

# FOURTH ACP-EEC CONVENTION

Signed at Lomé on 15 December 1989

## PREAMBLE

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 HELLENIC REPUBLIC,

HIS MAJESTY THE KING OF SPAIN,

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,

THE PRESIDENT OF THE PORTUGUESE REPUBLIC,

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

Contracting Parties to the Treaty establishing the European Coal and Steel Community and the Treaty establishing the European Economic Community, hereinafter referred to as "the Community", the States of the Community being hereinafter referred to as "Member States",

and THE COUNCIL AND THE COMMISSION OF THE EUROPEAN COMMUNITIES,

of the one part, and

THE PRESIDENT OF THE PEOPLE'S REPUBLIC OF ANGOLA,

HER MAJESTY THE QUEEN OF ANTIGUA AND BARBUDA,

THE HEAD OF STATE OF THE COMMONWEALTH OF THE BAHAMAS,

THE HEAD OF STATE OF BARBADOS,

HER MAJESTY THE QUEEN OF BELIZE,

THE PRESIDENT OF THE PEOPLE'S REPUBLIC OF BENIN,

THE PRESIDENT OF THE REPUBLIC OF BOTSWANA,

THE PRESIDENT OF THE PEOPLE'S FRONT, HEAD OF THE STATE, HEAD OF THE GOVERNMENT OF BURKINA FASO,

THE PRESIDENT OF THE REPUBLIC OF BURUNDI,

THE PRESIDENT OF THE REPUBLIC OF CAMEROON,

THE PRESIDENT OF THE REPUBLIC OF CAPE VERDE,

THE PRESIDENT OF THE CENTRAL AFRICAN REPUBLIC,

THE PRESIDENT OF THE ISLAMIC FEDERAL REPUBLIC OF THE COMOROS,  
THE PRESIDENT OF THE PEOPLE'S REPUBLIC OF THE CONGO,  
THE PRESIDENT OF THE REPUBLIC OF THE COTE D'IVOIRE,  
THE PRESIDENT OF THE REPUBLIC OF DJIBOUTI,  
THE GOVERNMENT OF THE COMMONWEALTH OF DOMINICA,  
THE PRESIDENT OF THE DOMINICAN REPUBLIC,  
THE PRESIDENT OF THE PEOPLE'S DEMOCRATIC REPUBLIC OF ETHIOPIA,  
THE PRESIDENT OF THE REPUBLIC OF FIJI,  
THE PRESIDENT OF THE GABONESE REPUBLIC,  
THE PRESIDENT OF THE REPUBLIC OF THE GAMBIA,  
THE HEAD OF STATE AND CHAIRMAN OF THE PROVISIONAL NATIONAL DEFENCE COUNCIL OF THE REPUBLIC OF GHANA,  
HER MAJESTY THE QUEEN 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 COOPERATIVE REPUBLIC OF GUYANA,  
THE PRESIDENT OF THE REPUBLIC OF HAITI,  
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 CHAIRMAN OF THE MILITARY COMMITTEE FOR NATIONAL SAFETY, HEAD OF STATE OF THE ISLAMIC REPUBLIC OF MAURITANIA,  
HER MAJESTY THE QUEEN OF MAURITIUS,  
THE PRESIDENT OF THE PEOPLE'S REPUBLIC OF MOZAMBIQUE,  
THE PRESIDENT OF THE SUPREME MILITARY COUNCIL, HEAD OF STATE OF NIGER,  
THE HEAD OF THE FEDERAL GOVERNMENT OF NIGERIA,  
THE PRESIDENT OF THE REPUBLIC OF UGANDA,  
HER MAJESTY THE QUEEN OF PAPUA NEW GUINEA,  
THE PRESIDENT OF THE RWANDESE REPUBLIC,  
HER MAJESTY THE QUEEN OF SAINT CHRISTOPHER AND NEVIS,  
HER MAJESTY THE QUEEN OF SAINT LUCIA,

HER MAJESTY THE QUEEN OF SAINT VINCENT AND THE GRENADINES,  
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,  
HER MAJESTY THE QUEEN OF THE SOLOMON ISLANDS,  
THE PRESIDENT OF THE SOMALI DEMOCRATIC REPUBLIC,  
THE PRESIDENT OF THE REPUBLIC OF THE SUDAN,  
THE PRESIDENT OF THE REPUBLIC OF SURINAME,  
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 TOGOLESE REPUBLIC,  
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 GOVERNMENT OF THE REPUBLIC OF VANUATU,  
THE PRESIDENT OF THE REPUBLIC OF ZAIRE,  
THE PRESIDENT OF THE REPUBLIC OF ZAMBIA,  
THE PRESIDENT OF THE REPUBLIC OF ZIMBABWE,  
WHOSE STATES ARE HEREINAFTER REFERRED TO AS "ACP STATES",

of the other part,

HAVING REGARD to the Treaty establishing the European Economic Community and the Treaty establishing the European Coal and Steel Community, on the one hand, and the Georgetown Agreement constituting the group of African, Caribbean and Pacific States, on the other;

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

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

REAFFIRMING their adherence to the principles of the said Charter and their faith in fundamental human rights, in all aspects of human dignity and in the worth of the human person, as the central agent and beneficiary of development, in the equal rights of men and women and of nations, large and small;

RECALLING the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights; recognizing the need to respect and guarantee civil and political rights and to strive to bring about full enjoyment of economic, social and cultural rights;

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

RESOLVED to step up their common efforts to contribute towards international cooperation and to the solution of international problems of economic, social, intellectual and humanitarian nature, in conformity with the aspirations of the international community towards the establishment of a new, more just and more balanced world order;

RESOLVED to make, through their cooperation, a significant contribution to the economic, social and cultural development of the ACP States and to the greater well-being of their populations;

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

HIS MAJESTY THE KING OF THE BELGIANS:

André GEENS, Minister for Development Cooperation;

HER MAJESTY THE QUEEN OF DENMARK:

Jacob RYTTER, Permanent Representative to the European Communities;

THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY:

Irmgard ADAM-SCHWAETZER, Deputy Minister, Ministry for Foreign Affairs;

THE PRESIDENT OF THE HELLENIC REPUBLIC:

Yannis POTTAKIS, Deputy Minister, Ministry for Foreign Affairs;

HIS MAJESTY THE KING OF SPAIN:

Pedro SOLBES, State Secretary for the European Communities;

THE PRESIDENT OF THE FRENCH REPUBLIC:

Jacques PELLETIER, Minister for Cooperation and Development;

THE PRESIDENT OF IRELAND:

Sean CALLEARY, TD, Minister of State at the Department of Foreign Affairs, responsible for Development Aid;

THE PRESIDENT OF THE ITALIAN REPUBLIC:

Claudio LENOCI, Under-Secretary of State, Ministry for Foreign Affairs;

HIS ROYAL HIGHNESS THE GRAND DUKE OF LUXEMBOURG:

Joseph WEYLAND, Permanent Representative to the European Communities;

HER MAJESTY THE QUEEN OF THE NETHERLANDS:

S.H. BLOMBERGEN, Chargé d'Affaires to Accra;

THE PRESIDENT OF THE PORTUGUESE REPUBLIC:

José Manuel DURAO BARROSO, State Secretary, Ministry for Foreign Affairs and Cooperation;

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

Lord REAY, Government Whip;

THE COUNCIL AND THE COMMISSION OF THE EUROPEAN COMMUNITIES:

Michel ROCARD, Prime Minister of the French Republic, President-in-Office of the Council of the European Communities;

Manuel MARIN, Vice-President of the Commission of the European Communities;

THE PRESIDENT OF THE PEOPLE'S REPUBLIC OF ANGOLA:

Emilio José de CARVALHO GUERRA, Head of the Mission of the People's Republic of Angola to the European Communities;

HER MAJESTY THE QUEEN OF ANTIGUA AND BARBUDA:

James THOMAS, High Commissioner of Antigua and Barbuda;

THE HEAD OF STATE OF THE COMMONWEALTH OF THE BAHAMAS:

Patricia Elaine Joan RODGERS, Head of the Mission of the Commonwealth of the Bahamas;

THE HEAD OF STATE OF BARBADOS:

Edward Evelyn GREAVES, Minister of Trade, Industry and Commerce;

HER MAJESTY THE QUEEN OF BELIZE:

Sir Edney CAIN, High Commissioner to the United Kingdom;

THE PRESIDENT OF THE PEOPLE'S REPUBLIC OF BENIN:

Amos ELEGBE, Minister for Trade, Craft Trades and Tourism;

THE PRESIDENT OF THE REPUBLIC OF BOTSWANA:

Archibald M. MOGWE Minister of Mineral Resources and Water Affairs;

THE PRESIDENT OF THE PEOPLE'S FRONT, HEAD OF STATE, HEAD OF THE GOVERNMENT OF BURKINA FASO:

Pascal ZAGRE, Minister for Planning and Cooperation;

THE PRESIDENT OF THE REPUBLIC OF BURUNDI:

D.R. Salvator SAHINGUVU, State Secretary to the Prime Minister responsible for Planning;

THE PRESIDENT OF THE REPUBLIC OF CAMEROON:

Elisabech TANKEU, Minister for Planning and Regional Development;

THE PRESIDENT OF THE REPUBLIC OF CAPE VERDE:

Adao ROCHA, Minister for Industry and Energy;

THE PRESIDENT OF THE CENTRAL AFRICAN REPUBLIC:

Thierry INGABA, State Secretary for Planning and International Cooperation;

THE PRESIDENT OF THE ISLAMIC FEDERAL REPUBLIC OF THE COMOROS:

Ali MLAHAILI, Ambassador to the French Republic;

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

Pierre MOUSSA, Minister responsible for Planning and Economic Affairs;

THE PRESIDENT OF THE REPUBLIC OF THE COTE D'IVOIRE:

Moise Koffi KOUMOUÉ, Minister for Economic Affairs and Finance;

THE PRESIDENT OF THE REPUBLIC OF DJIBOUTI:

Ahmed IBRAHIM ABDI, Minister of Labour and Social Security;

THE GOVERNMENT OF THE COMMONWEALTH OF DOMINICA:

Charles Angelo SAVARIN, Ambassador to the Kingdom of Belgium; .

THE PRESIDENT OF THE DOMINICAN REPUBLIC:

Joaquin RICARDO, Minister of Foreign Affairs;

THE PRESIDENT OF THE PEOPLE'S DEMOCRATIC REPUBLIC OF ETHIOPIA:

Aklilu AFEWORK, Minister, Head of the Office of the State Committee for Foreign Economic Relations;

THE PRESIDENT OF THE REPUBLIC OF FIJI:

Kaliopate TAVOLA, Head of the Mission of Fiji to the European Communities;

THE PRESIDENT OF THE GABONESE REPUBLIC:

Pascal NZE, Minister for Planning, Development and Economic Affairs;

THE PRESIDENT OF THE REPUBLIC OF THE GAMBIA:

Saihou S. SABALLY, Minister of Finance and Trade;

THE HEAD OF STATE AND CHAIRMAN OF THE PROVISIONAL NATIONAL DEFENCE COUNCIL OF THE REPUBLIC OF GHANA:

Dr KWESI BOTCHWEY, PNDC, Secretary for Finance and Economic Planning;

HER MAJESTY THE QUEEN OF GRENADA:

Denneth Matthew MODESTE,

Permanent Secretary, Ministry for External Affairs;

THE PRESIDENT OF THE REPUBLIC OF GUINEA:

Ibrahim SYLLA, Minister for Planning and International Cooperation;

THE PRESIDENT OF THE COUNCIL OF STATE OF GUINEA-BISSAU:

Aristides MENEZES, State Secretary, Ministry for International Cooperation;

THE PRESIDENT OF THE REPUBLIC OF EQUATORIAL GUINEA:

Alejandro Evuna OWONO, Minister of State entrusted with Missions to the Presidency of the Republic;

THE PRESIDENT OF THE COOPERATIVE REPUBLIC OF GUYANA:

James H. E. MATHESON, Ambassador Extraordinary, Head of the Mission of the Cooperative Republic of Guyana to the European Communities;

THE PRESIDENT OF THE REPUBLIC OF HAITI:

Yvon PERRIER, Minister for Foreign Affairs and Cults;

THE HEAD OF STATE OF JAMAICA:

Leslie Armon WILSON, Ambassador, Head of the Mission of Jamaica to the European Communities;

THE PRESIDENT OF THE REPUBLIC OF KENYA:

Dr Zacharia T. ONYONKA, MP, Minister for Planning and National Development;

THE PRESIDENT OF THE REPUBLIC OF KIRIBATI:

Michael T. SOMARE, Minister for Foreign Affairs of Papua New Guinea;

HIS MAJESTY THE KING OF THE KINGDOM OF LESOTHO:

Dr M. M. SEFALI, Minister of Planning, Economic and Manpower Development;

THE PRESIDENT OF THE REPUBLIC OF LIBERIA:

Dr Elijah TAYLOR, Minister of Planning and Economic Affairs;

THE PRESIDENT OF THE DEMOCRATIC REPUBLIC OF MADAGASCAR:

Georges Yvan SOLOFOSON, Minister for Trade;

THE PRESIDENT OF THE REPUBLIC OF MALAWI:

R. W. CHIRWA, MP, Minister of Trade, Industry and Tourism;

THE PRESIDENT OF THE REPUBLIC OF MALI:

Dr Na'Golo TRAORE, Minister for Foreign Affairs and International Cooperation;

THE CHAIRMAN OF THE MILITARY COMMITTEE FOR NATIONAL SAFETY, HEAD OF STATE OF THE ISLAMIC REPUBLIC OF MAURITANIA,

Mohamed Lemine Ould Na'DIAYANE, Lieutenant-Colonel, Member and Permanent Secretary of the Military Committee for National Safety;

HER MAJESTY THE QUEEN OF MAURITIUS:

Murlidass DULLOO, Minister for Agriculture, Fisheries and Natural Resources;

THE PRESIDENT OF THE PEOPLE'S REPUBLIC OF MOZAMBIQUE:

Pascoal Manuel MOCUMBI, Minister for Foreign Affairs;

THE PRESIDENT OF THE SUPREME MILITARY COUNCIL, HEAD OF STATE OF NIGER:

Yacouba SANDI, State Secretary in the Ministry for Foreign Affairs and Cooperation, responsible for Cooperation;

THE HEAD OF THE FEDERAL GOVERNMENT OF NIGERIA:

Dr Chu S, P. OKONGWU, Minister of Finance and Economic Development;

THE PRESIDENT OF THE REPUBLIC OF UGANDA:

Abbey KAFUMBE-MUKASA, Deputy Minister of Finance;

HER MAJESTY THE QUEEN OF PAPUA NEW GUINEA:

Michael T. SOMARE, CH, Minister for Foreign Affairs;

THE PRESIDENT OF THE RWANDESE REPUBLIC:

Aloys NSEKALIJE, Colonel, Minister for Industry and Craft Trades;

HER MAJESTY THE QUEEN OF SAINT CHRISTOPHER AND NEVIS:

Edwin LAURENT, Minister Counsellor of the High Commission of Eastern Caribbean States in London;

HER MAJESTY THE QUEEN OF SAINT LUCIA:

Edwin LAURENT, Minister Counsellor of the High Commission of Eastern Caribbean States in London;

HER MAJESTY THE QUEEN OF SAINT VINCENT AND THE GRENADINES:

Edwin LAURENT, Minister Counsellor of the High Commission of Eastern Caribbean States in London;

THE HEAD OF STATE OF WESTERN SAMOA:

Amua L. IJOANE, High Commissioner;

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

Carlos FERREIRA, Minister for Social Infrastructure and the Environment;

THE PRESIDENT OF THE REPUBLIC OF SENEGAL:

Seydina Oumar SY, Minister for Trade;

THE PRESIDENT OF THE REPUBLIC OF SEYCHELLES:

Claude MOREL, Chargé d'affaires a.i. of the Seychelles Embassy in Paris;

THE PRESIDENT OF THE REPUBLIC OF SIERRA LEONE:

Leonard S. FOFANAH, Minister of State, Ministry of National Development and Economic Planning;

HER MAJESTY THE QUEEN OF THE SOLOMON ISLANDS:

Lord REAY, Government Whip;

THE PRESIDENT OF THE SOMALI DEMOCRATIC REPUBLIC:

Ali HASSAN ALI, Ambassador, Head of the Mission of the Somali Democratic Republic to the European Communities;

THE PRESIDENT OF THE REPUBLIC OF THE SUDAN:

Dr SAYED ALI ZAKI, Minister of Finance and Economic Planning;

THE PRESIDENT OF THE REPUBLIC OF SURINAME:

Donald Aloysius MACLEOD, Ambassador Extraordinary, Head of the Mission of the Republic of Suriname to the European Communities;

HIS MAJESTY THE KING OF THE KINGDOM OF SWAZILAND:

NKOMENI Douglas NITWANE, Senator, Minister of Commerce, Industry and Tourism;

THE PRESIDENT OF THE UNITED REPUBLIC OF TANZANIA:

Joseph A. T. MUWOWO, Minister Plenipotentiary,

Chargé d'affaires ai. of the Embassy of the United Republic of Tanzania to the European Communities;

THE PRESIDENT OF THE REPUBLIC OF CHAD:

Ibni Oumar Mahamat SALEH, Minister for Planning and Cooperation;

THE PRESIDENT OF THE TOGOLESE REPUBLIC:

Barry Moussa BARQUE, Minister for Planning and Mining;

HIS MAJESTY KING TAUFU'AHU TUPOU IV OF TONGA:

His Royal Highness Crown Prince TUPOUTO'A, Minister for Foreign Affairs;

THE PRESIDENT OF THE REPUBLIC OF TRINIDAD AND TOBAGO:

Dr Sahadeo BASDEO, Senator,

Minister of External Affairs and International Trade;

HER MAJESTY THE QUEEN OF TUVALU:

Peter FEIST, Honorary Consul to the Federal Republic of Germany;

THE GOVERNMENT OF THE REPUBLIC OF VANUATU:

Harold Colin QUALAO, Minister of Trade, Commerce, Cooperatives, Industry and Energy;

THE PRESIDENT OF THE REPUBLIC OF ZAIRE: MOBUTU NYIWA,

State Commissioner for International Cooperation;

THE PRESIDENT OF THE REPUBLIC OF ZAMBIA:

RABBISON MAFESHI CHONGO, M. P., Minister of Commerce and Industry;

THE PRESIDENT OF THE REPUBLIC OF ZIMBABWE:

Dr O. M. MUNYARADZI, Minister of Trade and Commerce;

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

HAVE AGREED AS FOLLOWS:



# **Part One. GENERAL PROVISIONS OF ACP-EEC COOPERATION**

## **Chapter 1. Objectives and Principles of Cooperation**

### **Article 1.**

The Community and its Member States, of the one part, and the ACP States, of the other part (hereinafter referred to as the "Contracting Parties"), hereby conclude this cooperation Convention in order to promote and expedite the economic, cultural and social development, of the ACP States and to consolidate and diversify their relations in a spirit of solidarity and mutual interest.

The Contracting Parties thereby affirm their undertaking to continue, strengthen and render more effective the system of cooperation established under the first, second and third ACP-EEC Conventions and confirm the special character of their relations, based on their reciprocal interest, and the specific nature of their cooperation.

The Contracting Parties hereby express their resolve to intensify their effort to create, with a view to a more just and balanced international economic order, a model for relations between developed and developing states and to work together to affirm in the international context the principles underlying their cooperation.

### **Article 2.**

ACP-EEC cooperation, underpinned by a legally binding system and the existence of joint institutions, shall be exercised on the basis of the following fundamental principles:

- equality between partners, respect for their sovereignty, mutual interest and interdependence,
- the right of each State to determine its own political, social, cultural and economic policy options,
- security of their relations based on the *acquis* of their system of cooperation.

### **Article 3.**

The ACP States shall determine the development principles, strategies and models for their economies and societies in all sovereignty.

### **Article 4.**

Support shall be provided in ACP-EEC cooperation for the ACP States' efforts to achieve comprehensive self-reliant and self-sustained development based on their cultural and social values, their human capacities, their natural resources and their economic potential in order to promote the ACP States' social, cultural and economic progress and the well-being of their populations through the satisfaction of their basic needs, the recognition of the role of women and the enhancement of people's capacities, with respect for their dignity.

Such development shall be based on a sustainable balance between its economic objectives, the rational management of the environment and the enhancement of natural and human resources.

### **Article 5.**

1. Cooperation shall be directed towards development centred on man, the main protagonist and beneficiary of development, which thus entails respect for and promotion of all human rights. Cooperation operations shall thus be conceived in accordance with the positive approach, where respect for human rights is recognized as a basic factor of real development and where cooperation is conceived as a contribution to the promotion of these rights.

In this context development policy and cooperation are closely linked with the respect for and enjoyment of fundamental human rights. The role and potential of initiatives taken by individuals and groups shall also be recognized and fostered in order to achieve in practice real participation of the population in the development process in accordance with Article 13.

2. Hence the Parties reiterate their deep attachment to human dignity and human rights, which are legitimate aspirations of individuals and peoples. The rights in question are all human rights, the various categories thereof being indivisible and

inter-related, each having its own legitimacy; non-discriminatory treatment; fundamental human rights; civil and political rights; economic, social and cultural rights.

Every individual shall have the right, in his own country or in a host country, to respect for his dignity and protection by the law.

ACP-EEC cooperation shall help abolish the obstacles preventing individuals and peoples from actually enjoying to the full their economic, social and cultural rights and this must be achieved through the development which is essential to their dignity, their well-being and their self-fulfilment. To this end, the Parties shall strive, jointly or each in its own sphere of responsibility, to help eliminate the causes of situations of misery unworthy of the human condition and of deep-rooted economic and social inequalities.

The Contracting Parties hereby reaffirm their existing obligations and commitment in international law to strive to eliminate all forms of discrimination based on ethnic group, origin, race, nationality, colour, sex, language, religion or any other situation. This commitment applies more particularly to any situation in the ACP States or in the Community that may adversely affect the pursuit of the objectives of the Convention, and to the system of apartheid, having regard also to its destabilizing effects on the outside. The Member States (and/or, where appropriate, the Community itself) and the ACP States will continue to ensure, through the legal or administrative measures which they have or will have adopted, that migrant workers, students and other foreign nationals legally within their territory are not subjected to discrimination on the basis of racial, religious, cultural or social differences, notably in respect of housing, education, health care, other social services and employment.

3. At the request of the ACP States, financial resources may be allocated, in accordance with the rules governing development finance cooperation, to the promotion of human rights in the ACP States through specific schemes, public or private, that would be decided, particularly in the legal sphere, in consultation with bodies of internationally recognized competence in the field. Resources may also be given to support the establishment of structures to promote human rights. Priority shall be given to schemes of regional scope.

## **Article 6.**

1. With a view to attaining more balanced and self-reliant economic development in the ACP States, special efforts shall be made under this Convention to promote rural development, food security for the people, rational management of natural resources, and the preservation, revival and strengthening of agricultural production potential in the ACP States.

2. The Contracting Parties recognize that priority must be given to environmental protection and the conservation of natural resources, which are essential conditions for sustainable and balanced development from both the economic and human viewpoints.

## **Article 7.**

The Community and the ACP States shall give special importance and high priority to regional cooperation and integration. In this context, the Convention shall offer effective support for the ACP States' efforts to organize themselves into regional groupings and to step up their cooperation at regional and inter-regional level with a view to promoting a new, more just and more balanced economic order.

## **Article 8.**

The Contracting Parties acknowledge the need to accord special treatment to the least-developed ACP States and to take account of the specific difficulties confronting the landlocked and island ACP States. They shall pay special attention to improving the living conditions of the poorest sections of the population.

Cooperation shall comprise, inter alia, special treatment when determining the volume of financial resources and the conditions attached thereto in order to enable the least-developed ACP States to overcome structural and other obstacles to their development.

For the landlocked and island ACP States, cooperation shall be aimed at devising and encouraging specific operations to deal with development problems caused by their geographical situations.

## **Article 9.**

In order to step up the effectiveness of the instruments of this Convention, the Contracting Parties shall adopt, in the

framework of their respective responsibilities, guidelines, priorities and measures conducive to attaining the objectives set out in this Convention and agree to pursue, in accordance with the principles set out in Article 2, the dialogue within joint institutions and in the coordinated implementation of development finance cooperation and the other cooperation instruments.

### **Article 10.**

The Contracting Parties shall, each as far as it is concerned in the framework of this Convention, take all appropriate measures, whether general or particular, to ensure the fulfilment of the obligations arising from this Convention and to facilitate the pursuit of its objectives. They shall refrain from any measures liable to jeopardize the attainment of the objectives of this Convention.

### **Article 11.**

Within the scope of their respective responsibilities, the institutions of this Convention shall examine periodically the results of the application thereof, provide any necessary impetus and take any relevant decision or measure for the attainment of its objectives.

Any question that might directly hamper the effective attainment of the objectives of this Convention may be raised in the context of the institutions.

Consultations shall take place within the Council of Ministers at the request of either Contracting Party in cases provided for in this Convention or where difficulties arise with the application or interpretation thereof.

### **Article 12.**

Where the Community intends, in the exercise of its powers, to take a measure which might affect the interests of the ACP States as far as this Convention's objectives are concerned, it shall inform in good time the said States of its intentions. Towards this end, the Commission shall communicate regularly to the Secretariat of the ACP States any proposals for such measures. Where necessary, a request for information may also take place on the initiative of the ACP States.

At their request, consultations shall be held in good time so that account may be taken of their concerns as to the impact of those measures before any final decision is made.

After such consultations have taken place, the ACP States shall also be provided with adequate information on the entry into force of such decisions, in advance whenever possible.

## **Chapter 2. Objectives and Guidelines of the Convention In the Main Areas of Cooperation**

### **Article 13.**

Cooperation shall be aimed at supporting development in the ACP States, a process centred on man himself and rooted in each people's culture. It shall back up the policies and measures adopted by those States to enhance their human resources, increase their own creative capacities and promote their cultural identities. Cooperation shall also encourage participation by the population in the design and execution of development operations.

Account shall be taken, in the various fields of cooperation, and at all the different stages of the operations executed, of the cultural dimension and social implications of such operations and of the need for both men and women to participate and benefit on equal terms.

### **Article 14.**

Cooperation shall entail mutual responsibility for preservation of the natural heritage. In particular, it shall attach special importance to environmental protection and the preservation and restoration of natural equilibria in the ACP States. Cooperation schemes in all areas shall therefore be designed to make the objectives of economic growth compatible with development that respects natural equilibria and brings about lasting results in the service of man.

In the framework of efforts to protect the environment and restore natural balances, cooperation shall help promote specific operations concerning the conservation of natural resources, renewable and non-renewable, the protection of

ecosystems and the control of drought, desertification and deforestation; other operations on specific themes shall also be undertaken (notably locust control, the protection and utilization of water resources, the preservation of tropical forests and biological diversity, the promotion of a better balance between urban and rural areas, and the urban environment).

### **Article 15.**

Agricultural cooperation shall be aimed at the pursuit of food self-sufficiency and food security in the ACP States, developing and organizing their productive systems, improving the living standards and conditions and the life-styles of the rural population and achieving the balanced development of rural areas.

Operations in this field shall be designed and executed to support the agricultural and food policies or strategies adopted by the ACP States.

### **Article 16.**

Cooperation in the field of mining and energy shall be directed at promoting and expediting, in the mutual interest, diversified economic development, deriving full benefit from the ACP States' human potential: and natural resources, and at fostering better integration of these and other sectors and their complementarity with the rest of the economy.

Cooperation shall be aimed at creating and consolidating the cultural, social and economic environment and the infrastructure required to achieve that objective.

Support shall be provided for the ACP States' efforts to devise and implement energy: policies suited to their situation, notably the gradual reduction of the dependence of the majority of them on imported petroleum products and the development of new and renewable sources of energy.

Cooperation shall be aimed at encouraging improved exploitation of energy and mining resources by taking account of the energy component in the development of the different economic and social sectors and thus helping to improve living conditions and the environment, leading to the better conservation of biomass resources, particularly fuelwood.

### **Article 17.**

The Community and the ACP States acknowledge that industrialization is a driving force complementary to agricultural and rural development in promoting the economic transformation of the ACP States in order to achieve self-sustained growth and balanced and diversified development. Industrial development is needed to enhance the productivity of the ACP economies so that they can meet basic human needs and step up the competitive participation of the ACP States in world trade by way of selling more value-added products.

### **Article 18.**

Given the extreme dependence of the economies of the vast majority of ACP States on their export of commodities, the Contracting Parties agree to pay particular attention to their cooperation in this sector with a view to supporting ACP States' policies or strategies designed:

- on the one hand, to foster diversification, both horizontal and vertical, of the ACP economies, in particular through the development of processing, marketing, distribution and transport (PMD), and
- on the other hand, to improve the competitiveness of the ACP States' commodities on world markets through the reorganization and rationalization of their production, marketing and distribution activities.

### **Article 19.**

The aim of cooperation in fisheries shall be to help the ACP States to develop their fishery resources in order to expand production for domestic consumption as part of their efforts to achieve increased food security and increase production for export. Such cooperation shall be designed to serve the mutual interests of the Parties, in accordance with their fishery policies.

## **Chapter 3. Widening Participation In Cooperation Activities**

### **Article 20.**

In accordance with Articles 2, 3 and 13 and in order to encourage all parties from the ACP States and the Community which are in a position to contribute to the autonomous development of the ACP States to put forward and implement initiatives, cooperation shall also support, within limits laid down by the ACP States concerned, development operations put forward by economic, social and cultural organizations in the framework of decentralized cooperation, in particular where they combine the efforts and resources of organizations from the ACP States and their counterparts from the Community. This form of cooperation shall be aimed in particular at making the capabilities, original operating methods and resources of such parties available to the development of the ACP States.

The parties referred to in this Article are decentralized public authorities, rural and village groupings, cooperatives, firms, trade unions, teaching and research centres, non-governmental development organizations, various associations and all groups and parties which are able and wish to make their own spontaneous and original contribution to the development of ACP States.

## **Article 21.**

Cooperation shall encourage and support the initiatives of the ACP parties referred to in Article 20, provided they correspond with the priorities, guidelines and development methods adopted by the ACP States. In this framework, cooperation shall support either the independent activities of ACP parties or the activities of ACP parties which are combined with support from similar parties from the Community which make their capabilities, experience, technological and organizational capacities or financial resources available to them.

Cooperation shall encourage parties from the ACP States and the Community to provide supplementary financial and technical resources for the development effort. Cooperation may provide decentralized cooperation operations with financial and/or technical support drawn from the resources of the Convention under the conditions laid down in Article 22.

This form of cooperation shall be organized in accordance with the role and the prerogatives of the public authorities of the ACP States.

## **Article 22.**

Decentralized cooperation operations may be supported through the instruments of development finance cooperation, with the approval of the ACP States concerned, preferably from the programming stage, of the principle of and the conditions for providing support for this form of cooperation. Such support shall be provided, to the extent to which it is necessary for the successful implementation of the proposed operations provided the usefulness of the latter has been recognized and in accordance with the provisions for development finance cooperation. Projects under this form of cooperation may be linked, or not, with programmes in the concentration sectors of the indicative programmes with a priority for those linked to the concentration sectors.

# **Chapter 4. Principles Governing the Instruments of Cooperation**

## **Article 23.**

In order to contribute towards achieving the aims of this Convention, the Contracting Parties shall deploy cooperation instruments that correspond to the principles of solidarity and mutual interest, adapted to the economic, cultural and social situation in the ACP States and in the Community and to developments in their international environment.

These instruments shall be directed mainly, by strengthening the established mechanisms and systems, at:

- increasing trade between the Parties,
- supporting the ACP States' efforts to achieve self-reliant development by stepping up their capacity to innovate and to adapt and transform technology,
- supporting the ACP States' structural adjustment efforts and thus contributing to the attenuation of the debt burden,
- helping the ACP States to gain access to the capital markets and encouraging direct private European investment to contribute towards the development of the ACP States,
- remedying the instability of export earnings from the ACP States' agricultural commodities and helping those countries to cope with serious disruptions affecting their mining industries.

## **Article 24.**

In order to promote and diversify trade between the Contracting Parties, the Community and the ACP States are agreed on:

- general trade provisions,
- special arrangements for Community import of certain ACP products,
- arrangements to promote the development of the ACP States' trade and services, including tourism,
- a system of reciprocal information and consultation designed to help apply the trade cooperation provisions of this Convention effectively.

## **Article 25.**

The aim of the general trade arrangements, which are based on the Contracting Parties' international obligations, shall be to provide a firm and solid foundation for trade cooperation between the ACP States and the Community.

They shall be based on the principle of free access to the Community market for products originating in the ACP States, with special provisions for agricultural products and a safeguard clause.

In view of the ACP States' present development needs, the arrangements shall not comprise any element of reciprocity for those States as regards free access.

They shall also be based on the principle of non-discrimination by the ACP States between the Member States and the according to the Community of treatment no less favourable than the most-favoured-nation treatment.

## **Article 26.**

The Community shall contribute towards the ACP States' own development efforts by providing adequate financial resources and appropriate technical assistance aimed at stepping up those States' capacities for self-reliant and integrated economic, social and cultural development and also at helping to raise their populations' standard of living and well-being, and promote and mobilize resources in support of sustainable, effective and growth-oriented structural adjustment programmes.

Such contributions shall be made on a more predictable and continuous basis. They shall be provided at very highly concessional terms. Particular account shall be taken of the situation of the least-developed ACP States.

## **Article 27.**

The Contracting Parties agree to facilitate greater, more stable flows of resources from the private sector to the ACP States by taking measures to improve the access of ACP States to capital markets and to encourage European private investment in ACP States.

The Contracting Parties underline the need to promote, protect, finance and support investment and to provide equitable and stable conditions for the treatment of such investment.

## **Article 28.**

The Contracting Parties agree to confirm the importance of the system for the stabilization of export earnings, as well as of intensifying the process of consultation between the ACP States and the Community in international fora and organizations which aim to stabilize agricultural commodity markets.

Given the role played by the mining industry in the development efforts of numerous ACP States and the ACP-EEC mutual dependence in that sector, the Contracting Parties confirm the importance of the system established to help ACP States confronted with serious disruptions in that sector to restore it to a viable state and remedy the consequences of such disruptions for their development.

# **Chapter 5. Institutions**

## **Article 29.**

The institutions of this Convention shall be the Council of Ministers, the Committee of Ambassadors and the Joint Assembly.

### **Article 30.**

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. The functions of the Council of Ministers shall be to:

(a) establish the broad lines of the work to be undertaken in the context of the application of this Convention, notably in helping to solve problems fundamental to the joint and several development of the Contracting Parties;

(b) take any political decision for the attainment of the objectives of this Convention;

(c) take decisions in the specific areas provided for in this Convention;

(d) ensure efficient performance of the consultation mechanisms provided for in this Convention;

(e) deal with problems of interpretation of this Convention;

(f) settle procedural questions and arrangements for the implementation of this Convention;

(g) examine, at the request of one of the Contracting Parties, any question directly liable to hinder or promote the effective and efficient implementation of this Convention or any other issue likely to obstruct attainment of its objectives;

(h) take all necessary measures to establish ongoing contacts between the economic, cultural and social development bodies in the Community and in the ACP States and to arrange regular consultations with their representatives on matters of mutual interest, given the importance, acknowledged by the Contracting Parties, of establishing an effective dialogue between these bodies and of securing their contribution to the cooperation and development effort.

### **Article 31.**

1. The Committee of Ambassadors shall be composed, on the one hand, of each Member State's Permanent Representative to the European Communities and one representative of the Commission and, on the other, of the head of each ACP State's mission to the European Communities.

2. The Committee of Ambassadors shall assist the Council of Ministers in the performance of its functions and shall carry out any brief given to it by the Council.

It shall monitor implementation of this Convention and progress towards achieving the objectives set therein.

### **Article 32.**

1. The Joint Assembly shall be composed of equal numbers of, on the one hand, members of the European Parliament on the Community side and of, on the other, members of parliament or, failing this, of representatives designated by the ACP States.

2. (a) The Joint Assembly shall be a consultative body, which shall seek, through dialogue, debate and concerted action, to:

- promote better understanding between the peoples of the Member States and the ACP States,

- promote public awareness of the interdependence of the peoples and of their interests as well as of the need for solidarity in development,

- reflect upon all matters pertaining to ACP-EEC cooperation, particularly the fundamental problems of development,

- encourage research and initiative, and formulate proposals with a view to improving and reinforcing ACP-EEC cooperation,

- urge the relevant authorities of the Contracting Parties to implement this Convention in the most efficient manner possible so as to ensure the full attainment of its objectives;

(b) the Joint Assembly shall organize regular contacts and consultations with representatives of economic, cultural and social development bodies in the ACP States and in the Community in order to obtain their views on the attainment of the

objectives of this Convention.

## **Part Two. THE AREAS OF ACP-EEC COOPERATION**

### **Title I. ENVIRONMENT**

#### **Article 33.**

In the framework of this Convention, the protection and the enhancement of the environment and natural resources, the halting of the deterioration of land and forests, the restoration of ecological balances, the preservation of natural resources and their rational exploitation are basic objectives that the ACP States concerned shall strive to achieve with Community support with a view to bringing an immediate improvement in the living conditions of their populations and to safeguarding those of future generations.

#### **Article 34.**

The ACP States and the Community recognize that the existence of some ACP States is under threat as a result of a rapid deterioration of the environment that hinders any development efforts, in particular those aimed at achieving the priority objectives of food self-sufficiency and food security.

For many ACP States efforts to halt this deterioration of the environment and conserve natural resources are imperative and call for the preparation and implementation of coherent modes of development that have due regard for ecological balances.

#### **Article 35.**

The dimension of the environmental problem and of the means to be deployed mean that operations will have to be carried out in the context of overall, long-term policies, drawn up and implemented by the ACP States at national, regional and international level with international support.

To this end, the Parties agree to give priority in their activities to:

- preventive approach aimed at avoiding harmful effects on the environment as a result of any programme or operation,
- a systematic approach that will ensure ecological viability at all stages, from identification to implementation,
- a trans-sectoral approach that takes into account not only the direct but also the indirect consequences of the operations undertaken.

#### **Article 36.**

The protection of the environment and natural resources requires a comprehensive approach embracing the social and cultural dimensions.

In order to ensure that this specific dimension shall be taken into account, attention shall be given to incorporating suitable educational, training, information and research schemes in projects and programmes.

#### **Article 37.**

Cooperation instruments appropriate to environmental needs shall be designed and implemented.

Where necessary, both qualitative and quantitative criteria may be used. Jointly approved check-lists shall be used to help estimate the environmental viability of proposed operations, whatever their scale. Environmental impact assessment will be carried out as appropriate in the case of large-scale projects and those posing a significant threat to the environment.

For the proper integration of environmental considerations, physical inventories, where possible translated into accounting terms, shall be drawn up.

The implementation of these instruments has to ensure that, should an adverse environmental impact be foreseen, the necessary corrective measures are formulated in the early stage of the preparation of the proposed project or programme so that it can go ahead in accordance with the planned timetable though improved in terms of environmental and natural



resource protection.

### **Article 38.**

The Parties, desirous of bringing real protection and effective management to the environment and natural resources, consider that the areas of ACP-EEC cooperation covered in Part Two of this Convention shall be systematically examined and appraised in this light.

In this spirit the Community shall support efforts made by the ACP States at national, regional and international level and also operations mounted by intergovernmental and non-governmental organizations in furtherance of national and intergovernmental policies and priorities.

### **Article 39.**

1. The Contracting Parties undertake, for their part, to make every effort to ensure that international movements of hazardous waste and radioactive waste are generally controlled, and they emphasize the importance of efficient international cooperation in this area.

With this in view, the Community shall prohibit all direct or indirect export of such waste to the ACP States while at the same time the ACP States shall prohibit the direct or indirect import into their territory of such waste from the Community or from any other country, without prejudice to specific international undertakings to which the Contracting Parties have subscribed or may subscribe in the future in these two areas within the competent international fora.

These provisions do not prevent a Member State to which an ACP State has chosen to export waste for processing from returning the processed waste to the ACP State of origin.

The Contracting Parties shall expedite adoption of the necessary internal legislation and administrative regulations to implement this undertaking. At the request of one of the Parties, consultations may be held if delays are encountered. At the conclusion of such consultations each Party may take appropriate steps in the light of the situation.

2. The Parties undertake to monitor strictly the implementation of the prohibition measures referred to in the second paragraph of paragraph 1. Should difficulties arise in this respect, consultations may be held subject to the same conditions as those provided for in the second paragraph of paragraph 1 and with the same effect.

3. The term "hazardous waste" within the meaning of this Article shall cover categories of products listed in Annexes 1 and 2 to the Basle Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.

As regards radioactive waste, the applicable definitions and thresholds shall be those which will be laid down in the framework of the IAEA. In the meantime, the said definitions and thresholds shall be those specified in the declaration in Annex VIII to this Convention.

### **Article 40.**

At the request of the ACP States, the Community shall provide available technical information on pesticides and other chemical products with a view to helping them develop or reinforce a suitable and safe use of these products.

Where necessary and in accordance with the provisions for development finance cooperation, technical assistance can be given in order to ensure conditions of safety at all stages, from production to disposal of such products.

### **Article 41.**

The Parties recognize the value of exchanging views, using existing consultation mechanisms under this Convention, on major ecological hazards, whether on a planetary scale (such as the greenhouse effect, the deterioration of the ozone layer, tropical forests, etc.), or of a more specific scope resulting from the application of industrial technology. Such consultations may be requested by either Party, insofar as these hazards may in practice affect the Contracting Parties, and will be aimed at assessing the scope for joint action to be undertaken within the terms of this Convention. If necessary, the consultations will also provide for an exchange of views prior to discussions conducted on these subjects in the appropriate international fora.

## **Title II. AGRICULTURAL COOPERATION, FOOD SECURITY AND RURAL DEVELOPMENT**

# Chapter 1. Agricultural Cooperation and Food Security

## Article 42.

Cooperation in the agricultural and rural sector, that is arable farming, livestock production, fisheries and forestry, shall be aimed, inter alia, at:

- continuously and systematically promoting viable and sustainable development based in particular on protection of the environment and the rational management of natural resources,
- supporting the ACP States' efforts to increase their degree of self-sufficiency in food, in particular by strengthening the capacity of the ACP States to provide their populations with food of adequate quantity and quality and to ensure a satisfactory level of nutrition,
- reinforcing food security at national, regional and inter-regional level by stimulating regional trade flows of food products and improving coordination of the food policies of the countries concerned,
- guaranteeing the rural population incomes that will significantly improve their standard of living, in order to be able to cover their essential needs in the areas of food, education, health and living conditions,
- encouraging the active participation of the rural population, both men and women, in their own development by organizing small farmers into associations, and integrating producers, men and women, more effectively into national and international economic activity,
- increasing the participation of women in their capacity as producers, notably by improving access to all factors of production (land, inputs, credit, extension services and training),
- creating satisfactory living conditions and a satisfactory life-style in the rural environment, notably by developing social and cultural activities,
- improving rural productivity, notably by transfers of appropriate technology and the rational exploitation of plant and animal resources,
- reducing post-harvest losses,
- reducing the workload of women by, inter alia, promoting suitable post-harvest and food-processing technologies,
- diversifying job-creating rural activities and expanding activities that back up production,
- improving production by on-the-spot processing of the products of arable and livestock farming, fisheries and forestry,
- ensuring a better balance between food crops and export crops,
- developing and strengthening agricultural research tailored to the natural and human environment of the country and the region and meeting extension service and food security requirements,
- in the context of the above objectives, protecting the natural environment particularly through specific operations to protect and conserve ecosystems and to fight against drought, desertification and deforestation.

## Article 43.

1. Operations to attain the objectives referred to in Article 42 shall be as varied and practical as possible, at national, regional and inter-regional level.
2. They shall, furthermore, be designed and deployed to implement the policies and strategies established by the ACP States and respect their priorities.
3. Support shall be provided for such policies and strategies in the context of agricultural cooperation in accordance with the provisions of this Convention.

## Article 44.

1. Development of production calls for a rational stepping up of animal and crop production and involves:

- improving farming methods for rain-fed crops while conserving soil fertility,
- developing irrigated crops, inter alia through different types of agricultural water schemes (village water engineering, regulation of watercourses and soil improvement) ensuring optimum use and thrifty management of water which can be mastered by farmers and by local communities; operations shall also consist in the rehabilitation of existing schemes,
- improving and modernizing cultivation techniques and making better use of factors of production (improved varieties and breeds, agricultural equipment, fertilizers, plant treatment preparations),
- in the sphere of livestock farming, improving animal feed (more effective management of pasture, increased fodder production, more new water-points and repair of existing ones) and animal health, including the development of the infrastructure required for that purpose,
- better integration of arable and livestock farming;
- in the sphere of fisheries, modernizing fish-farming and developing aquaculture.

2. Other prerequisites for the development of production are:

- the extension of secondary and tertiary back-up activities for agriculture, such as the manufacture, modernization and promotion of agricultural and rural equipment and other inputs and, where necessary, their importation,
- the establishment or consolidation of agricultural savings and credit facilities adapted to local conditions in order to promote access to production factors for farmers,
- the encouragement of all those policies and incentives for producers which are appropriate to local conditions with a view to greater productivity and to improving farmer's incomes.

#### **Article 45.**

In order to ensure a return on output, agricultural cooperation shall contribute to:

- adequate means of preservation and suitable storage facilities for producers,
- effective control of disease, pests and other factors causing production losses,
- basic marketing arrangements underpinned by suitable organization of producers, with the necessary material and financial resources, and by adequate means of communication,
- flexible operation of marketing channels, taking account of every form of public or private initiative, to enable local markets, areas of the country with shortfalls and urban markets to be supplied, in order to cut down dependence on outside sources,
- facilities to prevent breaks in supplies (security storage) and guard against erratic price fluctuations (intervention storage),
- processing, packaging and marketing of products, particularly by developing artisanal and agro-industrial units, in order to adapt them to the trend of the market.

#### **Article 46.**

Rural promotion measures shall involve:

- the organization of producers within associations or communities in order to enable them to derive more benefit from joint contracts and investment and jointly owned equipment,
- encouragement of the participation of women and of recognition of the active role they play as full partners in the rural production and economic development processes,
- the development of social and cultural activities (such as health, education and culture) essential for improving rural life-styles;
- suitable extension services to train all farmers, both men and women,
- improvements in the training of instructors at all levels.

## **Article 47.**

Cooperation in agronomic and agrotechnical research shall contribute:

- to the development, in the ACP States, of domestic and regional research capacities suited to the local natural, social and economic conditions of crop and animal production, with special attention being paid to arid and semi-arid regions,
- in particular, to improving varieties and breeds, the nutritional quality of products and their packaging, and developing technology and processes accessible to the producers,
- to better dissemination of the results of research undertaken in an ACP or non-ACP State and applicable in other ACP States,
- to extension work in order to inform the greatest possible number of users of the results of such research,
- to promoting increased coordination of research, particularly at regional and international levels, in accordance with Article 152, and to implement appropriate operations to achieve this objective.

## **Article 48.**

Agricultural cooperation schemes shall be carried out in accordance with the detailed provisions and procedures laid down for development finance cooperation and in this context they may also cover the following:

1. under the heading of technical cooperation:

- exchange of information between the Community and the ACP States and among the ACP States themselves (on, for example, water use, intensive production techniques and the results of research),
- exchange of experience between professionals working in such areas as credit and savings, cooperatives, mutual insurance, artisanal activities and small-scale industry in rural areas;

2. under the heading of financial cooperation:

- supply of factors of production,
- support for market regulation bodies, on the basis of a coordinated approach to production and marketing problems,
- participation in the constitution of funds for agricultural credit facilities,
- opening of credit lines for farmers, farmers' trade organizations, artisans, women's groupings and small-scale industrial operators in rural areas, geared to their activities (such as supplies, primary marketing and storage), and also for associations implementing campaigns on specific themes,
- support for measures to combine industrial and trade skills in the ACP States and the Community within artisanal or industrial units, for the manufacture of inputs and equipment and for such purposes as the maintenance, packaging, storage, transport and processing of products.

## **Article 49.**

1. Community measures aimed at food security in the ACP States shall be conducted in the context of the food strategies or policies of the ACP States concerned and of the development objectives which they lay down.

They shall be implemented, in coordination with the instruments of this Convention, in the framework of Community policies and the measures resulting therefrom with due regard for the Community's international commitments.

2. In this context, multiannual indicative programming may be carried out with the ACP States which so wish, so that their food supplies can be better forecast.

## **Article 30.**

1. With regard to available agricultural products, the Community undertakes to ensure that export refunds can be fixed further in advance for all ACP States in respect of a range of products drawn up in the light of the food requirements expressed by those States.

Advance fixing shall be for one year and shall be applied each year throughout the life of this Convention, it being understood that the level of the refund will be determined in accordance with the methods normally followed by the Commission.

2. Specific agreements may be concluded with those ACP States which so request in the context of their food security policies.

## **Article 51.**

Food aid operations shall be decided on the basis of the rules and criteria adopted by the Community for all recipients of this type of aid.

Subject to those rules and to the Community's freedom of decision in this matter, food aid operations shall be governed by the following guidelines:

(a) except in urgent cases, Community food aid, which shall be a transitional measure, must be integrated with the ACP States' development policies. This calls for consistency between food aid and other cooperation measures;

(b) where products supplied as food aid are sold, they must be sold at a price which will not disrupt the domestic market. The resulting counterpart funds shall be used to finance the execution or running of projects or programmes with a major rural development component; these funds may also be used for all legitimate purposes approved by common agreement, taking into account Article 226 (d);

(c) where the products supplied are distributed free of charge, they must form part of nutrition programmes aimed in particular at vulnerable sections of the population or be delivered as remuneration for work;

(d) food aid operations that form part of development projects or programmes or nutrition programmes may be planned on a multiannual basis;

(e) as a matter of priority, the products supplied must meet the needs of the recipients. In the selection of such products, account should be taken in particular of the ratio of cost to specific nutritive value and of the effect the choice might have on consumer habits;

(f) where, in a recipient ACP State, the trend of the food situation is such as to make it desirable for food aid to be replaced in whole or in part by operations designed to consolidate the current trend, alternative operations may be implemented in the form of financial and technical assistance, in accordance with the relevant Community rules. These operations shall be decided upon at the request of the ACP State concerned;

(g) with a view to providing products suited to the habits of consumers, speeding up the supply of products for emergency operations or helping to improve food security, food aid purchases may be made not only in the Community but also in the recipient country or in another ACP or other developing country, preferably in the same geographical region.

## **Article 52.**

In implementing this Chapter, special attention shall be paid to assisting and enabling least-developed, land-locked and island ACP States to utilize fully the provisions of this Chapter. At the request of the States concerned, particular attention will be paid to:

- the specific difficulties of the least-developed ACP States in carrying out the policies or strategies they have established to strengthen their food self-sufficiency and food security. In this context, cooperation shall bear in particular on the productive sectors (including the supply of physical, technical and financial inputs), transport, marketing, packaging and the setting up of storage infrastructure,
- establishing a security stock system in landlocked ACP States in order to avoid the risk of breaks in supply,
- diversifying agricultural commodities production and improving food security in the island ACP States.

## **Article 53.**

1. The Technical Centre for Agricultural and Rural Cooperation shall be at the disposal of the ACP States to provide them with better access to information, research, training and innovations in the spheres of agricultural and rural development and extension.

In carrying out its work within the framework of its responsibilities it shall operate in close cooperation with the institutions and bodies referred to in this Convention.

2. The tasks of the Centre shall be to:

(a) assure, where so requested by the ACP States, the dissemination of scientific and technical information on methods and means of encouraging agricultural production and rural development, and also scientific and technical support for drawing up regional programmes in its own spheres of activity;

(b) foster the development by ACP States, at national and regional level, of their own capacities for production, purchase and exchange of technical and scientific information on agriculture, rural development and fisheries;

(c) refer ACP States' requests for information to bodies qualified to deal with them, or deal direct with such requests;

(d) provide ACP national and regional documentation centres and research institutes with easier access to scientific and technical publications dealing with agricultural and rural development issues and to databanks in the Community and the ACP States;

(e) in general help the ACP States to gain easier access to the results of work carried out by the national, regional and international bodies, more especially those qualified in the technical aspects of agricultural and rural development, based in the Community and in the ACP States, and maintain contact with those bodies;

(f) foster the exchange of information between those engaged in agricultural and rural development, notably research workers, instructors, technicians and extension workers, on the results of agricultural and rural development operations;

(g) sponsor and help organize meetings of specialists, research workers, planners and development personnel so that they may exchange experiences of specific ecological environments;

(h) facilitate access by the ACP States' training and extension personnel to the information they need to carry out their tasks and refer requests for specific training to existing qualified bodies;

(i) help facilitate the adaptation of available technical and scientific information to the needs of the ACP States' departments responsible for development, extension services, and training including functional literacy programmes in rural areas;

(j) facilitate the dissemination of technical and scientific information for use in integration strategies of agricultural and rural development, by reference to the priority requirements of development.

3. In the performance of its tasks the Centre shall pay particular attention to the needs of the least-developed ACP States.

4. To carry out its work, the Centre shall be supported by decentralized regional or national information networks. Such networks shall be built up gradually and efficiently as needs are identified with, as far as possible, the support of the most appropriate organizations and institutions.

5. The Committee of Ambassadors shall be the supervisory authority of the Centre. It shall lay down the rules of operation and the procedures for the adoption of the Centre's budget. The budget shall be financed in accordance with the rules laid down in this Convention in respect of development finance cooperation.

6. (a) The Centre shall be headed by a Director appointed by the Committee of Ambassadors.

(b) The Director of the Centre shall be assisted by staff recruited within the limit of the numbers budgeted for by the Committee of Ambassadors.

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

7. (a) To provide the Director of the Centre with technical and scientific assistance in working out appropriate solutions to the problems encountered by the ACP States, notably to improve their access to information, technical innovation, research and development in the sphere of agricultural and rural development and to devise the Centre's action programmes, an advisory committee shall be set up, composed on a basis of parity of agricultural and rural development experts.

(b) The members of the Advisory Committee shall be appointed by the Committee of Ambassadors in accordance with the procedures and criteria determined by it.

## **Chapter 2. Drought and Desertification Control**

### **Article 54.**

The ACP States and the Community recognize that certain ACP States are facing considerable difficulties as a result of endemic drought and growing desertification, which hold back all efforts at development, in particular those aimed at achieving the priority objective of food self-sufficiency and food security.

The two Parties agree that in a number of ACP States control of drought and desertification constitutes a major challenge on which depends the success of their development policy.

### **Article 55.**

The correction of this situation and the sustainable development of the countries affected or threatened by such disasters require a policy encouraging the restoration of the natural environment and of the balance between resources and the human and animal population; in particular through such means as improved harnessing and management of water resources, appropriate agriculture, agroforestry and reforestation schemes and control of the causes of desertification as well as of practices that engender it.

### **Article 56.**

If a return to the natural balance is to be expedited, a drought and desertification control component in particular must be incorporated into all agricultural and rural development operations, such as:

1. - the extension of agroforestry systems combining farming and forestry, research and development activities to produce plant species that are more adapted to local conditions,
- the introduction of suitable techniques aimed at increasing and maintaining the productivity of agricultural land, arable land and natural pastureland with a view to controlling the various forms of erosion,
- the reclamation of land that has deteriorated, by means of reforestation or agricultural-land improvement, combined with maintenance schemes involving, as far as possible, the people and authorities concerned in order to safeguard the progress made;
2. the encouragement of measures to economize on wood as an energy source by stepping up research into, application of and information on new and renewable sources of energy such as wind, solar and biomass energy, and by the use of improved stoves with a greater heat yield;
3. the rational development and management of forestry resources by setting up at national or regional level, forestry management plans aimed at optimizing the exploitation of forestry resources;
4. the pursuit of ongoing campaigns to educate the people concerned to be aware of the phenomena of drought and desertification and to train them in the possible ways of controlling them.
5. an overall coordinated approach which, as a result of schemes such as those referred to in points 1 to 4, seeks to ensure the restoration of a suitable ecological balance between natural resources and the human and animal population, without prejudicing the objective of harmonious economic and social development.

### **Article 57.**

The operations to be undertaken, where necessary with research backing, shall cover, inter alia:

1. improving man's knowledge of, and ability to forecast, desertification phenomena by observing developments in the field, by means, inter alia, of modern technologies such as remote sensing, by making use of results achieved and gaining a better understanding of the changes to the human environment in time and space;
2. making an inventory of water-tables and of their replenishment capacity with a view to better predictability of water supplies, using surface and ground water and improving management of these resources, in particular by means of dams or other appropriate developments for the purpose of satisfying the needs of people and animals, and improving weather forecasting;
3. establishing a system for the prevention and control of bush fires and deforestation.

## **Title III. DEVELOPMENT OF FISHERIES**

### **Article 58.**

The ACP States and the Community recognize the urgent need to promote the development of fishery resources of ACP States both as a contribution towards the development of fisheries as a whole and as a sphere of mutual interest for their respective economic sectors.

Cooperation in this field shall promote the optimum utilization of the fishery resources of ACP States, while recognizing the rights of landlocked States to participate in the exploitation of sea fisheries and the right of coastal States to exercise jurisdiction over the living marine resources of their exclusive economic zones in conformity with current international law and notably the conclusions of the Third United Nations Conference on the Law of the Sea.

### **Article 59.**

To encourage the development of the exploitation of the fishery resources of the ACP States, all the mechanisms for assistance and cooperation provided for in this Convention, notably financial and technical assistance in accordance with the terms set out in Title III, Part Three shall be applied to fisheries.

The priority objectives of such cooperation shall be to:

- improve knowledge of the fisheries environment and its resources,
- increase the means of protecting fishery resources and monitoring their rational exploitation,
- increase the involvement of the ACP States in the exploitation of deep-sea fishery resources within their exclusive economic zones,
- encourage the rational exploitation of the fishery resources of the ACP States and the resources of high seas in which the ACP States and the Community share interests,
- increase the contribution of fisheries including aquaculture, non-industrial fishing and inland fisheries, to rural development, by giving importance to the role they play in strengthening food security, improving nutrition and the social and economic conditions of the communities concerned; this implies, inter alia, a recognition of and support for women's work at the post-harvest stage and in the marketing of fish,
- increase the contribution of fisheries to industrial development by increasing catches, output, processing and exports.

### **Article 60.**

Assistance from the Community for fisheries development shall include support in the following areas:

- (a) fisheries production, including the acquisition of boats, equipment and gear, the development of infrastructure for rural fishing communities and the fishing industry and support for aquaculture projects, notably by providing specific lines of credit to appropriate ACP institutions for onlending to the operators concerned;
- (b) fisheries management and protection, including the assessment of fish stocks and of aquacultural potential, the improvement of environmental monitoring and control and the development of ACP coastal States' capacities for a rational management of the fishery resources in their exclusive economic zones;
- (c) processing and marketing of fishery products, including the development of processing, collection, distribution and marketing facilities and operations; the reduction of post-harvest losses and the promotion of programmes to improve fish utilization and nutrition from fishery products.

### **Article 61.**

Particular attention shall be paid in fishery resource development cooperation to the training of ACP nationals in all areas of fisheries, to the development and strengthening of ACP research capabilities and to the promotion of intra-ACP and regional cooperation in fisheries management and development.

### **Article 62.**

In implementing Articles 60 and 61, special attention shall be given to enabling least-developed, landlocked and island ACP States to maximize their capabilities to manage their fishery resources.

### **Article 63.**



The ACP States and the Community recognize the need for direct or regional cooperation or, as appropriate, cooperation through international organizations, with a view to promoting conservation and the optimum use of the living resources of the sea.

#### **Article 64.**

The Community and the ACP States recognize that coastal States exercise sovereign rights for the purpose of exploring, exploiting, conserving and managing the fishery resources of their respective exclusive economic zones in conformity with current international law. The ACP States recognize that there is a role for Community Member States' fishing fleets, operating lawfully in waters under ACP jurisdiction, in the development of ACP fishery potential and in economic development in general in the coastal ACP States. Accordingly, the ACP States declare their willingness to negotiate with the Community fishery agreements aimed at guaranteeing mutually satisfactory conditions for fishing activities of vessels flying the flag of one of the Member States of the Community.

In the conclusion or implementation of such agreements, the ACP States shall not discriminate against the Community or among the Member States, without prejudice to special arrangements between developing States within the same geographical area, including reciprocal fishing arrangements, nor shall the Community discriminate against ACP States.

#### **Article 65.**

Where ACP States situated in the same subregion as territories to which the Treaty establishing the European Economic Community applies wish to engage in fishing activities in the corresponding fishing zone, the Community, and the ACP States shall open negotiations with a view to concluding a fishery agreement in the spirit of Article 64, taking account of their specific situation in the region and of the objective of strengthening regional cooperation between those territories and the neighbouring ACP States.

#### **Article 66.**

The Community and the ACP States recognize the value of a regional approach to fisheries access and shall support moves by ACP coastal States towards harmonized arrangements for access for fishing vessels.

#### **Article 67.**

The Community and the ACP States agree to take all appropriate steps to ensure that the efforts undertaken in fisheries cooperation under this Convention shall be effective, taking into account notably the Joint Declaration on the origin of fishery products.

As regards exports of fishery products to the markets of the Community, due account shall be taken of Article 358.

#### **Article 68.**

The mutually satisfactory conditions referred to in Article 64 shall bear in particular on the nature and the scale of the compensation to be received by the ACP States concerned under bilateral agreements.

Compensation shall be additional to any allocation relating to projects in the fisheries sector pursuant to Title III, Part Three of this Convention.

Compensation shall be provided for partly by the Community as such and partly by the shipowners and shall take the form of financial compensation which may include licensing fees and, where appropriate, any other elements agreed upon by the parties to the fishery agreement, such as obligatory landing of part of the catch, employment of ACP nationals, the taking on board of observers, transfer of technology, research and training grants.

Compensation shall relate to the scale and value of the fishing opportunities provided in the exclusive economic zones of the ACP States concerned.

In addition, with regard to the fishing of highly migratory species, the particular character of such fisheries shall be taken into account in the respective obligations under the agreements, including the financial compensation.

The Community shall take all necessary measures to ensure that its vessels comply with the provisions of the agreements negotiated and with the laws and regulations of the ACP State concerned.

## **Title IV. COOPERATION ON COMMODITIES**

### **Article 69.**

ACP-EEC cooperation in the field of commodities shall take into account:

- the fact that the economies of a large number of ACP States are highly dependent on their exports of primary products,
- the deteriorating situation of their exports in most cases, mainly as a result of the downward trend in world prices,
- the structural nature of the difficulties in many commodity sectors both within the economies of the ACP States and at international level, in particular within the Community.

### **Article 70.**

The Community and the ACP States recognize the need for joint efforts aimed at resolving the structural difficulties in many commodity sectors and they take as the main objectives of their cooperation in this field:

- diversification, both horizontal and vertical, of the ACP economies, in particular through the development of processing, marketing, distribution and transport (PMDT), and
- improvement of the competitiveness of the ACP States' commodities on world markets through the reorganization and rationalization of their production, marketing and distribution activities.

The Community and the ACP States undertake to employ all appropriate means to enable them to go as far as possible in the attainment of these objectives; to that end, they agree to make coordinated use of the range of instruments and resources of this Convention.

### **Article 71.**

In pursuit of the objectives set out in Article 70, cooperation in the field of commodities, especially PMDT, shall be planned and implemented in compliance with the priorities decided by the ACP States and in support of policies and strategies drawn up by these States,

### **Article 72.**

Cooperation operations in the field of commodities shall be directed towards developing international, regional and national markets; they shall be carried out in accordance with the detailed rules and procedures laid down in the Convention, notably those relating to development finance cooperation. In this context, they may also cover:

1. the enhancement of human resources, including in particular:

- training programmes and courses for operators in the sectors concerned,
- support for national or regional schools and training institutes specializing in the sector;

2. the fostering of investments by EEC and ACP economic operators in the sector concerned, notably by means of:

- information and awareness-raising campaigns directed at operators likely to invest in activities that diversify and add value to ACP commodities,
- a more dynamic use of risk capital for firms wishing to invest in these PMDT activities,
- utilization of the pertinent provisions on investment promotion, protection, financing and support;

3. the development and improvement of the infrastructure necessary for activities in the sector concerned, and notably transport and telecommunications networks.

### **Article 73.**

In pursuit of the objectives set out in Article 70, the Contracting Parties shall attach particular importance to:

- ensuring that market signals, whether national, regional or international, are duly taken into account,

- taking account of the economic and social impact of the operations carried out ,
- ensuring a greater consistency at regional and international level between the strategies pursued by the various ACP States concerned,
- seeking an effective distribution of resources between the various activities and operators in the production sectors concerned.

#### **Article 74.**

The Community and the ACP States recognize the need to ensure a better operation of international commodity markets and to increase market transparency.

They confirm their willingness to step up consultations between the ACP States and the Community in the international fora and organizations dealing with commodities.

To this end, exchanges of views shall take place at the request of either Party:

- regarding the operation of existing international agreements or specialized intergovernmental working parties with the aim of improving them and making them more effective, consistent with market trends,
- when it is proposed to conclude or renew an international agreement or set up a specialized intergovernmental working party.

The aim of such exchanges of views shall be to take account of the respective interests of each Party; they may take place, where necessary, in the framework of the Commodities Committee.

#### **Article 75.**

The Community and the ACP States agree to set up a Commodities Committee, which shall serve in particular to help find solutions to structural problems relating to commodities.

The tasks of the Commodities Committee shall be to monitor the general implementation of the Convention in the commodities sector, taking account of the Parties' mutual interests, and, in particular:

- (a) to examine any general problems relating to ACP-EEC trade in these products which may be submitted to it by the relevant subcommittees set up under the Convention;
- (b) to recommend measures that will solve these problems and develop the competitiveness of the production and export systems;
- (c) to hold exchanges of views and information on the short- and medium-term prospects and forecasts for production, consumption and trade.

#### **Article 76.**

The Commodities Committee shall meet at least once a year at ministerial level. Its rules of procedure shall be laid down by the Council of Ministers. It shall be composed of representatives of the ACP States and of the Community appointed by the Council of Ministers. Its work shall be prepared by the Committee of Ambassadors in accordance with the procedures laid down in the rules of procedure of the Commodities Committee.

### **Title V. INDUSTRIAL DEVELOPMENT, MANUFACTURING AND PROCESSING**

#### **Article 77.**

In order to facilitate the attainment of the industrial development objectives of the ACP States, it is important to ensure that an integrated and sustainable development strategy, which links activities in different sectors to each other, is evolved. Thus, sectoral strategies for agricultural and rural development, manufacturing, mining, energy, infrastructure and services should be designed in such a way as to foster interlinkages within and between economic sectors with a view to maximizing focal value added and creating, where possible, an effective capacity to export manufactured products, while ensuring the protection of the environment and natural resources.

In pursuit of these objectives the Contracting Parties shall have recourse to the provisions on trade promotion for ACP

products and private investments, in addition to the specific provisions on industrial cooperation.

## **Article 78.**

Industrial cooperation, as a key instrument for industrial development, shall have as its objectives:

- (a) the creation of the basis of and framework for effective cooperation between the Community and the ACP States in the fields of manufacturing and processing, mineral resources development, energy resources development, transport and communications;
- (b) the promotion of conditions conducive to industrial enterprise development, and local and external investment;
- (c) improvement of capacity utilization and rehabilitation of existing industrial undertakings which are potentially viable, in order to restore the productive capacities of ACP economies;
- (d) fostering the creation of and the participation in enterprises by ACP nationals, especially those of a small and medium-sized nature that produce and/or use local inputs; promotion of new and strengthening of existing enterprises;
- (e) support for the establishment of new industries to supply the local market in a cost-effective manner and ensure the growth of the non-traditional export sector in order to increase foreign exchange earnings, provide employment opportunities and an increase in real incomes;
- (f) promoting increasingly close relations in the industrial field between the Community and the ACP States, and in particular further encouraging the speedy establishment of ACP-EEC industrial joint ventures;
- (g) promoting business associations in ACP States as well as other institutions for industrial enterprise and business development.

## **Article 79.**

The Community shall assist the ACP States in the improvement of their institutional framework, reinforcement of their financing institutions and the establishment, rehabilitation and improvement of industry-related infrastructure. The Community shall equally assist the ACP States in their efforts to integrate industrial structures at regional and inter-regional level.

## **Article 80.**

On the basis of a request from an ACP State, the Community shall provide the assistance required in the field of industrial training at all levels, bearing notably on the evaluation of industrial training needs and the establishment of corresponding programmes, the setting up and operation of national or regional ACP industrial training establishments, training for ACP nationals in appropriate establishments, on-the-job training both in the Community and in the ACP States and also cooperation between industrial training establishments in the Community and in the ACP States, and between the latter and those of other developing countries.

## **Article 81.**

In order to achieve the objectives of industrial development, the Community shall assist in the establishment and expansion of all types of viable industry which have been identified by the ACP States as important in terms of their industrialization objectives and priorities.

In this context the following areas merit particular attention:

(i) manufacturing and processing of primary products:

(a) industries processing, on a national or regional basis, raw materials for export;

(b) industries based on local needs and resources, focused on domestic and regional markets and mainly small and medium-sized industries geared to the modernization of agriculture, the efficient processing of agricultural products and the manufacturing of agricultural inputs and tools;

(ii) engineering, metallurgical and chemical industries:

(a) engineering enterprises for the production of tools and equipment primarily tailored to maintaining the existing plant

and equipment in the ACP States. These enterprises should, as a matter of priority, support the manufacturing and processing sector, the major export sectors, and small and medium-sized enterprises directed at satisfying basic needs;

(b) metallurgical industries based on the mining products of the ACP States, aimed at the secondary processing of mining products to supply ACP engineering and chemical industries;

(c) chemical industries, particularly on a small and medium scale, aimed at the secondary processing of mineral products to supply the other branches of industry, and also the agricultural and health sectors;

(iii) industrial rehabilitation and capacity utilization: the restoration, upgrading, reorganization, restructuring and maintenance of existing potentially viable industrial capacities. Special emphasis should be put in this respect on industries with a low import content that provide up-stream and down-stream linkages and have a favourable effect on employment. Rehabilitation activities should be targeted at the creation of conditions necessary to make enterprises being rehabilitated self-sustaining.

### **Article 82.**

The Community shall assist the ACP States to develop, during the period of application of this Convention, as a matter of priority, viable industries, as defined in Article 81, in accordance with the capacities and decisions of each ACP State and their respective endowments taking into account the adjustment of industrial structures taking place between the Contracting Parties and throughout the world.

### **Article 83.**

The Community shall contribute in a spirit of mutual interest to the development of ACP-EEC and intra-ACP cooperation between enterprises by way of information and industrial promotion activities.

The aim of such activities shall be to intensify the regular exchange of information, organize the contacts required in the industrial sphere between industrial policy-makers, promoters and economic operators from the Community and the ACP States, carry out studies, notably feasibility studies, facilitate the establishment and operation of ACP industrial promotion bodies and foster joint investment, subcontracting arrangements and any other form of industrial cooperation between enterprises in the Member States of the Community and in the ACP States.

### **Article 84.**

The Community shall contribute to the establishment and development of small and medium-sized enterprises in the artisanal, commercial, service and industrial sectors in view of the essential role that these enterprises play in the modern and informal sectors in building up a diversified economic fabric and in the general development of the ACP countries, and in view of the advantages they offer as regards the acquisition of skills, the integrated transfer and adaptation of appropriate technology and opportunities for taking the best advantage of local manpower. The Community shall also help with sectoral evaluation and the establishment of action programmes, with the setting up of appropriate infrastructure, the establishment, strengthening and operation of institutions providing information, promotion, extension, training, credit or guarantee and transfer of technology facilities.

The Community and the ACP States shall encourage cooperation and contact between small and medium-sized enterprises in the Member States and the ACP States.

### **Article 85.**

With a view to assisting the ACP States to develop their technological base and indigenous capacity for scientific and technological development and 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 development finance cooperation, is prepared, *inter alia*, to contribute to:

(a) the establishment and strengthening of industry-related scientific and technical infrastructure in the ACP States;

(b) the drawing up and implementation of research and development programmes;

(c) the identification and creation of opportunities for collaboration among research institutes, institutions of higher learning and enterprises of ACP States, the Community, the Member States and other countries;

- (d) the establishment and promotion of activities aimed at the consolidation of appropriate indigenous technology and the acquisition of relevant foreign technology, in particular that of other developing countries;
- (e) the identification, evaluation and acquisition of industrial technology including the negotiation on favourable terms and conditions of foreign technology, patents and other industrial property, in particular through financing or through other suitable arrangements with firms and institutions within the Community;
- (f) providing ACP States with advisory services 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 types of technology;
- (g) the promotion of technology cooperation between ACP States and between them and other developing countries, including support to research and development units in particular at regional level, in order to make the best use of any particularly appropriate scientific and technical facilities they may possess;
- (h) facilitating, wherever possible, access to and use of documentary and other data sources available in the Community.

## **Article 86.**

In order to enable the ACP States to obtain full benefit from the trade arrangements and other provisions of this Convention, promotion schemes shall be undertaken for the marketing of ACP States' industrial products on both Community and other external markets, and also in order to stimulate and develop trade in industrial products among the ACP States. Such schemes, shall cover market research, marketing and the quality and standardization of manufactured goods, in accordance with Articles 229 and 230 and taking into account Articles 135 and 136.

## **Article 87.**

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

- (a) review progress made with the overall industrial cooperation programme resulting from this Convention and, where appropriate, submit recommendations to the Committee of Ambassadors; in this framework it shall examine and give its opinion on the reports referred to in Article 327 concerning the progress of industrial cooperation and the growth of investment flows, and regularly monitor the mechanics of the interventions undertaken by the European Investment Bank, hereinafter referred to as "the Bank", the Commission, the Centre for the Development of Industry, hereinafter referred to as the CDP and the ACP authorities responsible for the implementation of industrial projects in order to ensure the best possible coordination;
- (b) examine problems and policy issues in the field of industrial cooperation submitted to it by the ACP States or by the Community, and make any appropriate proposals;
- (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 cooperation in and facilitating the industrial development and related mining and energy activities of the ACP States;
- (d) establish, on a proposal of the Executive Board, the general strategy of the CDI referred to in Article 89, appoint the members of the Advisory Council, appoint the director and deputy director, appoint the two auditors, apportion on an annual basis the overall financial allocation provided for in Article 3 of the Financial Protocol and approve the budget and annual accounts;
- (e) examine the CDI's annual report and any other report presented by the Advisory Council or the Executive Board in order to assess whether the CDI's activities are in conformity with the objectives assigned to it in this Convention, report to the Committee of Ambassadors and, through it, to the Council of Ministers and carry out such other duties 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. The Committee shall meet at least twice a year.

## **Article 88.**

A joint Advisory Council, composed of 24 members drawn from the business world or experts on industrial development, with representatives of the Commission, the Bank and the ACP Secretariat present as observers, shall allow the Committee

on Industrial Cooperation to take into account the point of view of industrial operators concerning matters referred to in Article 87 (1) (a), (b) and (c). The Advisory Council shall meet formally once a year.

## **Article 89.**

The CDI shall help to establish and strengthen industrial enterprises in the ACP States, notably by encouraging joint initiatives by economic operators of the Community and the ACP States.

As a practical operational instrument, the CDI shall give priority to the identification of industrial operators for viable projects, assist in the promotion and implementation of those projects that meet the needs of ACP States, taking special account of domestic and external market opportunities for the processing of local raw materials while making optimum use of the ACP States' endowments by way of factors of production. Assistance shall also be given to the presentation of such projects to the financing institutions. ,

In carrying out the above tasks, the CDI shall take care to operate selectively by giving priority to small and medium-sized industrial enterprises and rehabilitation operations, and restoring existing industrial capacities to full utilization. It shall place special emphasis on opportunities for joint ventures and subcontracting. In implementing these tasks, the CDI shall also pay special attention to the objectives referred to in Article 97.

## **Article 90.**

1. In undertaking the tasks! referred to in Article 89 the CDI shall operate by giving priority to viable projects. In particular, it shall:

(a) identify, appraise, evaluate, promote and assist in the implementation of economically viable industrial projects of the ACP States;

(b) carry out studies and appraisals aimed at identifying practical opportunities for industrial cooperation with the Community in order to promote the industrial development of the ACP States, and facilitating the implementation of appropriate schemes;

(c) supply information and also specific advisory services and expertise, including feasibility studies, with a view to expediting the establishment and/or restoration of industrial enterprises;

(d) identify potential partners of the ACP States and the Community for joint investment operations and assist in the implementation and follow-up;

(e) identify and provide information on possible sources of financing, assist in the presentation for financing, and, where necessary, assist in the mobilization of funds from these sources for industrial projects, in ACP States;

(f) identify, collect, evaluate and supply information and advice on the acquisition, adaptation and development of appropriate industrial technology relating to specific projects and, where appropriate, assist in the setting up of experimental or demonstration schemes.

2. In order to improve the attainment of its objectives, the CDI, in addition to its main activities, may also pursue the following:

(a) carry out studies, market research and evaluation work and gather and disseminate all relevant information on the industrial cooperation situation and opportunities and notably on the economic environment, the treatment which potential investors may expect and the potential of viable industrial projects;

(b) help, in appropriate cases, to promote the marketing of ACP manufactures on their domestic markets and on the markets of the other ACP States and the Community in order to encourage optimum exploitation of installed or projected industrial capacity;

(c) identify industrial policy-makers, promoters and economic and financial operators in the Community and ACP States, and organize and facilitate contacts and meetings of all kinds between them;

(d) identify, on the basis of needs indicated by ACP States, opportunities in industrial training, chiefly on the job, to meet the requirements of existing and planned industrial undertakings in ACP States and, where necessary, assist in the implementation of appropriate schemes;

(e) gather and disseminate all relevant information concerning the industrial potential of the ACP States and trends of

industrial sectors in the Community and the ACP States;

(f) promote the subcontracting and also the expansion and consolidation of regional industrial projects.

### **Article 91.**

The CDI shall be headed by a director assisted by a deputy director, recruited on the basis of technical skills and management experience, both of whom shall be appointed by the Committee on Industrial Cooperation. The management of the CDI shall implement the guidelines laid down by the Committee on Industrial Cooperation, and shall be answerable to the Executive Board.

### **Article 92.**

1. A joint Executive Board shall:

(a) advise and back up the director in providing impetus and motivation in managing the CDI and shall ensure that the guidelines laid down by the Committee on Industrial Cooperation are implemented satisfactorily;

(b) on a proposal from the director of the CDI,

(i) approve:

- multiannual and annual programmes of activities,

- the annual report,

- the organizational structures, staffing policy and establishment plan, and

(ii) adopt the budgets and annual accounts for submission to the Committee on Industrial Cooperation;

(c) take decisions on management proposals related to these issues;

(d) transmit an annual report to the Committee on Industrial Cooperation and report on any problems arising in connection with the points referred to in (c).

2. The Executive Board shall be composed of six persons with substantial experience in the private or public industrial or banking sectors or in industrial development planning and promotion. They shall be chosen by the Committee on Industrial Cooperation on the grounds of their qualifications among nationals of the States party to this Convention and appointed by that Committee according to the procedures laid down by it. A representative of the Commission, of the Bank and of the ACP Secretariat shall take part in the Board's proceedings as observers. In order to ensure a close follow-up of CDI activities, the Board shall meet at least once every two months. The secretariat shall be provided by the Centre.

### **Article 93.**

1. The Community shall contribute to the financing of the CDI's budget by means of a separate allocation in accordance with the Financial Protocol annexed hereto.

2. Two auditors appointed by the Committee on Industrial Cooperation shall audit the financial management of the CDI.

3. The CDI's statute, financial and staff regulations and rules of procedure shall be adopted by the Council of Ministers on a proposal from the Committee of Ambassadors after the entry into force of this Convention,

### **Article 94.**

The Centre shall step up its operational presence in the ACP States, notably as regards identification of projects and promoters and assistance in the submission of applications for financing.

It shall do this in accordance with procedures proposed by the Executive Board, taking account of the need to decentralize activities.

### **Article 95.**

The Commission, the Bank and the CDI shall maintain close operational cooperation in the context of their respective



responsibilities.

## **Article 96.**

Members of the Advisory Council, the Executive Board and the director and deputy director of the CDI shall be appointed for a period of no longer than five years, subject to a reservation in the case of the Executive Board that the situation be reviewed mid-term.

## **Article 97.**

1. In implementing this Title, the Community shall pay special attention to the specific needs and problems of the least-developed, landlocked and island ACP States in order to establish the basis for their industrialization (the formulation of industrial policies and strategies, economic infrastructure and industrial training), notably with a view to adding value to raw materials and other local resources in the following fields in particular:

- processing of raw materials,
- development, transfer and adaptation of technologies,
- development and financing of schemes in favour of small and medium-sized enterprises,
- development of industrial infrastructure and energy and mining resources,
- adequate training in the scientific and technical areas,
- production of equipment and inputs for the rural sector.

Such operations may be implemented with assistance from the CDI.

2. At the request of one or more least-developed ACP States, the CDI shall grant special assistance for identifying on-the-spot industrial promotion and development possibilities, notably in raw materials processing and the production of equipment and inputs for the rural sector.

## **Article 98.**

In order to implement industrial cooperation, the Community shall help carry out programmes, projects and operations submitted to it on the initiative or with the agreement of the ACP States. To this end, it shall use all the means provided in this Convention, notably those at its disposal under development finance cooperation and, in particular, those which are the responsibility of the Bank, without prejudice to operations to assist ACP States in mobilizing finance from other sources.

Industrial cooperation programmes, projects and operations which involve Community financing shall be implemented in conformity with Title II, Part Three of this Convention, having regard to the particular characteristics of aid operations in the industrial sector.

## **Title VI. MINING DEVELOPMENT**

### **Article 99.**

The main objectives of mining development shall be to:

- exploit all types of mineral resources in a way which ensures the profitability of mining operations in both export and local markets, while also meeting environmental concerns, and
- enhance the potential of human resources, with a view to promoting and expediting diversified economic and social development.

The Contracting Parties stress their mutual dependence in the sector and agree to use in a coordinated fashion this Convention's various instruments in this field and also other Community instruments where appropriate.

### **Article 100.**

At the request of one or more ACP States, the Community shall carry out technical assistance or training activities to strengthen their scientific and technical capacity in the field of geology and mining in order that they may derive greater

benefit from available know-how and direct their exploration and prospecting programmes accordingly.

## **Article 101.**

In order to facilitate the development of the mining resources of the ACP States concerned, having regard to national and external economic considerations and with a view to diversification, the Community shall cooperate as appropriate, through its technical and financial assistance programmes, with the ACP States in their prospecting and exploration efforts at all stages, both onshore and on the continental shelf as defined in international law.

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

## **Article 102.**

With the aim of supporting efforts to exploit the ACP States' mining resources, the Community shall contribute towards the support of projects to rehabilitate, maintain, rationalize and modernize economically viable production units in order to make them more operational and more competitive.

It shall also contribute to the identification, drawing up and implementation of new viable projects to an extent compatible with investment and management capacities as well as market trends, taking particular account of the financing of feasibility and pre-investment studies.

Particular attention shall be accorded to:

- operations to enhance the role of small and medium-scale projects, so promoting local mining enterprises with particular emphasis on minerals for industry and agriculture, destined notably for the domestic or regional markets, and also new products, and
- operations to protect the environment.

Cooperation shall also support the efforts of the ACP States to:

- build up supporting infrastructure;
- take measures to ensure that mining development makes the greatest possible contribution to the producer countries' social and economic development, such measures including the optimal use of mining revenue and the integration of mining development into industrial development and into an appropriate policy of land-use planning;
- encourage European and ACP investment;
- promote regional cooperation.

## **Article 103.**

In order to contribute to the objectives set out above, the Community shall be prepared to give its technical and financial assistance to help with the exploitation of the ACP States' mining potential in accordance with the procedures peculiar to each of the instruments at its disposal and according to the provisions of this Convention.

In the sphere of research and investment preparatory to the launching of mining 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 234.

The resources referred to in these provisions may be supplemented, for projects of mutual interest, by:

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

## **Article 104.**

The Bank may, in accordance with its Statute, commit its own resources on a case-by-case basis beyond the amount fixed in the Financial Protocol in mining investment projects recognized by the ACP State concerned and by the Community as being of mutual interest.

## **Title VII. ENERGY DEVELOPMENT**

### **Article 105.**

In view of the seriousness of the energy situation in the majority of the ACP States, owing partly to the crisis caused in many countries by dependence on imported petroleum, products and the increasing scarcity of fuelwood, and in view of the effects the use of fossil fuels have on the climate, the ACP States and the Community agree to cooperate in this area with a view to finding solutions to their energy problems.

In ACP-EEC cooperation particular emphasis shall be placed on energy programming, operations for saving and making efficient use of energy, reconnaissance of energy potential and the economically and technically appropriate promotion of new and renewable sources of energy.

### **Article 106.**

The Community and the ACP States recognize the mutual benefits of cooperation in the field of energy. Such cooperation shall promote the development of the ACP States' conventional and non-conventional energy potential and their self-sufficiency.

The main objectives of energy development shall be to:

- (a) promote economic and social development by exploiting and developing domestic and regional energy resources in an appropriate manner from the technical, economic and environmental viewpoints;
- (b) make energy production and use more efficient and, where the potential exists, increase energy self-sufficiency;
- (c) encourage increased use of alternative, new and renewable energy sources;
- (d) improve living conditions in urban, outlying and rural areas and propose solutions to these areas' energy problems that are appropriate to local needs and resources;
- (e) protect the natural environment by conserving biomass resources, particularly fuelwood, by encouraging alternative solutions, improving consumption techniques and habits, and using energy and energy resources in a rational and sustainable manner.

### **Article 107.**

In order to attain the abovementioned objectives, energy cooperation schemes may, at the request of one or more of the ACP States concerned, be focused on:

- (a) collection, analysis and dissemination of relevant information;
- (b) strengthening the ACP States management and control of their energy resources in line with their development objectives in order to enable them to appraise energy demand and supply options and to achieve strategic energy planning, inter alia by supporting energy programming and providing technical assistance for departments responsible for the planning and execution of energy policies;
- (c) analysing the energy implications of development projects and programming, taking account of the energy savings required and of opportunities for primary source substitution; in this context, operations shall be designed to increase the role played by new and renewable resources, particularly in rural areas, through programmes and projects tailored to local needs and resources;
- (d) implementing suitable programmes involving small and medium-sized energy development projects, particularly those aimed at saving and providing alternatives for fuelwood; in this context, operations shall be designed to resolve as swiftly as possible the problems caused by overconsumption of fuelwood by making domestic energy use more efficient in both rural and urban areas, encouraging the use of alternative sources for domestic use, particularly in urban areas, and developing plantations of suitable fuelwood species;
- (e) enhancing investment potential for the exploration and development of domestic and regional energy sources as well as for the development of sites of exceptional energy production permitting the establishment of energy-intensive industry;
- (f) promoting research, adaptation and dissemination of appropriate technology as well as the training needed to meet energy-related manpower needs in the energy sector;

(g) stepping up the ACP States' research and development activities, particularly as regards the development of new and renewable sources of energy;

(h) upgrading the basic infrastructure necessary for the production, transmission, transport and distribution of energy with particular emphasis on rural electrification;

(i) encouraging cooperation between ACP States in the energy sector, notably the extension of electricity distribution grids between ACP countries and cooperation between those States and other neighbouring States receiving Community aid.

### **Article 108.**

In order to contribute to the objectives set out above, the Community shall be prepared to give its technical and financial assistance to help with the exploitation of the ACP States' energy potential in accordance with the procedures peculiar to each of the instruments at its disposal and according to the provisions of this Convention.

In the sphere of research and investment preparatory to the launching of 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 234.

The resources referred to in these provisions may be supplemented, for projects of mutual interest, by:

(a) other Community financial and technical resources;

(b) action aimed at the mobilization of public and private capital, including cofinancing.

### **Article 109.**

The Bank may, in accordance with its Statute, commit its own resources on a case-by-case basis beyond the amount fixed in the Financial Protocol in energy investment projects recognized by the ACP State concerned and by the Community as being of mutual interest.

## **Title VIII. ENTERPRISE DEVELOPMENT**

### **Article 110.**

The Community and the ACP States stress that:

(i) enterprises constitute one of the main instruments for achieving the objectives of strengthening the economic fabric, encouraging inter-sectoral integration and increasing employment, incomes and the level of skills;

(ii) present ACP efforts to restructure their economies should be complemented by efforts to strengthen and enlarge their productive base. The enterprise sector should play an important part in the ACP States' strategies to revive growth;

(iii) a stable and propitious environment should be created together with an effective domestic financial sector with a view to reinvigorating the enterprise sector in the ACP States and to encouraging European investment;

(iv) the private sector needs to be made more dynamic and play a greater role, in particular through small and medium-sized enterprises, which are better suited to conditions prevailing in the ACP economies. Micro-firms and crafts should equally be encouraged and supported;

(v) private foreign investors complying with the objectives and priorities of ACP-EEC development cooperation should be encouraged to participate in the development efforts of the ACP States. Fair and equitable treatment should be accorded to such investment as well as a propitious, secure and predictable investment climate;

(vi) the fostering of ACP entrepreneurship is crucial for unlocking the considerable potential of the ACP States.

2. Efforts should be made to channel an increased proportion of the Convention's financial resources both to the encouragement of entrepreneurship and investment and towards directly productive activities.

### **Article 111.**

In pursuit of the abovementioned objectives, the Contracting Parties recognize the need to utilize the full range of instruments provided for by this Convention, including technical assistance, in the following areas with a view to sustaining

private sector development:

(a) support for the improvement of the legal and fiscal framework for business, and development of a greater role for professional organizations and chambers of commerce in the process of enterprise development;

(b) direct assistance for the creation and the development of business (specialized business start-up services; assistance for the redeployment of ex-public sector employees; assistance for technology transfers and development; management services and market research);

(c) the development of services in support of the enterprise sector so as to provide enterprises with advisory services in the legal, technical and managerial fields;

(d) specific programmes for training and developing the capacity of individual entrepreneurs, particularly in the small-scale and informal sectors.

## **Article 112.**

In order to support the development of the savings and domestic financial sectors, the following areas of action merit special attention:

(a) assistance for the mobilization of domestic savings and the development of financial intermediaries;

(b) technical assistance for the restructuring and reform of financial institutions.

## **Article 113.**

With a view to assisting enterprise development in ACP States, the Community shall provide technical and financial assistance, subject to the conditions laid down in the development finance cooperation Title.

## **Title IX. DEVELOPMENT OF SERVICES**

### **Chapter 1. Objectives and Principles of Cooperation**

#### **Article 114.**

1. The Community and the ACP States recognize the importance of services in the formulation of development policies and the need to step up cooperation in this sphere.

2. The Community shall support the ACP States' efforts to increase their domestic capacity to provide services with a view to improving the working of their economies, relieving balance of payment constraints and stimulating the process of regional integration.

3. The object is to ensure that the ACP States derive maximum benefit from the provisions of this Convention, at national and regional level, and to enable them to:

- participate under the most favourable conditions in Community, domestic, regional and international markets by diversifying the range and increasing the value and volume of ACP States' trade in goods and services,

- increase their collective capacity by means of greater economic integration and consolidation of functional cooperation or cooperation on specific themes,

- stimulate enterprise development, notably by encouraging ACP-EEC investment in services, with a view to creating employment, generating and distributing revenue and facilitating the transfer and adaptation of technology to specific ACP needs,

- derive maximum benefit from national or regional tourism and improve their participation in world tourism,

- set up the transport and communications networks and informatics and telematics systems needed for their development,

- step up vocational training activities and transfer of know-how in view of the determining role of human resources in the development of services.

4. In pursuit of these aims, the Contracting Parties shall have recourse, in addition to the specific provisions on services, to those on trade, trade promotion, industrial development, investment and education and training.

## **Article 115.**

1. In view of the wide range of services and their unequal contribution to development, and with a view to maximizing the impact of Community aid on the development of ACP States, the two Parties agree to pay particular attention to services necessary for their economies in the following areas:

- services that support economic development,
- tourism,
- transport, communications and information technology.

2. In order to implement cooperation in services, the Community shall help carry out programmes, projects and operations submitted to it on the initiative of the ACP States. To this end, it shall use all the means provided for in this Convention, notably those at its disposal under development finance cooperation, including those which are the responsibility of the Bank.

## **Article 116.**

In the field of the development of services, particular attention shall be given to the specific needs of land-locked and island ACP States arising from their geographic situation and also to the economic situations of least-developed ACP States.

# **Chapter 2. Services That Support Economic Development**

## **Article 117.**

In pursuit of cooperation objectives in this sector, cooperation shall concern marketed services, without, however, this leading to neglect of certain para-statal services required to improve the economic environment, such as customs computerization, by giving priority to the following services:

- services that support foreign trade,
- services required by the business sector,
- services that support regional integration.

## **Article 118.**

To help restore the ACP States' external competitiveness, cooperation in the field of services shall give priority to services that support external trade, the scope of which is as follows:

(i) the creation of appropriate infrastructure for trade, in particular through operations to improve external trade statistics, automation of customs procedures, port and airport management and the establishment of closer links between the various protagonists in trade, including exporters, trade financing bodies, customs and central banks;

(ii) the promotion of specifically trade-oriented services such as trade promotion measures that are also applicable to services;

(iii) the development of other external trade-linked services such as trade financing and clearing and payment facilities, and access to information networks.

## **Article 119.**

To foster a strengthening of the economic fabric of ACP States, taking account of the provisions on enterprise development, particular attention shall be paid to the following areas: :

(i) business advisory services to improve the running of firms, notably by facilitating access to services in the fields of management, accountancy, information technology, legal advice, tax consultancy and finance;

(ii) the setting up of adequate, appropriate and flexible business financing facilities to stimulate the growth or setting up of firms in the field of services;

(iii) strengthening the ACP States' capacity in financial services, technical assistance for developing insurance and credit institutions in the field of trade development and promotion.

## **Article 120.**

To underpin economic integration designed to create viable economies, and in view of the provisions on regional cooperation, particular attention shall be given to the following areas:

- (i) services to support trade in goods between ACP States through trade measures such as market studies;
- (ii) services required for the expansion of trade in services between ACP States with a view to enhancing their complementarity, notably by extending traditional trade promotion measures, adapted where necessary to the services sector;
- (iii) the creation of regional centres of services aimed at supporting specific economic sectors or jointly implemented sectoral policies, notably through the development of modern communications and information networks and computerized data banks.

## **Chapter 3. Tourism**

### **Article 121.**

Recognizing the real importance of the tourist industry for the ACP States, the Contracting Parties shall implement measures and operations to develop and support tourism. These measures shall be implemented at all levels, from the identification of the tourist product to the marketing and promotion stage.

The aim shall be to support the ACP States' efforts to derive maximum benefit from national, regional and international tourism in view of tourism's impact on economic development and to stimulate private financial flows from the Community and other sources into the development of tourism in the ACP States. Particular attention shall be given to the need to integrate tourism into the social, cultural and economic life of the people.

### **Article 122.**

Specific tourism development measures shall aim at the definition, adaptation and development of appropriate policies at national, regional, subregional and international levels. Tourism development programmes and projects shall be based on these policies on the basis of the following four components:

(a) human resources and institutional development, inter alia:

- professional management development in specific skills and continuous training at appropriate levels in the private and public sectors to ensure adequate planning and development,
- establishment and strengthening of tourism promotion centres,
- education and training for specific segments of the population and public/private organizations active in the tourism sector, including personnel involved in the support sector of tourism,
- intra-ACP cooperation and exchanges in the fields of training, technical assistance and the development of institutions;

(b) product development, inter alia:

- identification of the tourism product, development of non-traditional and new tourism products, including the preservation and development of cultural heritage, ecological and environmental aspects, management, protection and conservation of flora and fauna, historical, social and other natural assets, development of ancillary services,
- promotion of private investment in the tourist industry of ACP States, including the creation of joint ventures,
- provision of technical assistance for the hotel industry,
- production of crafts of a cultural nature for the tourist market.

(c) market development, inter alia:

- assistance for the definition and execution of objectives and market development plans at national, subregional, regional

and international levels,

- provision of support for ACP States' efforts to gain access to services for the tourist industry such as central reservation systems and air traffic control and security systems;
- provision of marketing and promotional measures and materials in the framework of integrated market development plans and programmes and adaptation of existing products with a view to improved market penetration, aimed at the main generators of tourism flows in traditional and non-traditional origin markets as well as specific activities such as participation at specialized trade events, such as fairs, production of quality literature, films and marketing aids.

(d) research and information, inter alia:

- improving tourism information and collecting, analysing, disseminating and utilizing statistical data,
- assessment of the socio-economic impact of tourism on the economies of ACP States with particular emphasis on the development of linkages to other sectors in ACP States and regions such as food production, construction, technology and management.

## **Chapter 4. Transport, Communications and Informatics**

### **Article 123.**

1. Cooperation in the area of transport shall be aimed at the development of road transport, railways, port installations and shipping, transport by domestic waterways and air transport.
2. Cooperation in the area of communications shall be aimed at the development of postal services and telecommunications, including radiocommunications and informatics.
3. Cooperation in these areas shall be directed particularly towards the following objectives:
  - (a) the creation of conditions fostering the movement of goods, services and persons at national, regional and international level;
  - (b) the provision, rehabilitation, maintenance and efficient operation of cost-effective systems serving the requirements of social and economic development and adjusted to the needs of users and to the overall economic situation of the States concerned;
  - (c) greater complementarity of transport and communications systems at national, regional and international level;
  - (d) the harmonization of the national systems installed in ACP States, while facilitating their adjustment to technological progress;
  - (e) the reduction of barriers to frontier-crossing transport and communications, in terms of legislation, regulations and administrative procedures.

### **Article 124.**

1. In all cooperation projects and programmes in the fields concerned, efforts shall be made to ensure an appropriate transfer of technology and know-how.
2. Particular attention shall be given to training ACP nationals in the planning, management, maintenance and operation of transport and communications systems.

### **Article 125.**

1. The Contracting Parties recognize the importance of air transport in forging closer economic, cultural and social links between the ACP States and between them and the Community, in improving the communications of isolated or not easily accessible regions and in developing tourism.
2. The objective of cooperation in this field shall be to promote the harmonious development of national and regional ACP air transport networks and the modernization of the ACP fleet of aircraft in line with technical progress, the implementation of the International Civil Aviation Organization air navigation plan, the improvement of reception infrastructures and the application of international operating standards, the development and improvement of air



maintenance centres, the provision of training and the development of modern airport security systems.

### **Article 126.**

1. The Contracting Parties acknowledge the importance of shipping services as one of the forces behind economic development and promotion of trade between them.

2. The objective of cooperation in this field shall be to ensure harmonious development of efficient and reliable shipping services on economically satisfactory terms by facilitating the active participation of all parties according to the principle of unrestricted access to the trade on a commercial basis.

### **Article 127.**

1. The Contracting Parties underline the importance of the United Nations Convention on a Code of Conduct for Liner Conferences and the ratification instruments thereof, which safeguard the terms of competition in maritime matters and afford, inter alia, the shipping lines of developing countries extended opportunities to participate in the conference system.

2. Consequently, the Contracting Parties are agreed, when ratifying the Code, on taking prompt measures for its implementation at national level, in conformity with its scope and provisions. The Community shall assist ACP States to apply the relevant provisions of the Code.

3. In conformity with Resolution 2 on non- Conference lines, annexed to the Code, the Contracting Parties shall not prevent non-Conference lines from operating in competition with a Conference line as long as they comply with the principle of fair competition on a commercial basis.

### **Article 128.**

Attention shall be given in the context of cooperation to encouraging the efficient shipment of cargo at economically and commercially meaningful rates and to the aspirations of ACP States for greater participation in such international shipping services. In this respect, the Community acknowledges the aspirations of the ACP States for greater participation in bulk cargo shipping. The Contracting Parties agree that competitive access to the trade shall not be impaired.

### **Article 129.**

In the framework of financial and technical assistance for shipping, special attention shall be given to:

- effective development of efficient and reliable shipping services in the ACP States, notably the gearing of port infrastructure to meet traffic requirements and the maintenance of port equipment,
- maintenance or acquisition of handling equipment and watercraft and their modernization in line with technical progress,
- development of inter-regional shipping with a view to encouraging intra-ACP cooperation and improvements in the functioning of ACP shipping,
- technology transfer including multimodal transport and containerization for the promotion of joint ventures,
- setting up of appropriate legislative and administrative infrastructure and the improvement of port management, notably through vocational training,
- development of inter-island shipping services and connecting infrastructure and to increased cooperation with economic operators.

### **Article 130.**

The Contracting Parties undertake to promote shipping safety, security of crews and the prevention of pollution.

### **Article 131.**

In order to ensure the effective implementation of Articles 126 to 130, consultation may take place, at the request of either Contracting Party, where necessary under the conditions provided for in the rules of procedure referred to in Article 11.

## **Article 132.**

1. In the field of cooperation on communications, particular attention shall be paid to technological development in supporting ACP States' efforts to establish and develop effective systems. This includes studies and programmes concerning satellite communication, where this is justified by operational considerations, in particular at regional and subregional level. Cooperation shall also cover means of observation of the earth by satellite for meteorology and remote-sensing purposes, notably their use for desertification control, halting all forms of pollution, the management of natural resources, agriculture and mining in particular, and land use planning.

2. Particular importance shall be attached to telecommunications in rural areas, in order to stimulate their economic and social development.

## **Article 133.**

The aim of cooperation in the field of information technology shall be the building up of the ACP States' information technology and telematics capacity by offering countries which wish to give high priority to this sector support for their efforts to acquire and install information technology systems; the development of efficient telematic networks, including international financial information; the production, in time, of computer components and software in the ACP States; their participation in international activities in the field of data processing and the publication of books and reviews.

## **Article 134.**

Cooperation activities in the transport and communications fields shall be carried out in accordance with the provisions and procedures laid down in Title III, Part Three of this Convention.

## **Title X. TRADE DEVELOPMENT**

### **Article 135.**

With a view to attaining the objectives set out in Article 167 on trade cooperation, the Contracting Parties shall implement measures for the development of trade at all stages up to final distribution of the product.

The object is to ensure that the ACP States derive the maximum benefit from the provisions of this Convention in the fields of trade, agricultural and industrial cooperation and may participate under the most favourable conditions in the Community, domestic, subregional, regional and international markets by diversifying the range and increasing the value and the volume of ACP States' trade in goods and services.

### **Article 136.**

1. In promoting the development of trade and services, in addition to developing trade between the ACP States and the Community, particular attention shall be given to operations designed to increase the ACP States' self-reliance, develop intra-ACP trade, trade to international markets and improve regional cooperation in trade and services.

2. Operations shall be undertaken at the request of

- the ACP States, particularly in the following areas:

- the establishment of coherent trade strategies,

- development of human resources and professional skills in the field of trade and services,

- the establishment, adaptation and strengthening of organizations in the ACP States dealing with the development of trade and services, particular attention being paid to the special needs of organizations in the least-developed, landlocked and island ACP States,

- support for the ACP States' efforts to develop and improve the quality of their products, adapt them to market requirements and diversify their outlets,

- market development measures including increasing contacts and exchange of information between economic operators in ACP States, the Member States of the Community and in third countries,

- support for ACP States in the application of modern marketing techniques in production-oriented sectors and programmes in areas such as rural development and agriculture,
- support for the ACP States' efforts to develop and improve supportive service infrastructure, including transport and storage facilities, in order to ensure effective distribution of goods and services and in order to enhance the flow of exports from ACP States,
- support for ACP States in developing their internal capacities, information systems and awareness of the role and importance of trade in economic development,
- support to small and medium-sized enterprises for product identification and development, market outlets and joint marketing ventures.

3. With a view to expediting the procedures, financing decisions may deal with multiannual programmes in accordance with the provisions of Article 290 on implementation procedures.

4. Support for ACP States' participation in trade fairs, exhibitions and trade missions should be carried out, only where such events form an integral part of overall trade and market development programmes.

5. Participation of the least-developed, landlocked and island ACP States in various trade activities shall be encouraged by special provisions, inter alia, the payment of travel expenses of personnel and costs of transporting exhibits, on the occasion of their participation in national, regional and third-country fairs, exhibitions or trade missions, including the cost of the temporary construction and/or renting of exhibition booths and stalls. Special assistance shall be provided to least-developed, landlocked and island ACP States for the preparation and/or purchase of promotional material.

### **Article 137.**

Within the framework of the instruments provided for in this Convention and in accordance with the provisions for development finance cooperation, assistance for the development of trade and services shall include technical assistance for the establishment and development of insurance and credit institutions in connection with trade development.

### **Article 138.**

In addition to the appropriations which, within the framework of the national indicative programmes referred to in Article 281, may be allocated by each ACP State to the financing of operations to develop the fields referred to in Titles IX and X, Part Two, the contribution of the Community to the financing of such operations, where they are of a regional nature, may amount, within the framework of the regional cooperation programmes referred to in Article 156, to the amount provided for in the Financial Protocol annexed to this Convention.

## **XI. CULTURAL AND SOCIAL COOPERATION**

### **Article 139.**

Cooperation shall contribute to the self-reliant development of the ACP States, a process centred on man himself and rooted in each people's culture. The human and cultural dimension must embrace all areas and be reflected in all development projects and programmes. Cooperation shall back up the policies and measures adopted by those States to enhance their human resources, increase their own creative capacities and promote their cultural identities. It shall foster participation by the population in the process of development.

Such cooperation shall aim at promoting, in the interests of dialogue, exchange and mutual enrichment and, on a basis of equality, a better understanding and greater solidarity between ACP governments and peoples on the one hand, and between ACP and Community governments and peoples on the other.

### **Article 140.**

1. Cultural and social cooperation shall be expressed through:

- the taking into account of the cultural and social dimension in projects and programmes,
- promotion of the cultural identities of the ACP States' peoples, with a view to fostering their self- advancement, stimulating their creativity and encouraging intercultural dialogue,

- operations with the purpose of enhancing human resources with a view to the judicious and optimum use of natural resources and the satisfaction of basic physical and non-material needs.

2. Cultural and social cooperation schemes shall be undertaken in accordance with the arrangements and procedures laid down in Title HI of Part Three. Resources may also be mobilized through the use of targeted counterpart funds, which may be employed in the social sectors. All schemes shall be governed by the priorities and objectives set in the indicative programmes or in the context of regional cooperation, depending on their inherent characteristics.

### **Article 141.**

The Foundation for ACP-EEC Cultural Cooperation shall be recognized as having the task of contributing to the implementation of the objectives of this Title.

Actions conducted by the Foundation to that end shall cover the following areas:

- studies, research and measures concerning the cultural aspects of taking into account the cultural dimension of cooperation,
- studies, research and measures to promote the cultural identities of the ACP peoples and all initiatives likely to contribute to intercultural dialogue.

## **Chapter 1. Cultural and Social Dimension**

### **Article 142.**

1. The design, appraisal, execution and evaluation of each project or programme shall be based on understanding of, and regard for, the cultural and social features of the milieu.

2. This involves in particular:

- assessment of opportunities for participation by the population,
- thorough knowledge of the milieu and ecosystems concerned,
- study of local technology and of other appropriate forms of technology,
- provision of relevant information for all those concerned in the design and execution of operations, including technical cooperation personnel,
- evaluation of the human resources available for executing and maintaining projects,
- provision of integrated programmes for the promotion of human resources.

### **Article 143. The Following Shall Be Taken Into Account In the Appraisal of All Projects and Programmes:**

(a) under the heading of cultural aspects:

- adaptation to the cultural milieu and the implications for that milieu,
- integration and enhancement of the local cultural heritage, notably value systems, way of life, modes of thought and know-how, materials and styles,
- methods of information acquisition and transmission,
- interaction between people and their environment and between population and natural resources;

(b) under the heading of social aspects, the impact of such projects or programmes on:

- reinforcement of capacities and structures for self-development,
- improvement of the status and role of women,
- the involvement of young people in economic, cultural and social development,

- contribution to the satisfaction of the basic cultural and physical needs of the population,
- promotion of employment and training,
- balance between demographic structure and other resources,
- social and interpersonal relationships,
- structures, methods and forms of production and processing.

### **Article 144.**

1. Cooperation shall support the ACP States' efforts to ensure that grassroots communities are closely and continuously involved in development operations. Participation by the population should be encouraged from the earliest stages of the preparation of projects and programmes and must be designed to overcome linguistic, educational or cultural barriers.

To this end, and with the internal dynamics of the people as the starting point, the following factors shall be taken into consideration:

- (a) strengthening institutions capable of encouraging participation by the people, through operations involving work organization, staff training and management;
  - (b) helping the people to organize themselves, particularly within cooperative-type associations, and placing at the disposal of the different groups concerned means complementary to their own initiative and efforts;
  - (c) encouraging participation initiatives through education, training and cultural motivation and promotion;
  - (d) involving the people concerned in the various stages of development. Special attention should be given to the role of women, young people, the elderly and the disabled and the impact of development projects and programmes on these groups;
  - (e) expanding job opportunities, including those offered by the works undertaken as part of development operations.
2. Measures to improve the situation of young people and encourage recognition of their aspirations and their role in society may be supported in the context of cooperation in this sphere.
3. Existing institutions or associations shall be used as widely as possible for the preparation and execution of development operations.

## **Chapter 2. Promotion of Cultural Identities and Intercultural Dialogue**

### **Article 145.**

The Contracting Parties shall encourage cooperation through operations fostering the recognition of the cultural identities of the ACP peoples, which are part of their histories and systems of values. It shall foster the reciprocal cultural enrichment of the ACP peoples and those of the Community.

Schemes to promote cultural identities shall be aimed at preserving and enhancing the cultural heritage, the production and dissemination of cultural products and services, highly representative cultural events and support for information and communications media.

Intercultural dialogue shall be geared to more thorough knowledge and a better understanding of cultures. By clearing obstacles to intercultural communication, cooperation shall stimulate awareness of the interdependence of peoples of different cultures.

### **Article 146. Safeguarding the Cultural Heritage**

Support shall be provided for action by the ACP States to:

- (a) safeguard and promote their cultural heritage, notably through the establishment of cultural databanks and sound-recording libraries for the collection of oral traditions and the enhancement of such traditions;

(b) conserve historical and cultural monuments and promote traditional architecture.

### **Article 147. Production and Distribution of Cultural Goods**

Cooperation schemes aimed at developing ACP States' cultural productions or co-productions and their distribution shall be designed as components of an integrated programme or as specific projects.

Cooperation shall be aimed at fostering the distribution of the ACP States' cultural goods and services which are highly representative of their cultural identities. in the ACP countries and the Community.

Where cultural items are produced for the market, their production and distribution shall be eligible for assistance provided under industrial cooperation and trade promotion.

### **Article 148. Cultural Events**

Cooperation shall support ACP events and exchanges and also those jointly organized by ACP. States and Member States of the Community in particularly significant cultural spheres as part of the promotion of cultural identities and intercultural dialogue.

In this context, cooperation shall support in particular contacts and meetings between groups of young people from ACP States and between ACP groups and groups of young people from Community Member States.

### **Article 149. Information and Communications**

Cooperation in the area of information and communications shall be aimed at:

(a) increasing, by appropriate means, the ACP States' ability to contribute actively to the international flow of information, communications and knowledge; to this end it shall support, inter alia, the setting up and, strengthening of national, regional and inter-regional communications media and infrastructure;

(b) ensuring that the people of the ACP States are better informed for the purposes of mastering their own development, through cultural, economic or social projects or programmes making wide use of communications systems and taking account of traditional communications techniques;

(c) supporting programmes aimed at creating the conditions for an effective participation of the ACP States in mastery of information and new communications technology.

## **Chapter 3. Operations to Enhance the Value of Human Resources**

### **Article 150.**

Cooperation shall contribute to enhancing the value of human resources, in the context of integrated and coordinated programmes, through operations covering education and training, research, science and technology, participation by the population, the role of women, health and nutrition, and population and demography.

### **Article 151. Education and Training**

1. The education and training needs of each ACP State shall be determined and taken into account at the programming stage.

2. Training operations shall take the form of integrated programmes aimed at well-defined objectives, either in a given sector or as part of a more general framework. They shall take account of each country's institutional situation and social and cultural values.

3. Education and training operations identified under the indicative programmes and within the focal sectors shall be priority objectives without excluding the possibility of other training operations outside the focal sectors of the indicative programmes.

4. These operations shall, as a matter of priority, be undertaken in the recipient ACP State or region. Where necessary, they may be undertaken in another ACP State or in a Member State of the Community. In the case of specialized training particularly suited to the ACP States' needs, training schemes may, by way of exception, be carried out in another

developing country.

5. In order to meet immediate and foreseeable education and training needs, cooperation shall support the ACP States' efforts to:

- (a) set up and expand training and educational establishments, particularly those of a regional nature;
- (b) restructure their educational establishments and systems, update curricula, methods and technology employed and reform their basic educational institutions and systems, in particular by providing overall primary education coverage and adjusting imported systems as well as building them into development strategies;
- (c) inform and make the population aware of progress in science and technology at an early age and at all stages of education and to place emphasis on curricula that incorporate science, technology and practical applications of knowledge geared to job prospects, taking account of traditional techniques;
- (d) pay greater attention to the history and culture of the ACP peoples;
- (e) draw up an inventory of the skills and training and identify new technology required to achieve each ACP State's development objectives;
- (f) encourage educational and training operations proper, notably literacy programmes and programmes of non-traditional forms of training, for functional and vocational purposes, as well as components of programmes that enhance the potential and status of illiterate people;
- (g) exchange their experience with the Community in the field of literacy education and promote and support the participation and integration of women in education and training and give less advantaged sections of the population in rural areas access to education and training;
- (h) stimulate training of instructors, educational planners and specialists in educational technology;
- (i) initiate associations, twinning, exchanges and transfers of information and technology between universities and institutions of higher education in the ACP States and in the Community.

## **Article 152. Scientific and Technical Cooperation**

1. The aim of scientific and technical cooperation shall be to:

- (a) provide support for the ACP States' efforts to acquire their own scientific and technical skills, master the technology they require for their development and participate actively in modern scientific, environmental and technological developments;
- (b) target research to find solutions to economic and social problems;
- (c) improve the quality of life and well-being of the people.

2. To this end, cooperation shall provide support, in addition to that under Articles 47, 85 and 229 for:

- (a) identification of the ACP States' needs concerning relevant new technology (including biotechnology) and its acquisition;
- (b) the execution of research programmes established by the ACP States and integrated into other development operations;
- (c) associations, twinning, exchanges and transfers of information and technology between universities and research institutes in the ACP States and in the Community.

3. Research programmes shall be carried out primarily in the ACP States' national or regional framework; they shall take account of the needs and living conditions of the people concerned, especially the rural population, while guarding against any adverse repercussions on health, the environment, employment or development. They shall support development in priority areas and comprise the following operations, as needed:

- (a) the setting up or strengthening of basic or applied research institutes;
- (b) scientific and technological cooperation between the ACP States or between them and the Member States of the Community or other countries, developed or developing, and with Community or international scientific institutes;
- (c) the promotion of local technology, and the selection of imported technology and its adaptation to the specific needs of the ACP States;

(d) improvement of scientific and technical information and documentation to ensure the better dissemination of research trends and findings, via networks at national, subregional, regional and inter-regional levels and between ACP States and the Community;

(e) making research findings accessible to the general public.

4. These research programmes should be coordinated wherever possible with others implemented in the ACP States with the help of other sources of financing such as international research institutes, the Member States of the Community or the Community itself.

## **Article 153. Women In Development**

Cooperation shall support the ACP States' efforts aimed at:

(a) enhancing the status of women, improving their living conditions, expanding their economic and social role and promoting their full participation in the production and development process on equal terms with men;

(b) paying particular attention to access by women to land, labour, advanced technology, credit and cooperative organizations and to appropriate technology aimed at alleviating the arduous nature of their tasks;

(c) providing easier access by women to training and education, which shall be regarded as a crucial element to be incorporated from the outset in development programming;

(d) adjusting education systems as necessary to take account in particular of women's responsibilities and opportunities;

(e) paying particular attention to the crucial role women play in family health, nutrition and hygiene, the management of natural resources and environmental protection. Dissemination of information to women and training of women in these areas are fundamental factors to be considered at the programming stage. Appropriate action shall be taken in all operations referred to above to ensure the active participation of women.

## **Article 154. Health and Nutrition**

1. The ACP States and the Community recognize the importance of the health sector to ensuring sustainable and self-reliant development. The aim of cooperation shall be to facilitate the right of access of the greatest number of people to adequate health care, thus promoting equity and social justice, alleviating suffering, reducing the economic burden of disease and mortality, and promoting the effective participation of the community in operations to improve health and well-being.

The two parties recognize that the attainment of these aims calls for:

- a systematic, long-term approach to the improvement and strengthening of the health sector,
- the definition of comprehensive national health guidelines and programmes,
- improved management and use of existing human, financial and physical resources.

2. To this end, cooperation in this sector shall seek to support functional and sustainable health services which are financially affordable, culturally acceptable, geographically accessible and technically competent. It shall seek to promote an integrated approach to the creation of health services based on the extension of preventive care, the improvement of curative care and complementarity between hospital-based and basic-level services, in accordance with primary health care policy.

3. Cooperation in the health sector may provide support for:

- the improvement and extension of basic health services and also the strengthening of hospitals and maintenance of equipment, acknowledged as essential for the smooth operation of the health system as a whole,
- health-sector planning and management, including the strengthening of statistical services, and the formulation of health-financing strategies at national, regional and district levels, this last level being the focal point for coordination of basic services, provision of specialist services and implementation of programmes to stamp out widespread diseases,
- schemes to integrate traditional medicine in modern health care,
- essential drug programmes and strategies, including local production units for basic drugs and consumables, taking account of traditional pharmacy, in particular the use of medicinal plants, which is something that should be studied and



developed,

- training of staff in the context of an overall programme, from public health planners, administrators, management staff and specialists, down to the personnel working in the field, this training being tailored to the actual responsibilities borne at each level,

- support for training and information programmes and campaigns aimed at stamping out endemic diseases, improving environmental hygiene, combatting the use of narcotic drugs, the spread of transmitted diseases and other health scourges in the framework of integrated health systems,

- the building up of research institutes, university departments and specialist schools in ACP countries, notably in the field of public health.

## **Article 155. Population and Demography**

1. Cooperation on population shall be aimed in particular at:

(a) ensuring a better overall balance in the ACP States between population, the protection of the environment and natural resources and the production of economic resources and social goods;

(b) dealing with regional imbalances, which may stem from factors such as internal migration, rural exodus, rapid urbanization and increasing environmental deterioration; :

(c) dealing with local imbalances between population and available resources.

2. Measures to achieve the objectives referred to in paragraph 1 should be made part of training programmes and projects, health or land-use planning policies and shall include:

(a) creation of statistical and demographic services in the ACP States or expansion of their capacity, with a view to collecting reliable data for the formulation of population policies;

(b) public information about demographic problems and policies;

(c) the preparation, implementation and evaluation of demographic projects or programmes;

(d) the formulation and implementation of voluntary family planning policies;

(e) the training of personnel in the ACP States to implement population policies in various sectors.

3. Such measures shall take into account focal, cultural and social practices and local economies. They shall be drawn up and carried out in accordance with the policies and programmes of ACP States and, in conformity with fundamental rights and the freely made choices of individuals concerning family size, the planning of births and the means to be used for family planning.

The implementation of such measures shall take particular account of the interaction between demographic and other policies. The role of women in these different areas shall be considered essential.

## **Title XII. REGIONAL COOPERATION**

### **Article 156.**

1. The Community shall support the ACP States' efforts through regional cooperation and integration to promote long-term collective and self-reliant, self-sustained and integrated social, cultural and economic development and greater regional self-sufficiency.

2. Community support shall be given within the framework of the major regional cooperation and integration objectives which the ACP States have set or will set for themselves at regional, inter-regional and international level.

3. In order to promote and strengthen the ACP States' collective capabilities, the Community shall provide effective aid enabling them to strengthen regional economic integration and consolidate cooperation of a functional type or on specific themes referred to in Articles 158 and 159.

4. While taking account of local circumstances, regional cooperation shall transcend the concepts of geographical location. It shall also cover intra-ACP regional cooperation.

It shall include regional cooperation between ACP States and overseas territories or departments. The funding to enable the participation of these territories and departments shall be additional to funds allocated to the ACP States under the Convention.

### **Article 157.**

1. Regional cooperation shall cover operations agreed on between:

- two or more or all ACP States,
- one or more ACP States and one or more neighbouring non-ACP States, countries or territories,
- one or more ACP States and one or more overseas territories or departments,
- two or more regional bodies of which ACP States are members,
- one or more ACP States and regional bodies of which ACP States are members.

2. Regional cooperation may also cover projects and programmes agreed upon by two or more ACP States and one or more non-ACP, non-neighbouring developing States and, when special circumstances so warrant, between one ACP State and one or more non-ACP, non-neighbouring developing States.

### **Article 158.**

1. In the context of regional cooperation particular attention shall be paid to:

- (a) evaluation and utilization of existing and potential dynamic complementarities in all relevant sectors;
- (b) maximization of the use of ACP human resources as well as the optimum and judicious exploration, conservation, processing and exploitation of ACP natural resources;
- (c) promotion of scientific and technical cooperation among the ACP States, including support for intra-ACP technical assistance programmes as provided for in Article 275 (e) of the Convention;
- (d) acceleration of economic diversification in order to stimulate complementarity in production and intensification of cooperation and development within and between ACP regions, as well as between the latter and overseas territories and departments;
- (e) promotion of food security;
- (f) strengthening a network of relations among individual countries or groups of countries which have common characteristics, affinities and problems in order to solve such problems;
- (g) fullest use of economies of scale wherever a regional solution is more efficient than a national solution;
- (h) expansion of ACP States' markets by promoting trade among ACP States and between the ACP States and neighbouring third countries or overseas territories and departments;
- (i) integration of ACP States' markets by liberalizing intra-ACP trade and eliminating tariff, non-tariff, monetary and administrative barriers.

2. Particular stress shall be put on the promotion and strengthening of regional economic integration.

### **Article 159.**

1. Having regard to Article 158, the scope of regional cooperation shall include the following:

- (a) agriculture and rural development, notably food self-sufficiency and food security;
- (b) health programmes, including education, training, research and information related to primary health care and control of major diseases, including animal diseases;
- (c) evaluation, development, exploitation and preservation of fishery and marine resources, including scientific and technical cooperation with a view to the surveillance of exclusive economic zones;

- (d) preservation and improvement of the environment, especially through programmes to combat desertification, erosion, deforestation, coastal deterioration, the consequences of large-scale marine pollution, including large accidental discharges of petroleum or other pollutants with a view to ensuring rational and ecologically balanced development;
- (e) industrialization, including the setting up of regional and inter-regional production and marketing enterprises;
- (f) exploitation of natural resources, notably the production and distribution of energy;
- (g) transport and communications, namely roads, railways, air and sea transport, inland waterways, postal services and telecommunications and give priority to the establishment, rehabilitation and development of road and rail links to the sea for the landlocked ACP States;
- (h) development and expansion of trade;
- (i) support for the setting up or strengthening of regional payment mechanisms including clearing and financing facilities for trade;
- (j) support, at the request of the ACP States concerned, for operations and structures which promote the coordination of sectoral policies and structural adjustment efforts;
- (k) assistance to ACP States to help combat drug trafficking at regional and inter-regional levels;
- (l) assistance for action programmes undertaken by ACP and ACP-EEC trade and business organizations with the aim of improving the production and marketing of products on external markets;
- (m) education and training, research, science and technology, informatics, management, information and communication, the establishment and strengthening of training and research institutions and technical bodies responsible for technology exchanges and cooperation among universities;
- (n) other services, including tourism;
- (o) cultural and social cooperation activities, including support for action-oriented programmes taken by ACP States at regional level with a view to enhancing the status of women, improving their living conditions, expanding their economic and social role and promoting their full participation in the economic, cultural and social development process.

## **Article 160.**

1. In order to improve its impact and effectiveness, regional cooperation shall be programmed for each region at the beginning of the period covered by the Convention.

The programming, with the participation of the ACP States, shall be based on an appropriation fixed at the outset for each region and shall be the result of an exchange of views between all the national authorizing officers in the region concerned, or a regional organization which they have mandated to represent them, the Commission and its delegates:

(a) The aim of this programming shall, in accordance with Article 156 (2), be to draw up a programme specifying:

- the focal sectors for Community aid,
- the most appropriate measures and operations to achieve the objectives set for those sectors,
- the projects and programmes enabling those objectives to be attained, in so far as they have been clearly identified.

(b) The exchange of views organized for the purpose of programming shall continue for the purposes of implementation and follow-up; to that end, the national authorizing officers of the region concerned or a regional organization which they have mandated to represent them, the Commission and its delegates, and those in charge of regional projects and programmes shall meet, as a general rule, once a year to ensure that regional programmes are correctly implemented.

2. Account being taken of the objectives and inherent characteristics of regional cooperation, projects and programmes undertaken in this sphere shall be governed by the arrangements and procedures established for development finance cooperation where they apply to that context.

## **Article 161.**

1. Regional organizations duly mandated by the ACP States concerned must play an important part in the design and implementation of regional programmes.

2. They may take part in the programming exercise and in the implementation and management of regional programmes and projects.

3. Where an operation is financed by the Community through a regional cooperation body, the financing terms applicable to the final beneficiaries shall be agreed between the Community and that body in agreement with the ACP State or States concerned.

## **Article 162.**

A regional operation is one which helps directly to solve a development problem common to two or more countries through joint schemes or coordinated national schemes and which meets at least one of the following criteria:

(a) because of its nature or physical characteristics, it necessarily extends beyond the frontiers of one ACP State and cannot be carried out by a single country nor be divided up into national operations to be undertaken by each State on its own account;

(b) the regional formula makes it possible to achieve significant economies of scale in relation to national operations;

(c) the operation is the regional, inter-regional or intra-ACP expression of a sectoral or a global strategy;

(d) the accompanying costs and benefits are unequally shared out among the beneficiary countries.

## **Article 163.**

The Community's contribution under regional cooperation shall, in respect of operations which could be undertaken partly at national level, be determined on the basis of the following factors: :

(a) the operation strengthens cooperation between the ACP States concerned at the level of authorities, institutions or enterprises, or through regional bodies or by removing obstacles, whether in the form of regulations or financial;

(b) two or more States have entered into mutual commitments in respect of an operation, notably as regards the distribution of facilities, investment and the running thereof.

## **Article 164.**

1. The requests for financing from funds earmarked for regional cooperation shall be governed by the following general procedures:

(a) requests for financing shall be presented by each of the ACP States participating in a regional operation;

(b) wherever an operation of regional cooperation is such as to be of interest to other ACP States, the Commission shall, in agreement with other applicant States, inform the other ACP States or, if need be, all the ACP States. The ACP States interested shall then confirm whether they intend to participate.

Notwithstanding this procedure, the Commission shall examine without delay any request for financing as long as it has been presented by at least two ACP States. The financing decision shall be taken after the States consulted have communicated their intention;

(c) where a single ACP State is associated with non-ACP countries, as provided for in Article 157, its request alone shall suffice;

(d) request for financing for intra-ACP regional cooperation schemes may be submitted by the ACP Council of Ministers, or, by specific delegation, by the ACP Committee of Ambassadors;

(e) regional cooperation bodies may present requests for the financing of one or more specific regional cooperation schemes on, behalf, and with the explicit agreement, of those of their members that are ACP States;

(f) each request for regional cooperation funding must include, where necessary, proposals concerning:

(i) the ownership of the goods and services to be financed as part of the operation, and the division of responsibilities for operation and maintenance;

(ii) the choice of the regional authorizing officer and the State or body authorized to sign the financing agreement on behalf of all the participating ACP States or bodies.

2. The indicative programme for each region may lay down appropriate arrangements for the submission of requests.
3. The ACP State or States or regional bodies participating in a regional operation with third countries as provided for in Article 157 may request the Community to finance that part of the operation for which they are responsible or a part in proportion to the benefits they derive from the operation.

### **Article 165.**

1. With a view to encouraging regional cooperation between the -least-developed, landlocked and island countries, particular attention shall be paid to these countriesâ specific problems at the regional programming stage and in the implementation.
2. As regards financing, the least-developed ACP States shall be given priority in any project involving at least one ACP State in that category, while special attention shall be paid to the landlocked and island ACP States in order to overcome the obstacles holding back their development.

### **Article 166.**

For the purposes set out in the present Title, the amount of the Community's financial assistance is provided for in Article 3 of the Financial Protocol to this Convention.

## **Part Three. THE INSTRUMENTS OF ACP-EEC COOPERATION**

### **Title I. TRADE COOPERATION**

## **Chapter 1. General Trade Arrangements**

### **Article 167.**

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.
2. In the pursuit of this objective, particular regard shall be had to securing effective additional advantages for ACP States' trade with the Community and to improving the conditions of access for their products to the market in order to accelerate the growth of their trade and, in particular, of the flow of their exports to the Community and to ensure a better balance in the trade of the Contracting Parties.
3. To this end, the Contracting Parties shall apply the provisions of this Title and the- other appropriate measures under Title III of this Part and under Part Two of this Convention.

### **Article 168.**

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 where 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 measure relating to their import;
- (ii) for products other than those referred to in point (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 when this Convention enters into force should benefit from such arrangements, the Community shall examine these requests in consultation with the ACP States.

(c) Notwithstanding the above, the Community shall, in the context of the special relations and special nature of ACP-EEC cooperation, examine on a case-by-case basis the requests from the ACP States for preferential access for their agricultural products to the Community market and shall notify its decision on these reasoned requests if possible within four months, and in any case not more than six months after the date of their submission.

Within the context of subparagraph (a) (ii), the Community shall take its decisions in particular with reference to concessions granted to developing third countries. It shall take account of the possibilities offered by the off-season market.

(d) 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.

However, if 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 shall reserve the right to adapt the import treatment for those 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 shall reserve 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 shall undertake 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.

(e) Where the Community intends to conclude 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 169.**

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

2. However, paragraph 1 shall apply without prejudice to the import arrangements for the products referred to in the first indent of Article 168 (2) (a).

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

## **Article 170.**

1. Article 169 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 archaeological value or the protection of industrial and commercial property.

2. Such prohibitions or restrictions shall in no case constitute a means of arbitrary discrimination or a disguised restriction of trade generally.

In cases where implementation of the measures referred to in paragraph 1 affects the interests of one or more ACP States, consultations shall be held at the request of the latter, in accordance with the second paragraph of Article 12, with a view to reaching a satisfactory solution.

3. Provisions on the movement of hazardous and radioactive waste are set out in Part Two, Title I of this Convention.

## **Article 171.**

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 of the Community.

### **Article 172.**

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 State concerned, consultations shall be held at the request of the latter in accordance with Article 12, second paragraph, with a view to reaching a satisfactory solution.

### **Article 173.**

1. Where existing Community rules or regulations 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 relevant institutions of the Community shall, to the greatest possible extent, inform the Council of Ministers of such measures in order to ensure effective consultations.

### **Article 174.**

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 commitment entered into by the Community under this Chapter in respect of imports of the products originating in the ACP States.

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 most-favoured-nation treatment.

(b) Notwithstanding specific provisions of this Convention, the Community shall not discriminate between ACP States in the field of trade.

(c) 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 173.**

Unless it has already done so under earlier ACP-EEC Conventions, each Contracting Party shall communicate its customs tariff to the Council of Ministers within three months of 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 176.**

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 pursuant to paragraphs 1 or 2, each Contracting Party shall continue to apply its own rules.

### **Article 177.**

1. Should application of this Chapter result in serious disturbances in a sector of the economy of the Community or of one or more of the Member States, or jeopardize their external financial stability, or if difficulties arise which may result in a

deterioration 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 other means for protectionist purposes or to hamper structural development. The Community will refrain from using safeguard measures having the same effect.

3. Safeguard measures shall be restricted to those which would least disturb trade between the Contracting Parties in implementing the objectives of this Convention and must not exceed the scope of what is strictly necessary to remedy the difficulties that have arisen.

4. When applied, safeguard measures shall take account of the existing level of the ACP exports concerned to the Community and their potential for development.

### **Article 178.**

1. Prior consultations shall take place concerning the application of the safeguard clause, both when such measures are first adopted and when they are extended. The Community shall provide the ACP States with all the information required for such consultations and shall provide the data from which to determine to what extent imports from an ACP State or ACP States of a specific product have caused the effects referred to in Article 177 (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 177 (1), might take where special factors have necessitated such decisions.

4. In order to facilitate the examination of factors that may cause market disturbances, a mechanism shall be instituted for the statistical surveillance of certain ACP exports to the Community.

5. The Contracting Parties undertake to hold regular consultations with a view to finding satisfactory solutions to problems which might result from the application of the safeguard clause.

6. The prior consultations as well as the regular consultations and the surveillance mechanism referred to in paragraphs 1 to 5 shall be implemented in accordance with Protocol 4.

### **Article 179.**

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 180.**

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

### **Article 181.**

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

In addition to the cases for which consultations are specifically provided for in Articles 167 to 180, 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 procedural rules in Articles 12, particularly in the following cases:

(1) where Contracting Parties intend to take 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 168 (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 or the Member States take safeguard measures in accordance with Article 177, 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 177 (3).

Such consultations must be completed within three months.

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

### **Article 182.**

Until the entry into force of a common organization of the market in spirits and notwithstanding Article 167 (1), entry into the Community of products of subheadings 2208 40 10, 2208 4090, 22089011 and 22089019 of the combined nomenclature - rum, arrack, taffia - originating in the ACP States shall be governed by Protocol 6.

### **Article 183.**

In order to permit the improvement of the conditions under which bananas originating in the ACP States are produced and marketed, the Contracting Parties hereby agree to the objectives set out in Protocol 5.

### **Article 184.**

This Chapter and Protocols 5 and 6 shall not apply to relations between the ACP States and the French overseas departments.

## **Chapter 3. Trade In Services**

### **Article 185.**

1. The Contracting Parties recognize the importance of trade in services for the development of the ACP States' economies, on account of the increasing role of services in international trade and their considerable growth potential.
2. The ACP States and the Community recognize that the long-term aim in this area is a progressive liberalization of trade in services, with due respect for national policy objectives, and taking due account of the level of development of ACP States.
3. The ACP States and the Community recognize further that it will be opportune and necessary to develop cooperation in this sector when the outcome of current multilateral trade negotiations is known.
4. Therefore, the Contracting Parties will negotiate amendments or further elaboration of this Convention to take account, and to take advantage, of the outcome of the multilateral trade negotiations in the GATT.
5. Following the negotiations referred to in paragraph 4, which will take place within the framework of the Council of Ministers, the Council of Ministers may adopt any amendment to this Chapter.

## **Title II. COOPERATION IN THE FIELD OF COMMODITIES**

### **Chapter 1. Stabilization of Export Earnings from Agricultural Commodities**

#### **Article 186.**

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 export earnings derived from the ACP States' exports to the Community or other destinations as defined in Article 189, 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 shall be devoted, in accordance with a framework of mutual obligations to be agreed between the ACP State concerned and the Commission in each case, either to the sector, interpreted in the widest possible sense, that recorded the loss of export earnings and be used there for the benefit of economic operators adversely affected by this loss, or, where appropriate, to diversification, either for use in other appropriate productive sectors in principle agricultural, or for the processing of agricultural products.

## Article 187.

1. The following products shall be covered:

	<b>Combined nomenclature position</b>
1. Groundnuts in shell or shelled	1202
2. Groundnut oil	1508
3. Cocoa beans	1801
4. Cocoa husks, shells and skins and other waste	1802
5. Cocoa paste	1803
6. Cocoa butter	1804
7. Cocoa powder	1805
8. Raw or roasted coffee	0901 11 to 0901 22
9. Extracts, essences and concentrates of coffee	2101 1011, 2101 1019
10. Cotton not carded or combed	5201
11. Cotton linters	1404 20
12. Coconuts	0801 10
13. Copra	1203
14. Coconut oil	1513 11 151319
15. Palm oil	1511
16. Palm kernel oil	1513 21 1513 29
17. Palm nuts and kernels	1207 10
18. Raw hides and skins	4101 10 to 4101 30 4102 4103 10

19. Leather of bovine animals	4104 10 to 4104 29 4104 31 11 4104 31:19 4104 31 30 4104 39 10
20. Sheep and lamb skin leather	4105
21. Goat and kid skin leather	4106
22. Wood in the rough and squared wood	4403
23. Sawn wood	4407
24. Fresh bananas	0803 00 10
25. Dried bananas	0803 00 90
26. Tea	0902
27. Raw sisal	5304 10
28. Vanilla	0905
29. Cloves	0907
30. Wool not carded or combed	5101
31. Fine animal hair of Angora goat' Mohair	5102 10 50
32. Gum Arabic	1301 2000
33. Pyrethrum; saps and extracts of pyrethrum	1211 90 10 1302 14
34. Essential oils	3301 11 to 3301 29
35. Sesame seed	1207 40
36. Cashew nuts and kernels	0801 30
37. Pepper	0904
38. Shrimps and prawns	0306 13 0306 23
39. Squid, octopus and cuttlefish	0307 41 0307 49 0307 51 0307 59
40. Cotton seed	1207 20
41. Oil cake	2305 2306 10 2306 50 2306 60 2306 90 93
42. Rubber	4001

43. Peas	0708 10 0713 10 0713 20
44. Beans	0708 20 0713 31 to 0713 39 ex 0713.90
45. Lentils	0713 40
46. Nutmeg and mace	0908 10 0908 20
47. Shea nuts	1207 92
48. Shea nut oil	ex 151590 40 to ex 151590 99
49. Mangoes	ex 0804 50

2. In all cases of application of the system, the Commission shall, in the interests of the ACP State concerned, consider as products within the meaning of this chapter:

- (a) each product listed in paragraph 1;
- (b) product groups 1 and 2, 3 to 7, 8 and 9, 10 and 11, 12 to 14, 15 to 17, 18 to 21, 22 and 23, 24 and 25, 47 and 48.

### **Article 188.**

If, 12 months after the entry into force of this Convention, one or more products not contained in the list in Article 187 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 more 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, taking account of factors such as employment, deterioration of the terms of trade between the Community and the ACP State concerned, the level of development of the ACP State concerned and the conditions which characterize products originating in the Community.

### **Article 189.**

1. The system shall apply to earnings from exports:

- (a) by each ACP State to the Community of each product referred to in Article 187 (2);
- (b) by the ACP States benefiting from the derogation referred to in paragraph 2 to the other ACP States of each product referred to in Article 187 (2) for which such derogation has been granted;
- (c) by the ACP States benefiting from the derogation referred to in paragraph 3 to all destinations of each product referred to in Article 187 (2).

2. At the request of one or more ACP States in respect of one or more of the products referred to in Article 187 (1), the Council of Ministers may decide, after examination of a report established by the Commission on the basis of the relevant information provided by the requesting ACP State or States, and not more than six months after the presentation of the request, to apply the system to exports of the products in question from the said ACP State or States to other ACP States.

3. If, on the basis of relevant data for the average of the two years preceding the application year, at least 70% of an ACP State's total export earnings from products covered by the system do not come from exports to the Community, the system shall be automatically applied to its exports of each of the products referred to in Article 187 (2), whatever the destination.

In the case of the least-developed ACP States this percentage shall be 60 %.

For each year of application and for each ACP State, the Commission shall check that these criteria have been fulfilled.

### **Article 190.**

For the purposes stipulated in Article 186 and for the duration of the Financial Protocol annexed to this Convention, the

amount provided for in that protocol shall be allocated to the system. This amount shall cover all commitments under the system. It shall be managed by the Commission.

### **Article 191.**

1. The overall amount referred to in Article 190 shall be divided into a number of equal annual instalments corresponding to the number of years of application of the Financial Protocol.

2. Whatever balance remains at the end of each year of application of the Financial Protocol annexed to this Convention except the last shall be carried forward automatically to the following year.

### **Article 192.**

Interest earned by investment in the market, over the period from 1 April to 30 June, of the sum equivalent to half each annual instalment, minus any advances and transfers paid during that period, shall be credited to the system's resources.

Interest earned by investment in the market, over the period from 1 July to 31 March, of the sum equivalent to the second half of each annual instalment, minus any advances and transfers paid during that second period, shall be credited to the system's resources.

Any part of an annual instalment which has not been advanced or transferred shall continue to bear interest which will be added to the system's resources until its utilization in the following year.

### **Article 193.**

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

(1) the annual instalment, plus any amounts available or less any amounts used under Article 194 (1);

(2) the sums carried forward under Article 191 (2);

(3) the amount of interest earned pursuant to Article 192.

### **Article 194.**

1. If the total amount of the transfer bases in a year of application, calculated in accordance with Article 197, and where appropriate reduced in accordance with Articles 202 to 204, exceeds the amount of resources available in the system for that year, advance use shall be made automatically, for each year except the last, of a maximum of 25 % of the following year's instalment.

2. If, after the operation referred to in paragraph 1, the amount of resources available is still less than the total amount of the transfer bases referred to in paragraph 1 for the same year of application, the amount of each transfer basis shall be reduced by 10 % of that amount.

3. If, after the reduction referred to in paragraph 2, the total amount of the transfers so calculated is less than the amount of resources available, the remainder shall be shared among all the transfers in proportion to the amounts by which each transfer was reduced.

4. If, after the reduction referred to in paragraph 2, the total amount of the transfers which may give rise to a payment exceeds the amount of available resources, the Council of Ministers shall evaluate the situation on the basis of a Commission report on the probable development of the system and shall examine the steps to be taken to remedy that situation, within the terms of this Convention.

### **Article 195.**

In the case of any balance remaining from the overall amount referred to in Article 190, including the interest referred to in Article 192 after the expiry of the last year of administration of the system under the Financial Protocol annexed to this Convention:

(a) the amounts resulting from the application of the percentages referred to in Article 197 (3) and (4) shall be repaid to each ACP State in proportion to the deduction or deductions made in application of those provisions;

(b) if any balance remains after application of (a), the Council of Ministers shall decide on its use.

## **Article 196.**

1. The system shall apply to the earnings from an ACP State's exports of the products referred to in Article 187 (2) 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 5 % of its total earnings from exports of all goods. The percentage shall be 4 % in the case of sisal.

2. For the least-developed, landlocked and island ACP States, the percentage referred to in paragraph 1 shall be 1%.

3. Where, following a natural disaster, a substantial fall in production of the product in question is recorded during the year preceding the year of application, the percentage referred to in paragraph 1 shall be calculated on the basis of the average export earnings from that product during the three years preceding the year of the disaster.

A substantial fall in production shall be taken to mean at least 50 % of the average production during the three years preceding the year of the disaster.

## **Article 197.**

1. In order to implement the system, a reference level and a transfer basis shall be calculated for each ACP State and for exports of each product referred to in Article 187 (1) to the Community or other destinations as defined in Article 189.

2. The reference level shall be constituted by the average of export earnings during the period of the six calendar years preceding each year of application less the two years with the highest and lowest figures.

3. The transfer basis shall be constituted by the difference between the reference level and actual earnings in the calendar year of application, reduced by an amount corresponding to 4,5 % of the reference level. In the case of the least-developed ACP States, this percentage shall be 1%.

4. The reductions referred to in paragraph 3 shall not apply in the case of the least-developed or landlocked ACP States if the difference between the reference level and actual earnings is less than ECU 2 million, or in the case of island ACP States if this difference is less than ECU 1 million.

In no case shall the reduction of the difference between the reference level and actual earnings be greater than:

- 20% for the least-developed and for landlocked ACP States,
- 30% for other ACP States.

5. The amount of the transfer shall be the transfer basis after application, where relevant, of Articles 202 to 204 and 194,

## **Article 198.**

1. Where an ACP State:

- begins 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 over the three years preceding the year of application.

2. In the case of the ACP States accorded the derogation:

- referred to in Article 189 (2), the transfer basis shall be calculated by adding to the earnings from exports of the product or products concerned to the Community the earnings from exports of those products to other ACP States;
- referred to in Article 189 (3), the transfer basis shall be calculated according to the earnings from exports of the product or products concerned to all destinations.

## **Article 199.**

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

2. The ACP States shall notify the Commission of the annual statistical data specified in the joint declaration in Annex XLII.
3. This information must be sent to the Commission not later than 31 March in the year following that of application. Failure to do so shall result in the ACP State concerned losing all transfer rights in relation to the product or products in question for the relevant year of application.

## **Article 200.**

The system shall be implemented in respect of the products listed in Article 187 where they are:

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

2. The statistics to be used to carry out the calculations referred to in Article 197 shall be those calculated and published by the Statistical Office of the European Communities. :

3. In the case of ACP States accorded the derogation

(a) referred to in Article 189 (2), the statistics relating to exports of the product or products in question to other ACP States shall be the volume exported by the ACP State concerned multiplied by the average unit value of imports by the Community as calculated and published by the Statistical Office of the European Communities or, failing those, the statistics of the ACP State concerned;

(b) referred to in Article 189 (3), the statistics relating to exports of the product or products in question to all destinations shall be the volume exported by the ACP State concerned multiplied by the average unit value of imports by the Community as calculated and published by the Statistical Office of the European Communities or, failing those, the statistics of the ACP State concerned.

4. Should there be significant differences between the statistics of the Statistical Office of the European Communities and those of the ACP State concerned, consultation shall be held between that ACP State and the Commission.

## **Article 201.**

No transfer shall take place if it emerges from the examination of the dossier 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 measures or policies involving discrimination detrimental to the Community.

## **Article 202.**

The transfer basis shall be reduced in due proportion to the fall in earnings from exports to the Community of the product in question if, after joint examination by the Commission and the ACP State concerned, it appears that such a drop is the consequence of trade-policy measures taken by the ACP State or through its economic operators with the aim of restricting supply; such reduction may entail the annulment of the transfer basis.

## **Article 203.**

Should examination of the trend of the ACP State's exports, to all destinations, of production of the product in question in the ACP State concerned and of demand in the Community reveal significant changes, consultations shall take place between the Commission and that ACP State to determine whether the transfer basis is to be maintained or reduced, and, if so, to what extent.

## **Article 204.**

In no case shall any transfer basis for a given product be greater than the corresponding amount calculated on the basis of the exports of the ACP State concerned to all destinations.

## **Article 205.**

1. The Commission shall adopt a transfer decision on completion of the examination carried out in conjunction with the ACP State; this examination shall bear on the statistical data and the calculation of the transfer basis which may give rise to a

payment.

2. For each transfer a transfer agreement shall be concluded between the Commission and the ACP State concerned.

### **Article 206.**

1. The ACP State concerned and the Commission shall take such steps as are required to ensure that advances and transfers are made rapidly in accordance with the procedures laid down in Article 207.

2. Article 205 shall be applicable by analogy to advances.

### **Article 207.**

1. Provided that the ACP State concerned has sent all the necessary statistical information by 31 March in the year following that of application, in accordance with Article 199 (3), the Commission shall notify each ACP State not later than 30 April following of its situation in respect of each of the products listed in Article 187 (2) exported by that State during that year.

2. The ACP State concerned and the Commission shall take all possible steps to ensure that the procedures referred to in Articles 201 to 203 are concluded not later than 30 June of the year in question. After this period has elapsed, the Commission shall notify the ACP States of the amount of the transfer resulting from appraisal of the dossier.

3. Without prejudice to Article 206 and not later than 31 July of the year in question the Commission shall take decisions concerning all transfers, except for those where consultations have not been concluded.

4. On 30 September of the year in question the Commission shall report to the Committee of Ambassadors on the progress made with the processing of all transfers.

### **Article 208.**

1. In the event of a disagreement between an ACP State and the Commission over the results of the examinations or consultations referred to in Articles 201 to 203 and 199 (3), the ACP State concerned shall have the right to initiate, without prejudice to possible recourse to Article 352, a good offices procedure.

2. The good offices procedure shall be carried out by an expert appointed by agreement between the Commission and the ACP State concerned.

3. Within two months of this appointment, the conclusions of the procedure shall be communicated to the ACP State concerned and to the Commission, which shall take account of them in making the transfer decision.

The ACP State concerned and the Commission shall take all possible steps to ensure that the decision is taken not later than 31 October following receipt of the request,

4. The procedure shall not result in a delay in the processing of any other transfers for the same year of application.

### **Article 209.**

1. Where application of Articles 196 and 197 gives rise to a transfer basis, the ACP State concerned shall, in the month following receipt of the notification referred to in Article 207 (1), send the Commission a substantial analysis of the sector recording the loss of earnings, the causes of the loss, the policies pursued by the authorities and the projects, programmes and operations to which the recipient State undertakes to allocate the resources in accordance with the objectives set out in Article 186 (2).

2. Should the recipient ACP State intend, as provided for in Article 186 (2), to allocate the funds to a sector other than that where the loss has occurred, it shall communicate to the Commission the reasons for this allocation.

3. Projects, programmes or operations to which the recipient ACP State undertakes to allocate the transferred resources shall be examined jointly by the Commission and the ACP State concerned.

4. Where, in the sector for which the transfer is destined, there is already an adjustment operation designed to restructure production and export activities or to achieve diversification, the resources shall be used to second these efforts and; where necessary, support any consistent reform policy in the sectors concerned.

### **Article 210.**



When agreement is reached on the use of resources, the ACP State and the Commission shall sign a protocol setting up a framework of mutual obligations stipulating how the funds are to be used at the various stages of the operations agreed on.

### **Article 211.**

1. The transfer shall be made in ecus upon signature of the transfer agreement referred to in Article 205 (2) into an interest-bearing account, for which presentation of two signatures, of the ACP State and the Commission, shall be required. Any interest shall be credited to this account.
2. The funds in the account referred to in paragraph 1 shall be mobilized as the operations specified in the protocol on the use of the funds are implemented, on condition that the provisions of Article 212 have been complied with.
3. The procedures laid down in paragraph 2 shall be applicable by analogy to any counterpart funds generated.

### **Article 212.**

1. Within twelve months of the mobilization of resources the recipient ACP State shall send the Commission a report on the use which it has made of the funds transferred.
2. Should the report referred to in paragraph 1 not be presented within the time limit set or should it call for comment, the Commission shall send a request for substantiation to the ACP State concerned, which shall be obliged to reply thereto within two months.
3. Once the deadline referred to in paragraph 2 has expired, the Commission may, having referred the matter to the Council of Ministers and having duly informed the ACP State concerned, three months after completion of this procedure, suspend application of decisions on subsequent transfers until that State has provided the required information.

The ACP State concerned shall be notified of this measure immediately.

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

### **Article 213.**

1. In accordance with Article 25 of the ACP-EEC Convention of Lomé signed on 28 February 1975 and with Protocol 3 annexed thereto, 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 the aforementioned Article 25 have been laid down by Protocol 3 referred to in paragraph 1. The text of the Protocol is annexed to this Convention as Protocol 8.
3. Article 177 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 under this Convention may be used during the period of application of this Convention.
5. Article 8 (2) of the said Protocol shall apply should this Convention cease to be operative.
6. The declarations contained in Annexes XII, XXI and XXII to the Final Act to the ACP-EEC Convention of Lomé signed on 28 February 1975 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.

## **Chapter 3. Mining Products: Special Financing Facility (Sysmin)**

### **Article 214.**

1. A special financing facility shall be set up for those ACP States whose mining sectors occupy an important place in their economies and are facing difficulties that are already perceived or foreseeable in the near future.

2. Its aims are to contribute towards establishing a more solid and wider basis for the development of the ACP States while supporting their efforts:

- to safeguard their mining production and export sectors by remedial or preventive action designed to alleviate the serious consequences for their economies of the loss of viability as a result of a decline in their production or export capacity and/or export earnings in the mining products sector following major technological or economic changes or temporary or unforeseeable disruptions beyond the control of the State concerned and of the enterprise managing the sector concerned. Particular attention shall be paid to adjusting the competitive situation of enterprises to changes in market conditions, or

- for States heavily dependent on exports of one mining product, to diversify and broaden the bases of their economic growth, notably by helping them complete development projects and programmes under way where these are seriously jeopardized owing to substantial falls in export earnings from that product.

3. In pursuing these objectives, this support:

- will be adapted to the economic restructuring needs of the ACP State concerned,

- will take into account at the time of its formulation and implementation the mutual interests of the Contracting Parties.

## **Article 215.**

1. The special financing facility provided for in Article 214 shall be aimed at ACP States which export to the Community and which, during at least two of the four years preceding that of the request for aid, have derived either:

(a) 15% or more of their export earnings from one of the following products: copper (including cobalt), phosphates, manganese, bauxite and alumina, tin, iron ore, whether or not in agglomerate form, uranium; or

(b) 20% or more of their export earnings from all mining products (excluding precious minerals other than gold, oil and gas).

However, for least-developed, landlocked or island ACP States, the figure stipulated in (a) shall be 10 % and the figure stipulated in (b) shall be 12 %.

For the calculation of the thresholds referred to in (a) and (b) earnings shall not include those from mining products not covered by the system.

2. Recourse to the special financing facility shall be possible where, in the light of the aims referred to above:

(a) it is perceived or expected that the viability of one or more enterprises in the mining sector has been or is about to be seriously affected following temporary or unforeseeable difficulties - whether technical, economic or political - beyond the control of the State or undertaking concerned, and where such damage to viability leads to or may lead to a significant fall in revenue for the ACP State concerned - assessed in particular on the basis of a drop in production or export capacities of the product in question of around 10% - and/or a deterioration in its external trade balance.

Foreseeable damage to viability shall be characterized by the onset of deterioration of the means of production and its impact on the country's economy; or

(b) in cases under paragraph 1 (1), it is perceived that a substantial fall in export earnings from the mining product concerned, in relation to the average for the two years before the request, is seriously jeopardizing the completion of development projects and programmes under way. To be taken into consideration, such a fall in earnings must:

- be caused by technical, economic or political difficulties and not artificially provoked, directly or indirectly, by policies and measures of the ACP State or the economic operators concerned,

- result in a corresponding fall in total export earnings of approximately 10% at least in the year before that of the request.

The said difficulties shall refer to disruptions such as accidents, serious technical incidents, serious internal or external political events, major technological and economic changes or major changes in trade relations with the Community.

3. An ACP State may request financial aid under the special financing facility where the conditions set out in paragraphs 1 and 2 are met.

## **Article 216.**

1. The aid referred to in Article 215 shall be used in pursuit of the aims of the facility as set out in Article 214 (2).

- Where maintenance or return to viability of the mining enterprise or enterprises affected is deemed possible and appropriate by the two parties, the aid shall be used to finance projects or programmes, including the financial restructuring of the enterprise or enterprises concerned, with a view to maintaining, re-establishing or rationalizing at a viable level the production and export capacity concerned.

- Where it is not thought possible by the two parties to maintain or restore viability, the aid shall be used to broaden the bases of economic growth through the financing of viable horizontal or vertical conversion or diversification projects or programmes.

- By common agreement, the aim of diversification may also be pursued where the economy is dependent on the mining product in question to a significant degree, even where: viability can be re-established.

- Where Article 215 (2) (b) is applicable, the objective of diversification shall be pursued through financial assistance to aid the completion of development projects and programmes under way outside the mining sector which are in jeopardy.

2. Any decision to allocate funds to projects or programmes shall take due account of economic interests and the social implications of such aid in the ACP State concerned and in the Community and will be adapted to the economic restructuring needs of that ACP State.

In the case of requests presented under Article 215 (1) (b), the Community and the ACP State concerned shall jointly and systematically seek to establish the scope and the terms of any aid accorded in such a way that such aid does not injure competing Community mining production.

The consideration and appraisal of these factors shall be part of the analysis referred to in Article 217 (2).

3. Special attention shall be accorded to:

- processing and transport operations, notably at regional level, and the proper integration of the mining sector in the country's overall economic and social development,

- preventive operations to minimize any disruptive effects by adapting technology, improving the technical and managerial skills of local staff and adapting the skills of local staff to enterprise management techniques,

- stepping up the ACP States' scientific and technical capacity for the production of new materials.

## **Article 217.**

1. The request for aid must include information on the nature of the problems encountered, the perceived or expected consequences of the disruption both at national level and at the level of the mining enterprise or enterprises affected and indications in the form of an identification sheet on the measures or actions undertaken or desired to remedy them.

The request shall be made as soon as these consequences are identified and within a period not exceeding 12 months for making up the file.

2. Prior to any Community decision a technical, economic and financial analysis shall be made systematically of the mining sector concerned in order to assess both the eligibility of the request and the project or programme to be undertaken to utilize the aid. That analysis, which shall be very detailed, shall, in order to identify the operation, take particular account of world market prospects and, without prejudice to the first paragraph of Article 216 (2), the situation of the Community market in the products concerned. It shall also include an analysis of the possible implications of such an operation for the competing mining products of Member States and the possible implications of its non-implementation for the ACP State concerned. Its objective shall be to ascertain:

- whether the viability of the means of production concerned has been or is likely to be damaged and whether that viability can be restored, or whether recourse to diversification measures is more appropriate, or

- whether the fall in export earnings referred to in Article 215 (2) (b) seriously jeopardizes the implementation of development projects and programmes under way.

The analysis shall be carried out in accordance with the procedures for financial and technical cooperation. It shall require the close cooperation of the ACP State and economic operators concerned.

3. A single decision shall be taken on eligibility and the financing proposal.

The Community and the ACP State concerned shall take the necessary steps to expedite appraisal of requests so that the

appropriate action may be taken swiftly.

## **Article 218.**

1. If necessary, technical assistance for setting up and supervising the project may be financed under the facility.
2. The procedures applicable to such assistance and the detailed rules for its implementation shall be those laid down in this Convention for development finance cooperation.

## **Article 219.**

1. For the purposes specified in Article 214 and for the period of application of the Financial Protocol annexed to this Convention, the Community shall allocate the overall amount provided for in that Protocol to cover all its commitments under this special financing facility. The amount allocated to the facility shall be managed by the Commission.
2. (a) 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 the advance use of up to 50% of the following year's instalment where required.  
  
(b) Any balances remaining at the end of each year of application of the Financial Protocol annexed to this Convention, except the last, shall be carried over automatically to the following year.  
  
(c) Consequently, the resources available for each year of application will be made up of the following elements:
  - the annual instalment, less any amounts used under (a);
  - the sums carried over under (b);  
(d) If the resources available for any year of application are insufficient, the amounts provided for shall be reduced accordingly, without prejudice to subparagraphs (a), (b) and (c).

Before expiry of the period of application of the Financial Protocol, the Council of Ministers shall decide on the allocation of any balances remaining from the overall amount.

3. The amount of the aid provided for in Article 215 shall be determined by the Commission in the light of the funds available under the special financing facility, the nature of the relevant projects and programmes, the possibilities for cofinancing and the relative importance of the mining. industry concerned for the economy of the ACP State.
4. Under no circumstances may a single ACP State be eligible for more than 35 % of the resources available as a result of the application of paragraph 2 (c). The rate shall be 15 % for aid under Article 215 (1) (b).
5. Aid accorded to an ACP State under the special financing facility may be on-lent by that State to the final borrower on different financial terms which shall be established in the financing decision and shall result from an analysis of the aid project conducted on the basis of the usual economic and financial criteria for the type of project planned.
6. The analysis referred to in Article 217 shall be financed from resources of the facility.
7. In exceptional circumstances arising out of an emergency, confirmation and proof of which will have to be provided initially by the analysis, an ACP State which so requests may be granted an advance by way of partial prefinancing of the project or programme which it precedes.

## **Title III. DEVELOPMENT FINANCE COOPERATION**

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

#### **Section 1. Objectives**

##### **Article 220.**

The objectives of development finance cooperation shall be, through the provision of adequate financial resources and appropriate technical assistance, to:

- (a) support and promote the efforts of ACP States to achieve long-term, self-determined, self-reliant and self-sustained

- integrated social, cultural and economic development, on the basis of mutual interest and in a spirit of interdependence;
- (b) help raise the standard of living and improve the well-being of the peoples of the ACP States;
  - (c) promote measures likely to mobilize the capacity for initiative of communities and the participation of those concerned in the design and implementation of development projects;
  - (d) contribute to the fullest participation of the population in the benefits of development;
  - (e) contribute to the development of the capacity of the ACP States to innovate, adapt and transform technology;
  - (f) contribute to optimal and judicious exploration, conservation, processing, transformation and exploitation of the ACP States' natural resources in order to enhance the efforts of ACP States to industrialize and to achieve economic diversification;
  - (g) provide support for and promote the optimal development of human resources in the ACP States;
  - (h) facilitate an increase in the financial flows to the ACP States which are responsive to the evolving needs of the ACP States and support the efforts of the ACP States to harmonize international cooperation for their development through cofinancing of operations with other financing agencies or third parties;
  - (i) contribute to the attenuation of the debt burden, which is a major constraint on the development prospects of ACP States, by ensuring greater non-debt-creating transfers, and by developing and implementing in a coordinated and integrated way the different instruments of this Convention ;
  - (j) promote and mobilize resources in support of sustainable, effective and growth-oriented adjustment programmes;
  - (k) seek new approaches to direct private investment promotion in ACP States; support the development of a healthy, prosperous and dynamic ACP private sector and encourage domestic and foreign private investment flows into the productive sectors in the ACP States;
  - (l) encourage intra-ACP cooperation and regional cooperation among ACP-States;
  - (m) permit the establishment of more balanced economic and social relations and better understanding between the ACP States, Member States of the Community and the rest of the world, with a view to achieving a new international economic order;
  - (n) 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 assistance ;
  - (o) help the least-developed, landlocked and island ACP States to overcome the specific obstacles which hamper their development efforts.

## **Section 2. Principles**

### **Article 221.**

Development finance cooperation shall :

- (a) be implemented on the basis of and be consistent with the development objectives, strategies and priorities established by the ACP States, at both national and regional levels with due regard to their respective geographical, social and cultural characteristics, as well as their specific potential;
- (b) be provided on very highly concessional terms;
- (c) ensure that resource flows are on a more predictable and continuous basis;
- (d) ensure participation by the ACP States in the management and utilization of financial resources and ensure effective decentralization of decisionmaking powers;
- (e) strengthen and utilize, as much as possible, the ACP States' human resources and existing administrative structures;
- (f) be flexible and appropriate to the situation in each ACP State as well as adapted to the specific nature of the project or programme concerned ;
- (g) be carried out with a minimum of administrative formalities using simple and rational procedures so that projects and

programmes may be implemented rapidly and efficiently;

(h) ensure that technical assistance is provided only upon the request of the ACP State or States and is of the stipulated quality, relevant, cost-effective and includes arrangements for rapid and effective training of ACP replacement personnel.

## **Section 3. Guidelines**

### **Article 222.**

1. Operations financed within the framework of this Convention 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 are based;
- (b) choosing projects and programmes;
- (c) preparing and presenting the dossiers of projects and programmes;
- (d) preparing, negotiating and concluding contracts;
- (e) implementing and managing projects and programmes;
- (f) maintaining projects and programmes.

3. The ACP States and the Community shall be jointly responsible for:

- (a) establishing within the joint institutions the guidelines for development finance cooperation;
- (b) adopting the indicative programmes;
- (c) appraising projects and programmes;
- (d) ensuring equality of conditions for participation in invitations to tender and contracts;
- (e) monitoring and evaluating the effects and results of projects and programmes;
- (f) ensuring the proper, prompt and efficient execution of projects and programmes.

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

### **Article 223.**

Unless otherwise provided in the Convention, all decisions requiring the approval of either Contracting Party shall be approved, or be deemed approved, within 60 days of notification by the other party.

## **Section 4. Scope of Financing**

### **Article 224.**

Within the framework of the Convention, development finance cooperation shall cover:

- (a) capital projects and programmes;
- (b) rehabilitation of projects and programmes;
- (c) sectoral and general import support programmes, in accordance with Article 225, which may take the form of:
  - (i) sectoral import programmes (SIPs) through direct procurement;
  - (ii) sectoral import programmes (SIPs) in the form of foreign exchange released in instalments for financing sectoral imports; and/or
  - (iii) general import programmes (GIPs) in the form of foreign exchange released in instalments for financing general imports covering a wide range of products;

- (d) budgetary support to alleviate domestic financial constraints through the use of counterpart funds generated by the various Community instruments;
- (e) support for measures which contribute to attenuate the debt burden and balance of payments problems;
- (f) technical cooperation programmes;
- (g) deployment of flexible resources in support of the efforts of grassroots communities;
- (h) recurrent costs (including current administrative, operating, and maintenance costs, both local and foreign) of new, ongoing and completed projects and programmes;
- (i) on a case-by-case basis, supplementary expenses borne by the ACP States arising out of and strictly relating to the administration and the supervision of projects and programmes financed by the European Development Fund, hereinafter referred to as "the Fund";
- (j) credit lines and support of regional payment mechanisms and export credit operations in the ACP States;
- (k) equity participation;
- (l) a combination of all or part of the above components integrated into sectoral development programmes.

## **Article 225.**

Sectoral import programmes shall be provided, upon request, from the resources of the indicative programme to support the measures taken by the ACP State concerned in the sector or sectors for which the assistance is requested in accordance with Article 281.

The purpose of import programmes is to contribute to.

the optimal functioning of the productive sectors of the economy, to assist in the expansion of production and export capacity, to facilitate the transfer or development of technology and to help meet basic human needs. Import programmes may include the financing of inputs to the productive system such as capital and intermediate goods, raw materials, spare parts, fertilizers, insecticides and supplies to improve health and education services and standards. In addition, the resources provided under structural adjustment support may be used for sectoral import programmes as referred to in Article 224 (c) (i) and (ii), and for general import programmes as referred to in Article 224 (c) (iii).

## **Article 226.**

Counterpart funds generated from various Community instruments shall, except otherwise provided for, be used in a targeted way for the financing of local expenditure under:

- (a) fund projects and programmes within the indicative programme;
- (b) other agreed projects and programmes;
- (c) specific budget headings under public expenditure programmes of the ACP States such as those relating to health, education, training, job creation and protection of the environment;
- (d) measures to attenuate the negative social consequences of structural adjustment; such measures may include:
  - (i) assistance to indigenous organizations such as cooperatives and other types of mutual-help ventures; oo
  - (ii) nutrition and health support for target groups and the modernization of health facilities;
  - (ii) re-training;
  - (iv) the provision of pre-primary and primary education, particularly in depressed areas;
  - (v) rehabilitating, maintaining and upgrading social and economic infrastructure;
  - (vi) the payment of redundancy benefits to public or semi-public workers made redundant, or as a contribution towards keeping them in employment for a specific period, or as a form of assistance for finding alternative employment;
  - (vii) the provision or subsidization of basic tools;

(viii) small labour-intensive projects which can be used to create employment for the unskilled, youths and women and at the same time be used to provide training and help to rehabilitate or develop the infrastructure in both rural and urban areas;

(ix) strengthening of the management capacity of the ACP State to administer social programmes;

(x) appropriate measures to assist women, the aged, the handicapped and other vulnerable groups, for whom the social consequences of adjustment can be particularly severe.

### **Article 227.**

1. Recurrent cost financing (to cover current administrative, maintenance and operating expenses) may be granted to an ACP State, in order to ensure that full-use is made of investments which are of special importance for the economic and social development of the ACP State concerned and the running of which temporarily constitutes a burden for the ACP State or other eligible beneficiaries. Such support may, for new, ongoing or past projects and programmes, cover current administrative, maintenance and operating expenses such as:

(a) expenditure incurred in the start-up period, for setting up, launching and operating the capital projects or programmes in question;

(b) the cost of operating, maintaining and/or managing capital projects and programmes implemented earlier.

2. Special treatment shall be accorded to the financing of recurrent cost in the least-developed ACP States.

### **Article 228.**

The funds provided under the Convention may be used to cover the total costs of both the local and foreign expenditure of projects and programmes.

## **Section 5. Sectors of Intervention**

### **Article 229.**

1. Within the framework of the priorities established by the ACP State or States concerned at both national and regional level, support may be given to projects and programmes in every sector or area referred to in this Convention and may, inter alia, be in:

(a) agricultural and rural development, and in particular food self-sufficiency and food security programmes;

(b) industrialization, artisanal activities, energy, mining and tourism;

(c) economic and social infrastructure ;

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

(e) preservation and protection of the environment;

(f) prospecting for, exploration and exploitation of, natural resources;

(g) education and training programmes, basic and applied scientific research and applied technology, technological adaptation or innovation and the transfer of technology;

(h) industrial promotion and information ;

(i) marketing and trade promotion;

(j) promotion, development and reinforcement of small and medium-sized national and regional enterprises;

(k) support to national and regional development banks and financial institutions, and to clearing and payment institutions which are designed to promote regional and intra-ACP trade ;

(l) micro-projects for grassroots development;

(m) transport and communications, including promotion of sea and air transport;



- (n) fisheries development;
- (o) development and optimal utilization of human resources, special account being taken of the role of women in development;
- (p) improvement of social and cultural infrastructure and services including health, housing, water supply etc;
- (q) assisting ACP and ACP-EEC professional and business organizations with the aim of improving production and marketing of products on external markets;
- (r) support for structural adjustment programmes, thus contributing also to debt-attenuation measures;
- (s) investment promotion and support measures;
- (t) support for development operations put forward by economic, cultural, social and educational organizations in the framework of decentralized cooperation, in particular where they combine the efforts and resources of ACP organizations and of their Community counterparts.

2. The projects and programmes may also concern operations on specific themes, such as:

- (a) drought and desertification control and protection of natural resources;
- (b) assisting ACP States in the fields of disaster prevention and preparedness, including prediction and early-warning systems, with a view to reducing the consequences of disasters;
- (c) control of endemic human diseases and epidemics;
- (d) hygiene and primary health care ;
- (e) control of endemic livestock diseases;
- (f) measures to save energy;
- (g) long-term operations, in general, which extend beyond any specific time scale.

## **Section 6. Eligibility for Financing**

### **Article 230.**

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

- (a) ACP States;
- (b) regional or inter-state bodies to which one or more ACP States belong and which are authorized by those States;
- (c) joint bodies set up by the ACP States and the Community to pursue certain specific objectives.

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

- (a) national and/or regional public or semi-public agencies, departments or local authorities of the ACP States and in particular their financial institutions and development banks;
- (b) companies and firms of ACP States;
- (c) enterprises of a Community Member State to enable them, in addition to their own contribution, to undertake productive projects in the territory of an ACP State;
- (d) ACP or Community financial intermediaries providing financing to small and medium-sized enterprises, as well as financial institutions promoting and financing private investments in ACP States;
- (e) groups of producers who are nationals of the ACP States;
- (f) award-holders and trainees;
- (g) ACP as well as Community local communities, cooperatives, trade unions, non-governmental organizations, and teaching and research institutions to enable them to undertake economic, cultural, social and educational projects and programmes

in the ACP States in the framework of decentralized cooperation.

## **Chapter 2. Financial Cooperation**

### **Section 1. Financial Resources**

#### **Article 231.**

For the purposes set out in the present Title, the overall amount of the Community's financial assistance is provided for in the Financial Protocol to this Convention.

#### **Article 232.**

1. Should an ACP State fail to ratify or denounce this Convention, the Contracting Parties shall adjust the amounts of the resources provided in the Financial Protocol. .

2. Such adjustment shall also apply upon:

(a) the accession to the Convention of new ACP States which did not take part in its negotiation;

(b) the enlargement of the Community.

### **Section 2. Terms and Conditions of Financing**

#### **Article 233.**

1. Projects or programmes may be financed by grant or by risk capital from the Fund, or by loans from the Bank's own resources, or jointly by two or more of these means of financing.

2. The methods of financing for each project or programme shall be determined jointly by the ACP State or States concerned and the Community by reference to:

(a) the level of development, the geographical situation and economic and financial circumstances of these States;

(b) the nature of the project or programme, its economic and financial return as well as its social and cultural impact; and

(c) in the case of loans, to factors guaranteeing their servicing.

3. Financial assistance may be made available to or through the ACP States concerned or, subject to their agreement, either through eligible financial institutions or directly to any other eligible beneficiary.

4. Where financial assistance is granted to the final recipient through an intermediary:

(a) the terms on which the assistance may be made available by the intermediary to the final recipient shall be laid down in the financing agreement or loan contract; and

(b) any financial benefit accruing to the intermediary from the on-lending transaction shall be used for development purposes, on the conditions laid down in the financing agreement or the loan contract, after taking into account administrative costs, exchange and financial risks, and the cost of technical assistance given to the final recipient.

#### **Article 234.**

1. Risk capital may be provided in the form of loans or equity participation.

(a) In the case of loans, it may be provided mainly in the form of:

(i) subordinated loans, which shall be redeemed and in respect of which interest, if any, shall be paid only after other claims have been settled;

(ii) conditional loans, the servicing and/or the duration of which shall be linked to the fulfilment of certain conditions with regard to the performance of the project financed such as profit or target output. The specific terms shall be laid down when the loan is made.

(b) In the case of equity participation, it may be provided to acquire temporary minority holdings on behalf of the Community in the capital of ACP enterprises or institutions financing development projects in the ACP States or of ACP financial institutions promoting and financing private investment in the ACP States. Such holdings shall be transferred to nationals or institutions of the ACP States or as otherwise agreed with the ACP State concerned, once the conditions specified for the purpose are met.

(c) The terms of risk capital operations shall depend on the characteristics of each project or programme financed and shall in general be more favourable than those of subsidized loans. In the case of loans the interest rate shall, in any case, be less than 3 %.

2. In order to minimize the effects of exchange rate fluctuations, the problem of exchange rate risk shall be dealt with in the following way:

(a) in the case of risk capital operations designed to strengthen an enterprise's own funds the exchange rate risk shall as a general rule be borne by the Community;

(b) in the case of risk capital financing for investments of private sector firms and small and medium-sized enterprises, hereinafter referred to as "SMEs", the exchange rate risk shall be shared by the Community, on the one part, and by the other parties involved, on the other. On average, the foreign exchange risk shall be shared equally.

### **Article 235.**

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

(a) the rate of interest before subsidy shall be the rate applied by the Bank for the currencies, duration and repayment conditions adopted for the loan on the day of signature of the contract;

(b) this rate shall be reduced by means of a 4 % subsidy. The rate of subsidy shall be automatically adjusted so that the interest rate borne by the borrower will be neither less than 3% nor more than 6% for a loan contracted at the reference rate. The reference rate adopted for calculating the adjustment in the rate of subsidy shall be the rate for the ECU applied by the Bank for a loan with the same conditions as to duration and repayment on the day of signature of the contract;

(c) the amount of the interest rate subsidy calculated in terms of its value at the times of disbursement of the loan shall be charged against the amount of grants and paid directly to the Bank;

(d) 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. These loans shall normally comprise a grace period fixed by reference to the construction period and the funds needed for the project.

### **Article 236.**

The Bank shall:

(a) contribute, through the resources it manages, to the economic and industrial development of the ACP States on a national and regional scale; and to this end, finance in the first place, productive projects and programmes in industry, agro-industry, tourism, mining, energy and in transport and telecommunications linked to these sectors. These sectoral priorities shall not exclude the possibility of the Bank's financing, from its own resources, productive projects and programmes in other sectors including commercial agriculture;

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

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

### **Article 237.**

The ACP States concerned shall, in respect of loans granted or equity participation under the Convention, and in respect of which they have given their written approval:

(a) grant exemption from all national or local duties, fiscal charges on interest, commissions and amortization of loans due

in accordance with the law or laws of the ACP State or-States concerned;

(b) place at the disposal of the beneficiaries the currency necessary for the payment of interest, commission and the amortization of loans due in terms of financing contracts granted for the implementation of projects and programmes on their territories;

(c) make available to the Bank the foreign currency necessary for the transfer of all sums received by it in national currency at the exchange rate applicable between the ECU, or other currencies of transfer, and the national currency at the date of the transfer, which represent the net revenue and proceeds from transactions involving the acquisition by the Community of holdings in the capital of companies or firms. :

### **Article 238.**

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 landlocked or island ACP States. Those financial resources shall be combined with more 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 risk capital or loans from the Bank, having regard in particular to the criteria laid down in Article 233 (2).

## **Section 3. Debt and Structural Adjustment Support**

### **Article 239. Debt**

1. The ACP States and the Community share the view that the external debt situation of ACP States has emerged as a major development issue, and that the associated heavy debt-servicing obligations contribute to constraints on import capacity and the level of investments in these States, thus affecting their growth and development.

2. The ACP States and the Community reaffirm their determination to develop and implement in a coordinated and integrated way the different instruments of the Convention and to implement the following measures with a view to contributing to the attenuation of the debt burden of the ACP States and their balance of payment problems with a view to stimulating economic recovery and growth.

### **Article 240.**

In order to avoid increases in the debt of ACP States, finance under this Convention, apart from bank loans and risk capital, is provided in the form of grants. Specifically the following measures and actions will be taken:

(a) for projects with high rates of return, and in particular for Sysmin financing, a two-stage procedure will be followed whereby ACP States will: receive grants and will on-lend the funds at appropriate market terms and conditions, with suitable arrangements for deposit of interest and repayment, less an agreed service charge, in a counterpart fund account, managed according to normal procedures as agreed for this type of finance generated from Community assistance;

(b) Stabex transfers will be granted without any obligation for the beneficiary ACP States to reconstitute the resources of the system.

2. In addition, the Community agrees to:

(a) enable, on a case-by-case basis, the acceleration of the use of the resources of past indicative programmes which have not been committed through the quick-disbursing instruments provided for in this Convention in order to contribute to the attenuation of the debt burden;

(b) grant, at the request of an ACP State:

(i) assistance in studying and finding practical solutions to indebtedness, debt-servicing difficulties and balance of payments problems;

(ii) training in external debt management and international financial negotiations as well as support for training workshops, courses and seminars in these fields;

(iii) assistance to ACP States in developing flexible techniques and instruments of debt management to deal with unanticipated interest rate and exchange rate variations;

(c) encourage its institutions, including the Bank, to play a more active role in catalysing new flows of finance to debt-affected ACP States.

## **Article 241.**

The Community commits itself to support the ACP States' efforts to:

- (a) undertake reforms with a view to improving the performance of the economy;
- (b) strengthen their external debt management mechanisms at national level so as to exercise more effective control over external borrowing by the public sector, and monitor private sector borrowing;
- (c) reverse the outflow of capital;
- (d) intensify their efforts to reduce inflation and implement measures designed to increase domestic savings;
- (e) introduce concrete measures to improve the quality of investment in both the public and private sectors;
- (f) give adequate incentives to projects that generate or save foreign exchange;
- (g) as a long-term objective, develop subregional capital markets which can serve as effective mechanisms for tapping ACP surplus funds invested abroad;
- (h) adopt measures aimed at increasing intra-ACP trade through the use of existing subregional and regional payments mechanisms and encourage clearing arrangements and credit insurance in all intra-ACP trade transactions.

## **Article 242.**

In order to contribute to the servicing of the debt resulting from Community loans from the Bank's own resources, special loans and risk capital, the ACP States may, in accordance with arrangements to be made on a case-by-case basis with the Commission, use the available foreign currency referred to in Article 319 for such servicing, as and when debt repayment falls due and up to the amount required for payments in national currency.

## **Article 243. Structural Adjustment Support**

The ACP States and the Community recognize that the economic and social problems being experienced by ACP States are the result of both internal factors and external developments. They see the need for urgent action and share the view that short and medium-term policies must reinforce the long-term development efforts and goals of ACP States. To this end, they have agreed that the Convention should provide structural adjustment support to assist ACP States in their effort to:

- (a) create an economic environment favourable to a resumption of, or to an acceleration in, the growth of GDP and employment;
- (b) improve the social and economic well-being of the population as a whole;
- (c) improve public sector management and provide appropriate private sector incentives;
- (d) increase the level of productivity in the key sectors of the economy;
- (e) achieve greater economic diversification as part of the effort to develop a larger measure of resilience in the economy and to reduce domestic and external imbalances while maintaining GDP growth;
- (f) improve balance-of-payments performance and the foreign-exchange position;
- (g) ensure that adjustment is economically viable and socially and politically bearable.

## **Article 244.**

Adjustment support shall be administered on the basis of the following principles:

- (a) the ACP States shall bear primary responsibility for the analysis of the problems to be solved and the preparation of reform programmes;
- (b) support programmes shall be adapted to the different situation in each ACP State and be sensitive to the social

conditions, culture and environment of these States;

(c) assistance shall be supportive of the ACP State's priority development objectives such as agricultural and rural development, food security, PMDT and environmental protection, and contribute to the attenuation of the debt burden;

(d) adjustment support shall take place within the framework of the political and economic model of the ACP State concerned;

(e) the right of the ACP States to determine the direction of their development strategies and priorities shall be recognized and respected;

(f) both the reform and the support programme shall make provision from the outset to deal with the negative social effects that may result from the process of adjustment efforts, in pursuit of the objectives of economic growth and social justice, particular attention being paid to the most vulnerable groups in the society including the poor, the unemployed, women and children;

(g) the pace of the reform programmes shall be realistic and compatible with each ACP State's capacities and resources, while the implementation of support programmes shall be flexible and adapted to the management capacity of the ACP State concerned;

(h) quick disbursement shall be an important feature of support programmes;

(i) support shall be given in the context of a joint assessment between the Community and the ACP State concerned on the reform measures being undertaken or contemplated either at a macro-economic or sectoral level.

## **Article 245.**

1. For purposes of structural adjustment support, Community financial assistance shall be given in form of grants:

(a) as provided for in Article 1 of the Financial Protocol; and

(b) from the indicative programme, in accordance with Article 281 (2) (c).

2. On the expiry of the Financial Protocol, appropriations set aside for structural adjustment support and not committed shall be paid back, save as otherwise decided by the Council of Ministers, to the assets of the Fund for the purpose of financing other operations falling within the scope of development finance cooperation, notably those relating to programmable assistance.

## **Article 246.**

1. All ACP States shall in principle be eligible for structural adjustment assistance depending on the scope of the reforms being undertaken or contemplated at the macroeconomic or sectoral level, their effectiveness, and their likely impact on the economic, social and political dimension of development, and on economic and social hardships being experienced, as reflected, by indicators such as:

(a) the level of indebtedness and the debt service burden;

(b) balance of payments difficulties;

(c) the budgetary situation;

(d) the monetary situation;

(e) the rate of growth of real national income;

(f) the level of unemployment;

(g) the situation in social areas such as nutrition, housing, health and education.

2. ACP States undertaking reform programmes that are acknowledged and supported at least by the principal multilateral donors, or that are agreed with such donors but not necessarily financially supported by them, shall be treated as having automatically satisfied the requirements for adjustment assistance.

3. In assessing the social and economic hardships referred to in paragraph 1, particular attention will be given to the least-developed ACP States.

## **Article 247.**

1. The resources earmarked for structural adjustment support may be mobilized either at the beginning of or during the Financial Protocol period, at the request of the ACP State concerned.

2. Such support for adjustment effort shall take the form of:

(a) sectoral or general import programmes in accordance with Articles 224 (c) and 225;

(b) technical assistance related to structural adjustment support programmes.

3. In addition, with a view to alleviating the ACP States' domestic financial constraints, counterpart funds generated by various Community instruments may be used in accordance with Article 226.

4. Structural adjustment support shall be implemented flexibly and the instruments chosen on a case-by-case basis.

A GIP designed in keeping with the approach to structural adjustment support laid down in the Convention will usually be the most appropriate instrument for countries carrying out macroeconomic reforms. In the case of sectoral adjustment, the assistance will be given in the form of an SIP in kind or in foreign currency.

An SIP could also be used in a situation of macro-economic reforms with a view to achieving a greater sectoral impact.

## **Article 248.**

The implementation of each support programme shall:

(a) be adapted to the needs of each recipient State;

(b) ensure consistency between the use of the different support instruments and the approach of structural adjustment as defined in Articles 243 and 244;

(c) ensure that the eligibility of ACP economic operators for access to the resources of the programme is as wide and transparent as possible and that the best price/quality ratio is obtained on imported goods. To this end this Convention's tendering procedures must be applied flexibly in order to:

- ensure the rapidity of disbursements,
- minimize the administrative burden on the State | concerned,
- accord with the administrative and commercial practices of that State;

(d) be the subject of an agreement between the Commission and the ACP body in charge of the implementation of the programme.

## **Article 249.**

In order to increase the flow of financial resources the Community, with the agreement of the ACP State concerned, may enter into cofinancing arrangements with other donors or agencies. The various provisions of this Convention on cofinancing shall apply. To this end and in order to ensure effective use of resources and to minimize delays, efforts shall be made, subject to the agreement of the ACP State concerned and with its effective participation, to:

(a) coordinate the approach of the various donors towards structural adjustment support;

(b) coordinate operational implementation in a simple and cost-effective manner.

## **Article 250.**

1. The ACP State's request for structural adjustment support shall contain the broad outline of the underlying problems being addressed by the ACP State and of the measures and actions being implemented or contemplated, the areas in which support is required, the social repercussions being experienced or envisaged and proposals to deal with them, as well as the cost estimates of the support programme for which assistance is being sought and the duration or likely period of completion.

2. The preparation, appraisal and financing decision for structural adjustment programmes shall be carried out according to

the provisions on implementation procedures of Chapter 5 with due regard to the need to ensure the quick disbursing feature of structural adjustment programmes. On a case-by-case basis, retro-active financing of a limited part of imports of ACP-EEC origin may be permissible.

3. In the case of foreign exchange programmes, funds will be transferred to an ecu-denominated bank account opened by the ACP States concerned in a Community Member State from which all disbursement covered by the programme shall be made. Such funds will be considered as an advance to be cleared by the submission of justification of the use of funds.

## **Section 4. Cofinancing**

### **Article 251.**

1. The financial resources provided for in this Convention may be applied, at the request of the ACP States, to cofinancing (undertaken in particular with development agencies and institutions, Community Member States, ACP States, third countries or international or private financial institutions, firms, or export credit agencies).

2. Special consideration shall be given to the possibility of cofinancing in the following cases, among others:

(a) large-scale projects which cannot be financed exclusively by any one source of financing alone;

(b) projects in which Community participation, and an input of its project expertise, might facilitate the participation of other additional sources of finance;

(c) projects which may benefit from a blend of concessionary and non-concessionary financing;

(d) projects which may be broken down into sub-projects which could be eligible for financing from different sources;

(e) projects for which a diversification of financing may lead to an advantageous solution from the point of view of the financing and investment costs and of other aspects of the implementation of the said projects;

(f) projects of a regional or inter-regional nature.

3. Cofinancing may be in the form of joint or parallel financing. Preference will be given in each case to the solution which is more suitable from the point of view of cost-effectiveness.

4. With the agreement of the parties concerned:

(a) measures shall be taken to coordinate and harmonize operations of the Community and those of other cofinancing bodies, in order to minimize the number of procedures to be undertaken by the ACP States and to render those procedures more flexible, notably as regards:

(i) the needs of other cofinancing bodies and recipients;

(ii) the choice of projects to be cofinanced and the arrangements for carrying them out;

(iii) the harmonization of works, supply and services contracts rules and procedures;

(iv) the payment terms;

(v) the rules of eligibility and competition;

(vi) the margin of preference granted to ACP enterprises;

(b) the process of consultation and coordination with other donors and cofinanciers should be strengthened and developed, where possible, through the establishment of cofinancing framework agreements, and cofinancing policies and procedures should be reviewed to ensure effectiveness and the best terms possible;

(c) the Community may provide the other cofinancing bodies with administrative help or may act as a lead or coordinating agency for projects part-financed by it in order to facilitate the implementation of cofinanced projects or programmes.

## **Section 5. Micro-projects**

### **Article 252.**

1. In order to respond to the needs of local communities with regard to development, the Fund shall, at the request of the



ACP State concerned, participate in the financing of micro-projects at local level which:

- (a) have an economic and social impact on the life of the people;
- (b) meet a demonstrated and observed priority need, and
- (c) will be undertaken at the initiative and with the active participation of the local community which will benefit therefrom.

2. Contributions for micro-projects shall be made:

- (a) by the local community concerned, in kind or in the form of services or cash and adapted to its capacity to contribute;
- (b) by the Fund, in which case the contribution shall not normally exceed three-quarters of the total cost of each project and may not exceed ECU 300 000;
- (c) exceptionally, by the ACP State concerned, either in the form of a financial contribution or through the use of public equipment or the supply of services.

3. The amounts representing the Fund's contribution shall be drawn from the grant allocation of the national indicative programme.

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

### **Article 253.**

With the agreement of the ACP States concerned, at the request of the ACP local communities concerned and in accordance with the provisions on multiannual micro- project programmes in Article 290, ACP and Community non-profit organizations may, in addition to the possibilities of cofinancing, coordinate, supervise or implement individual micro-projects and/or multiannual micro-project programmes.

## **Section 6. Emergency Assistance**

### **Article 254.**

1. Emergency assistance shall be accorded to ACP States faced with serious economic and social difficulties of an exceptional nature resulting from natural disasters or extraordinary circumstances having comparable effects. The assistance, which is intended to make, by the most suitable means, a real contribution to remedying the immediate difficulties:

- (a) shall be sufficiently flexible to take any form adapted to the circumstances, including the supply of a wide range of relief goods and services and/or the distribution of cash to victims;
- (b) may also cover the financing of immediate measures to make damaged structures and equipment operational again and to ensure minimum viability;
- (c) shall be non-reimbursable and made available quickly and easily.

2. The Community shall take adequate steps to facilitate speedy action which is required to meet the immediate needs for which emergency assistance is intended. To this end:

- (a) funds provided under emergency assistance must be fully committed and disbursed and action completed within 180 days of the establishment of the implementation arrangements unless otherwise stipulated by common agreement;
- (b) where the funds made available have not all been fully disbursed within the time limit set, or such other agreed time limit as referred to in subparagraph (a), then the balance shall be paid back into the special appropriation referred to in the Financial Protocol;
- (c) the detailed rules for the allocation and implementation of emergency assistance shall be the subject of emergency and flexible procedures;
- (d) funds may be used for the retroactive financing of immediate relief measures undertaken by the ACP States themselves.

### **Article 255.**

1. Assistance may be granted to ACP States taking in refugees or returnees to meet acute needs not covered by emergency assistance, to implement in the longer term projects and action programmes aimed at self-sufficiency and the integration or reintegration of such people.
2. Similar assistance, as set out in paragraph 1, may be envisaged to help with the voluntary integration or reintegration of persons who have had to leave their homes as a result of conflicts or natural disasters. In implementing this provision account shall be taken of all the factors leading to the displacement in question including the wishes of the population concerned and the responsibilities of the government in meeting the needs of its own people.
3. Underlining the developmental nature of the assistance granted in accordance with this Article, assistance may be used together with the indicative programme of the State concerned.
4. Such assistance shall be administered and implemented under procedures permitting flexibility and rapid action. Special attention shall be paid to the most effective manner of providing such assistance to the population concerned. Conditions for payment and implementation shall be laid down case by case. The assistance may be implemented, if the ACP State so agrees, in conjunction with specialized organizations, including those of the United Nations, or by the Commission direct.

## **Article 256.**

Contracts under emergency assistance shall be awarded on the basis of the relevant rules provided for in Section 5 of Chapter 5.

## **Article 257.**

Post-emergency action, aimed at physical and social rehabilitation consequent on the results of natural disasters or extraordinary circumstances having comparable effects, may be undertaken with Community assistance under this Convention. The post-emergency needs may be covered by other resources, in particular the counterpart funds generated by Community instruments, the special appropriation for refugees, returnees, and displaced persons, the national or regional indicative programmes or a combination of these different elements.

These needs may also be covered, subject to the provisions of Article 2 of the Financial Protocol, by the unexpended balance of the special appropriation for emergency assistance remaining upon expiry of that Protocol.

# **Chapter 3. Investment**

## **Section 1. Investment Promotion**

### **Article 258.**

The ACP States and the Community, recognizing the importance of private investment in the promotion of their development cooperation and acknowledging the need to take steps to promote such investment, shall:

- (a) implement measures to encourage participation in their development efforts by private investors who comply with the objectives and priorities of ACP-EEC development cooperation and with the appropriate laws and regulations of their respective States;
- (b) accord fair and equitable treatment to such investors;
- (c) take measures and actions which help to create and maintain a predictable and secure investment climate as well as enter into negotiations on agreements which will improve such climate;
- (d) promote effective cooperation amongst ACP and between ACP and Community economic operators in order to increase the flow of capital, management skills, technology and other forms of know-how;
- (e) facilitate a greater and more stable flow of resources from the Community private sector to the ACP States by contributing to the removal of obstacles which impede the ACP States' access to international capital markets, and in particular within the Community;
- (f) create an environment which encourages the development of financial institutions and the mobilization of resources which are essential to capital formation and the growth of entrepreneurship;
- (g) promote the development of enterprises by taking such steps as are necessary to improve the business environment

and, in particular, foster a legal, administrative and incentive framework which is conducive to the emergence and development of dynamic private sector enterprises including grass roots operations;

(h) strengthen the capacity of national institutions in ACP States to provide the range of services which can encourage greater national participation in business activity.

## **Article 259.**

In order to encourage private investment flows and the development of enterprises, the ACP States and the Community, in cooperation with other interested bodies, shall within the framework of the Convention :

(a) support efforts aimed at promoting European private investment in the ACP States by organizing discussions between any interested ACP State and potential investors on the legal and financial framework that ACP States might offer to investors;

(b) encourage the flow of information on investment opportunities by organizing investment promotion meetings, providing periodic information on existing financial or other specialized institutions, their facilities and conditions and encouraging the establishment of focal points for such meetings;

(c) encourage the dissemination of information on the nature and availability of investment guarantees and insurance mechanisms to facilitate investment in ACP States;

(d) provide assistance to small and medium-sized enterprises in ACP States in designing and obtaining equity and loan-financing on optimal terms and conditions;

(e) explore ways and means of overcoming or reducing the host-country risk for individual investment projects which could contribute to economic progress;

(f) provide assistance to ACP States in:

(i) creating or strengthening the ACP States' capacity to improve the quality of feasibility studies and the preparation of projects in order that appropriate economic and financial conclusions might be drawn;

(ii) producing integrated project management mechanisms covering the entire project development cycle within the framework of the development programme of the State.

## **Section 2. Investment Protection**

### **Article 260.**

The Contracting Parties on their respective affirm the need to promote and protect either party's investments territories, and in this context affirm the importance of concluding between States, in their mutual interest, investment promotion and protection agreements which could also provide the basis for insurance and guarantee schemes.

### **Article 261.**

1. A Contracting State may request the negotiation of an investment promotion and protection agreement with another Contracting State.

2. The States party to such agreements shall practise no discrimination between Contracting States party to this Convention or against each other in relation to third countries when opening negotiations for, concluding, applying and interpreting bilateral or multilateral investment promotion and protection agreements.

By "non-discrimination", the Parties understand that, in negotiating such agreements, either side may be entitled to provisions in agreements negotiated between the ACP States or Member States concerned and another State, provided that in every case reciprocity is accorded.

3. The Contracting States shall have the right to request a modification or adaptation of the non-discriminatory treatment referred to in paragraph 2 when international obligations or changed de facto circumstances so necessitate.

4. The application of the principles referred to in paragraphs 2 and 3 does not purport to and cannot in practice, infringe the sovereignty of any Contracting State party to the Convention.

5. The relation between the date of entry into force of any agreement negotiated, provisions for the settlement of disputes and the date of the investments concerned will be set out in the said agreement, account being taken of paragraphs 1 to 4. The Contracting Parties confirm that retroactivity shall not apply as a general principle unless Contracting States stipulate otherwise.

## **Article 262.**

In order further to encourage European investment in development projects of special importance to, and promoted by, the ACP States, the Community and the Member States, on the one hand, and the ACP States, on the other, may also conclude agreements relating to specific projects of mutual interest where the Community and European enterprises contribute towards their financing.

## **Section 3. Investment Financing**

### **Article 263.**

1. With a view to assisting the implementation of directly productive investment, both public and private, contributing to the economic and industrial development of the ACP States, the Community shall provide financial assistance, subject to the provisions laid down in Chapter 2 of this Title, in the form of risk capital and/or loans from the Bank's own resources. This financial assistance may be used inter alia for:

- (a) increasing, directly or indirectly, the own resources of ACP public, semi-public or private enterprises and providing financing in the form of loans for investment in such enterprises;
- (b) supporting productive investment projects and programmes identified and promoted by the joint bodies set up by the Community and the ACP States in accordance with the Convention;
- (c) financing schemes in favour of small and medium-sized enterprises.

2. In order to achieve the objectives set out in paragraph 1, a significant part of risk capital shall be devoted to supporting private sector investment.

### **Article 264.**

In addition to the resources provided for above, the ACP State or States may use the resources of the national or regional programme, inter alia, for:

- (a) financing schemes in favour of small and medium-sized enterprises;
- (b) encouraging the setting up or the strengthening of national or regional financial institutions in order to enable them effectively to support private sector needs;
- (c) appropriate and effective support for export promotion;
- (d) providing general or specific technical cooperation to cater for private sector needs.

### **Article 265.**

The financing of directly productive projects may concern new investments as well as the rehabilitation or utilization of existing capacity.

### **Article 266.**

Where the financing is undertaken through an on-lending body, it shall be the responsibility of that body to select and appraise individual projects and to administer the funds placed at its disposal in the conditions provided for in this Convention and by mutual agreement between the parties.

## **Section 4. Investment Support**

### **Article 267.**

In order effectively to achieve the various objectives of the Convention in relation to promoting private investment and to realize its multiplying effect, the Bank and/or the Commission shall participate by way of:

- (a) financial assistance, including equity participations;
- (b) technical assistance;
- (c) advisory services;
- (d) information and coordination services.

## **Article 268.**

1. The Bank shall utilize risk capital resources to supplement the activities aimed at promoting and providing support for the private sectors in the ACP States. To this end, risk capital may be used to:

- (a) provide direct loans for the investment in ACP States' public, semi-public and private enterprises, including SMEs;
  - (b) increase the own resources, or resources treated as such, of public, semi-public or private enterprises through direct holdings in the name of the Community;
  - (c) participate, with the agreement of the ACP State, in the capital of financial institutions promoting private investment in ACP States;
  - (d) provide finance to ACP States' financial institutions or, with the agreement of the ACP State concerned, ACP and/or Community promoters wishing to invest, in addition to their own contribution, in ACP-EEC joint ventures in order to reinforce the own resources of ACP enterprises;
  - (e) with the agreement of the ACP State or States concerned, assists ACP or Community financial intermediaries which contribute towards the financing of SMEs in the ACP States in:
    - (i) acquiring participations in the capital of ACP SMEs;
    - (ii) funding the acquisition of participations in ACP SMEs by ACP private investors and/or Community promoters in the conditions laid down in point (d);
    - (iii) on-lending for financing investment in ACP States' SMEs;
  - (f) assist with the restructuring or recapitalization of financial institutions of the ACP States;
  - (g) finance specific studies, research or investment for the preparation and identification of projects; provide assistance, including training, management and investment-related services, to enterprises in the context of the Bank's operations during the pre-investment period or for rehabilitation purposes and, where appropriate, contribute to the start-up costs, including investment guarantee and insurance premiums, necessary to ensure that the investment decision is taken.
2. Where appropriate, loan financing of investment, both directly or indirectly, as well as of sectoral support programmes, shall be provided from the Bank's own resources.

## **Article 269.**

The ACP States may, to encourage the promotion and development of their respective private sectors, use the resources of the indicative programme for:

- (a) supporting the development of enterprises, by providing training, assistance in financial management and project preparation, specialized business start-up services and development and management services, and by encouraging technology transfers;
- (b) providing appropriate and effective support for investment promotion, including the provision of assistance to promoters;
- (c) supporting the setting up or the strengthening of national or regional financial institutions in the ACP States to finance export operations;
- (d) financing imports of intermediate materials needed for the export industries of a requesting ACP State;

(e) credit lines in favour of SMEs;

(f) providing appropriate and effective support for export promotion;

(g) supporting the improvement of the investment climate including the legal and fiscal framework for business, and the development of services in support of the enterprise sector so as to provide enterprises with advisory services in the legal, technical and managerial fields;

(h) providing technical cooperation to reinforce the activities of bodies in the ACP States working for the development of small and medium-sized enterprises;

(i) implementing appropriate programmes for vocational training and developing the capacity of individual entrepreneurs, particularly in the small-scale and informal sectors;

(j) providing assistance for the mobilization of domestic savings, development of financial intermediation and of new financial instruments, rationalization of enterprise promotion policies and encouragement of foreign investment;

(k) financing ventures undertaken by cooperatives or local communities in ACP States and the creation or strengthening of SME guarantee funds.

### **Article 270.**

In order to mobilize external investment resources, both private and public, particular efforts should be made in exploiting the possibilities of cofinancing or attracting parallel financing for the various projects or programmes.

### **Article 271.**

In assisting the ACP efforts to invest in PMDT, particular attention shall be paid to supporting optimal use of existing capacity of the ACP State concerned and the needs for rehabilitation.

### **Article 272.**

In order to support the promotion of investment in the ACP States and with due regard to the complementarity of their roles, the Commission and the Bank will closely coordinate their activities in this field.

The Commission and the Bank shall, with the assistance of Member States and ACP States, ensure effective coordination at the operational level among all parties interested in supporting investment in ACP States.

With a view to keeping those parties informed on investment prospects, the Commission shall produce reports and studies notably on:

- investment flows between the Community and the ACP States, economic, legal or institutional obstacles hampering those investments, measures which will facilitate private capital movements, joint financing, access of ACP States to international financial markets and the effectiveness of domestic financial markets,
- activities undertaken by national and international systems of investment guarantees,
- investment promotion and protection agreements between Member States and ACP States.

The Commission shall submit to the ACP-EEC Development Finance Cooperation Committee the results of these studies. It shall also, in collaboration with the Bank, submit a report on the results of coordination in the field of investment and private sector support.

## **Section 5. Current Payment and Capital Movements**

### **Article 273.**

1. 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 and services, establishment and industrial cooperation. These obligations shall not, however, prevent the Contracting Parties from adopting the necessary protective measures should they be justified by reasons relating to, serious economic difficulties or severe balance-of-payments

problems.

2. 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-à-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.

To the extent that such measures or treatment are unavoidable, they shall be maintained or introduced in accordance with accepted international monetary rules and every effort shall be made to minimize any adverse effects on the parties affected.

## **Section 6. Qualification and Treatment of Business Entities**

### **Article 274.**

1. As regards 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 the ACP States and nationals and companies or firms of the Member 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 ACP State or the Member State, as the case may be, shall not be bound to accord such treatment for that activity to the nationals and companies or firms of the State concerned.

2. For the purpose of this Convention, "companies or firms of a Member State or of an ACP State" mean companies or firms constituted under civil or commercial law, including corporations, whether public or otherwise, cooperative societies and other legal persons and partnerships governed by public or private law, save for those which are non-profitmaking, formed in accordance with the law of a Member State or an ACP State and whose statutory office, central administration or principal place of business is in a Member State or ACP State.

However, a company or firm having only its statutory 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.

## **Chapter 4. Technical Cooperation**

### **Article 275.**

Technical cooperation shall assist the ACP States in the development of national and regional manpower resources, the sustained development of their institutions, and contribute to the achievement of project and programme goals. To this end:

(a) support through the provision of technical assistance shall be made available only at the request of the ACP State or States concerned;

(b) technical cooperation shall be cost-effective and relevant to the need for which it is intended, and also favour the transfer of know-how and increase national and regional capabilities;

(c) efforts shall be made to encourage the participation in Fund-financed contracts of ACP experts, consultancy firms, educational and research institutions and also to make greater use of secondment of ACP national cadres as consultants to an institution in their own country, or a neighbouring country, or to a regional organization;

(d) ACP States may, either on a national or regional basis, use the instruments and resources of financial and technical cooperation to develop knowledge of national and regional manpower constraints and potential and to establish a register of ACP experts, consultants and consultancy firms suitable for employment on Fund projects and programmes, as well as to identify ways of employing qualified national and regional personnel on Fund projects;

(e) intra ACP technical assistance shall be supported through the instruments of development finance cooperation in order to enable the exchange between the ACP States of technical assistance, management and professional expertise;

(f) action programmes for long-term institution-building and staff development shall be an integral part of project and programme planning, account being taken of the necessary financial requirements;

(g) with a view to reversing the brain drain from the ACP States, the Community shall assist ACP States who so request to facilitate the return of qualified ACP nationals resident in developed countries through appropriate re-installation incentives;

- (h) project and programme appraisal shall take due account of national human resources constraints and ensure a strategy favourable to the promotion of such resources;
- (i) technical assistance personnel shall be qualified for the specific tasks as defined in the request from the ACP State or States and shall be integrated within the beneficiary ACP institution;
- (j) the effective training of national personnel shall be part of the assignment of technical assistance personnel so as to phase out technical assistance with a view to staffing projects entirely and on a permanent basis with nationals of the ACP States;
- (k) the cooperation shall include arrangements to enhance the capacity of the ACP States to build up their own expertise and improve the technical skills of their own consultants, consulting companies or firms;
- (l) special attention should be given to the development of the ACP States' capacities in project planning, implementation and evaluation.

## **Article 276.**

1. Technical cooperation may be either of a specific or a general nature.
2. Technical cooperation of a general nature shall include inter alia:
  - (a) development studies, studies of prospects and resources for economic development and diversification in the ACP States, and of problems of interest to the ACP States as a whole or to any group of those States;
  - (b) studies to find practical solutions to the indebtedness, debt-servicing and balance-of-payments problems of ACP States;
  - (c) sectoral or product studies;
  - (d) the provision of experts, advisers, technicians and instructors for specific assignments and for limited periods;
  - (e) the supply of instructional, experimentation, research and demonstration equipment;
  - (f) general information and documentation including statistics, to promote the development of the ACP States and the achievement of the aims of cooperation; exchanges of executive and specialized staff,
  - (g) students, research workers, motivators and heads of social or cultural groups or associations;
  - (h) the granting of study or training awards, particularly to persons already in employment and requiring further training;
  - (i) the organization of seminars or sessions for training, further training and information;
  - (j) the setting up or strengthening of information and documentation instruments, particularly for exchanges of know-how, methods and experience between ACP States and between them and the Community;
  - (k) cooperation between or twinning of ACP States' institutions, particularly universities, and other ACP and EEC training and research establishments;
  - (l) support for significant cultural events.
3. Technical cooperation related to specific operations shall include inter alia:
  - (a) technical, economic, statistical, financial and commercial studies, as well as research and surveys required to prepare projects or programmes, including those on structural adjustment and investment;
  - (b) preparation of projects and programmes;
  - (c) execution and supervision of projects and programmes;
  - (d) implementation of temporary measures required for the establishment, launching, operation and maintenance of a specific project;
  - (e) monitoring and evaluation of operations;
  - (f) integrated training, information and research programmes.

## **Article 277.**



The Community shall take practical measures to increase and improve the information placed at the disposal of ACP States concerning the availability and qualifications of relevant consultants.

## **Article 278.**

1. The choice of whether to use the services of consultancy companies or firms or of individual experts shall take account of the nature of the problems and the scale and complexity of the technical means and management resources required, as well as the comparative cost of the two solutions. In addition, measures shall be taken to ensure that recruiters can distinguish clearly between different levels of competence and experience on an international level. The choice of contractors and their staff shall refer to the following criteria:

- (a) professional skills (technical and training ability) and human qualities;
- (b) respect for the cultural values and the political and administrative circumstances of the ACP State or States concerned;
- (c) knowledge of the language necessary for the execution of the contract;
- (d) practical experience of problems of the type to be dealt with;
- (e) cost.

2. The recruitment of technical cooperation staff, the determination of their aims and functions and duration of their missions, their remuneration and the ways in which they contribute to the development of the ACP States to which they are assigned, must conform to the principles for technical cooperation policy laid down in Article 275. The procedures to be applied in this context must ensure objectivity in terms of the choice and quality of the services provided. The following principles shall also apply:

- (a) recruitment shall be carried out by the national institutions that will use the technical assistance, in accordance with the relevant provisions on competition and preference;
- (b) efforts shall be made to facilitate direct contact between the candidate and the future user of the technical assistance;
- (c) the use of alternative technical assistance delivery systems should be encouraged through the use of volunteers, non-governmental organizations, retired executives and twinning arrangements;
- (d) when considering a request for technical assistance, the ACP States and the Commission delegation shall compare the costs and benefits of different ways of transferring technology and increasing capabilities;
- (e) the tender dossier shall provide that each tenderer must indicate in his tender what methods he intends to adopt and what staff he intends to employ and the strategy for promoting ACP national and/or regional local capabilities once the contract is put into effect;
- (f) the Community shall provide the recipient ACP States with detailed information on the full cost of technical assistance in order to enable ACP States to negotiate the contracts in a cost-effective manner.

## **Article 279.**

In order to enhance the ACP States' capacity to build up their technical skills and improve the know-how of their consultants, the Community and the ACP States shall encourage cooperation partnership arrangements between consultancy firms, consulting engineers, experts and institutions of the Member States of the Community and those of the ACP States. To this end, the Community and the ACP States shall make every effort to:

- (a) encourage by means of temporary associations, subcontracting or the use of experts who are nationals of the ACP States in teams employed by consultancy firms, consulting engineers or institutions in the Member States;
- (b) inform tenderers in the tender dossier of the selection criteria and preferences provided for in the Convention, particularly those relating to the encouragement of the use of ACP human resources.

## **Article 280.**

1. Subject to the provisions of this Chapter, the award of service contracts and the rules of competition and preference therefore shall be in accordance with Section 5 of Chapter 5.

2. Technical cooperation shall provide support for the educational and training operations, multiannual training programmes, including awards, as referred to in Chapter 1 of Title XI of Part Two.

## **Chapter 5. Implementation Procedures**

### **Section 1. Programming**

#### **Article 281.**

1. At the beginning of the period covered by the Convention and before the indicative programme is drawn up:

- (a) each ACP State shall obtain from the Community a clear indication of the total programmable financial allocation from which it may benefit during that period as well as any other relevant information;
- (b) each ACP State eligible for the specific resources earmarked for adjustment support in accordance with Article 246 shall be notified of the estimated initial instalment that it may receive.

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

- (a) the priority development objectives of the ACP State concerned at national and regional level;
- (b) the focal sector or sectors for which support is considered the most appropriate;
- (c) the most appropriate measures and operations for attaining the objectives in the focal sector or sectors or, where such operations are not sufficiently well- defined, the broad outlines of the programmes to support the State's adopted policies in the focal sectors;
- (d) if possible, specific, clearly identified national projects and programmes, and especially those which constitute a follow-up to existing projects and programmes;
- (e) where appropriate, a limited part of the programmable resources not allocated to the focal: sector which the ACP State proposes to use for structural adjustment support;
- (f) any proposals for regional projects and programmes.

#### **Article 282.**

1. The draft indicative programme shall be the subject of an exchange of views between the ACP State concerned and the Community, due regard being given to the domestic needs of the ACP States and their sovereign rights to determine their development strategies, priorities and models as well as their overall macro-economic and sectoral policies.

2. The indicative programme shall be adopted by agreement between the Community and the ACP State concerned on the basis of the draft indicative programme proposed by that State and shall, when adopted, be binding on both the Community and the State concerned. It shall specify inter alia:

- (a) the focal sector or sectors in which the Community's support will be given and the resources to be deployed for that purpose;
- (b) the measures and actions necessary to achieve the objectives of the sectors agreed upon;
- (c) the timetable of commitments and measures to be taken;
- (d) the reserve set aside for insurance against possible claims, and to cover cost increases and contingencies;
- (e) the projects and programmes outside the focal sector or sectors as well as the proposals for regional projects and programmes and, where appropriate, the part for structural adjustment support.

3. The indicative programme shall be sufficiently flexible to ensure that operations are kept constantly in line with objectives and to take account of any changes occurring in the economic situation, priorities and objectives of the ACP States. It may be revised at the request of the ACP State concerned.

#### **Article 283.**

The Community and the ACP State shall take all necessary measures to ensure that the indicative programme is adopted in the shortest possible time, preferably before the entry into force of this Convention.

#### **Article 284.**

1. The indicative programme shall establish the overall amounts of programmable assistance which may be placed at the disposal of each ACP State. Save for funds reserved for emergency assistance, interest rate subsidies and regional cooperation; programmable assistance shall comprise grants and a part of risk capital.
2. Any balance remaining from the Fund that has not been committed or disbursed by the end of the last year of application of the Financial Protocol shall be utilized until it has been exhausted, in accordance with the same conditions as those laid down in this Convention.
3. A comparative account of commitments and payments shall be drawn up each year by the national authorizing officer and the Commission delegate, who shall take the necessary steps to ensure that the timetable of commitments agreed at the time of programming is adhered to and determine the causes of delays recorded in their execution so that the necessary remedial measures can be proposed.

## **Section 2. Project Identification, Preparation and Appraisal**

#### **Article 285.**

The identification and preparation of projects and programmes shall be the responsibility of the ACP State concerned or any other eligible beneficiary.

#### **Article 286.**

Project or programme dossiers prepared and submitted for financing must contain all information necessary for the appraisal of the projects or programmes or, where such projects and programmes have not been completely defined, provide the broad outlines necessary for their appraisal. Such dossiers shall be officially transmitted to the delegate by the ACP States or the other beneficiaries in accordance with this Convention. In the case of beneficiaries other than ACP States, the express agreement of the State concerned shall be required.

#### **Article 287.**

1. The appraisal of projects and programmes shall be undertaken jointly by the ACP State or States and the Community. In order to expedite the procedure, the Commission shall give the necessary powers to its delegate to undertake this joint appraisal.
2. Project and programme appraisal shall take into account the specific characteristics and constraints of each ACP State as well as the following factors:
  - (a) effectiveness and viability of the operations requested and the returns thereon, if possible on the basis of a cost-benefit analysis, possible variants being examined;
  - (b) cultural, social, gender and environmental aspects, both direct and indirect, and impact on the populations;
  - (c) availability of local manpower and other resources necessary to implement, operate and maintain the projects and programmes;
  - (d) training and institutional development necessary to achieve project or programme goals;
  - (e) burden of recurrent cost on the recipient;
  - (f) national commitments and efforts;
  - (g) experience gained from operations of the same kind;
  - (h) results of studies already undertaken on similar projects or programmes in order to expedite implementation and minimize costs.

3. The specific difficulties and constraints of 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.

4. The general guidelines and criteria for appraisal of projects and programmes shall be developed during the Convention by the ACP-EEC Development Finance Cooperation Committee in the light of evaluation work, taking into account the necessary flexibility in adapting these criteria to the specific situation of each ACP State.

## **Section 3. Financing Proposal and Decision**

### **Article 288.**

1. The conclusions of the appraisal shall be summarized by the delegate in a financing proposal in close collaboration with the national authorizing officer.

2. The financing proposal shall contain an advance timetable for the technical and financial implementation of the project or programme, and shall deal with the duration of the different phases of implementation.

3. The financing proposal shall:

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

(b) be forwarded by the delegate simultaneously to the ACP State or States concerned and the Commission.

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

### **Article 289.**

1. Subject to Article 288 (4), the Community's decision-making body shall communicate its decision within 120 days from the date of communication by the delegate referred to in Article 288 (3) (b).

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

(a) that the matter be referred to the ACP-EEC Development Finance Cooperation Committee set up under the Convention; or

(b) that they be given a hearing by the Community's decision-making body.

3. Following such a hearing, a definitive decision to adopt or reject the financing proposal shall be taken by the relevant Community body, to which the ACP State or States concerned may forward, before the decision is taken, any facts which may appear necessary to supplement the information available to it.

### **Article 290.**

1. With a view to expediting procedures and in derogation from the provisions set out in Articles 288 and 289, financing decisions may deal with multiannual programmes where the financing concerns:

(a) training;

(b) micro-projects;

(c) trade promotion;

(d) sets of operations of a limited scale in a specific sector;

(e) technical cooperation.

2. In these cases, the ACP State concerned may submit to the delegate a multiannual programme setting out the broad outlines, the types of actions envisaged and the financial commitment proposed.

The financing decision on each multiannual programme shall be taken by the chief authorizing officer. The letter from the chief authorizing officer to the national authorizing officer notifying such decision shall constitute the financing agreement as per Article 291.

Within the framework of multiannual programmes thus adopted, the national authorizing officer shall implement each individual action in accordance with the relevant provisions of the Convention and the terms of the financing agreement referred to above.

At the end of each year, the national authorizing officer, in consultation with the delegate, shall forward a report to the Commission on the implementation of the programmes,

## **Section 4. Financing Agreement and Cost Overruns**

### **Article 291.**

1. For any project or programme financed by a grant from the Fund, a financing agreement shall be drawn up between the Commission and the ACP State or States concerned within 60 days of the decision of the Community's decision-making body.
2. The agreement shall specify in particular the details of the Fund's financial commitment and the financing arrangements and terms, the general and specific provisions relating to the project or programme concerned and shall also incorporate the advance timetable for the technical implementation of the project or programme contained in the financing proposal.
3. Financing agreements for all projects and programmes shall make adequate provision for appropriations to cover cost increases and contingencies.
4. Once the financing agreement has been signed, disbursements shall be made in accordance with the financing plan laid down therein.
5. Any unexpended balance left upon closure of the accounts of projects and programmes 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 292. Cost Overruns**

1. Once it appears that cost overruns beyond the limit set in the financing agreement are likely to be incurred, the national authorizing officer shall, through the delegate, notify the chief authorizing officer accordingly, as well as of the measures which the national authorizing officer intends to take in order to cover such cost overruns over the allocated appropriations, either by reducing the scale of the project or programme or by calling on national or other non-Community resources,
2. If it is decided by agreement with the Community not to scale down the project or programme or if it is not possible to cover them by other resources, then such overruns may be:
  - (a) covered by any unexpended balance left upon closure of projects and programmes from indicative programmes which has not been reallocated, up to 20 % of the financial commitment for the project or programme concerned; or
  - (b) financed by the indicative programme.

### **Article 293. Retroactive Financing**

1. In order to ensure early project start-up, avoid gaps between sequential projects and prevent delays, the ACP States, in agreement with the Commission, may, on completion of project appraisal and before the financing decision is taken:
  - (i) issue invitations to tender for all types of contracts, with a suspension clause;
  - (ii) pre-finance, for a limited amount, activities linked to preliminary and seasonal work, orders for equipment with long delivery lead times as well as some ongoing operations. Such expenditures must satisfy the procedures provided for in the Convention.
2. These provisions do not prejudice the powers of the Community's decision-making body.
3. Expenditure made by the ACP State in pursuance of this Article shall be retroactively financed under the project or programme, once the financing agreement is signed.

## **Section 5. Competition and Preferences Eligibility**

### **Article 294.**

1. Save where a derogation is granted in accordance with Article 296:

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

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

(ii) cooperative societies and other legal persons governed by public or private law, save for those which are non-profitmaking, of the Community and/or the ACP States;

(iii) joint ventures or groupings of ACP and/or Community companies or firms;

(b) supplies must originate in the Community and/or the ACP States, in accordance with the provisions of Annex LIV.

2. To be eligible to participate in invitations to tender and the award of contracts, tenderers shall provide evidence satisfactory to the ACP States of their eligibility under Article 274 and paragraph 1 of this Article, and adequacy of resources to carry out the contract effectively.

### **Article 295. Participation on Equal Terms**

The ACP States and the Commission shall take the necessary measures to ensure the widest possible participation on equal terms in invitations to tender for works, supplies and services contracts, including, as appropriate, measures to:

(a) ensure publication of invitations to tender in the Official Journal of the European Communities, the official journals of all the ACP States and any other appropriate information media;

(b) eliminate discriminatory practices or technical specifications which might stand in the way of widespread participation on equal terms;

(c) encourage cooperation between the companies and firms of the Member States and of the ACP States;

(d) ensure that all the selection criteria are specified in the tender dossier; and

(e) ensure that the tender selected conforms to the requirements of the tender dossier and meets the selection criteria stated therein.

### **Article 296. Derogation**

1. In order to ensure the optimum cost-effectiveness of the system, natural or legal persons from non-ACP developing countries may be authorized to participate in contracts financed by the Community at the request of the ACP States concerned. The ACP States concerned shall, on each occasion, provide the delegate with the information needed for the Community to decide on such derogations, particular attention being given to:

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

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

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

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

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

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

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

(b) in the case of cofinancing projects and programmes;

(c) in the case of emergency assistance.

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

## **Article 297. Competition**

Save as provided for in Article 298, works and supply contracts financed from the Fund shall be concluded following an open invitation to tender and service contracts shall be concluded following a restricted invitation to tender.

## **Article 298.**

1. The ACP State or States may, in accordance with the provisions of paragraphs 2, 3 and 4 and of Article 299 and in agreement with the Commission:

- (a) place contracts after restricted invitations to tender following, where applicable, calls for prequalification;
- (b) conclude contracts by direct agreement;
- (c) perform contracts through public or semi-public departments of the ACP States.

2. Restricted invitation to tender may be used:

- (a) where the urgency of the situation is established or where the nature or certain particular characteristics of the contracts so warrant;
- (b) for projects or programmes of a highly specialized nature;
- (c) for large-scale contracts after prequalification;

3. Direct-agreement contracts may be awarded in the following cases:

- (a) small-scale operations or in urgent situations or short-term technical cooperation schemes;
- (b) emergency assistance;
- (c) operations assigned to individual experts;
- (d) operations which are complementary to or necessary for the completion of others already in hand;
- (e) where the execution of the contract is exclusively reserved for holders of patents or licences to use, process or import the articles concerned;
- (f) following an unsuccessful invitation to tender.

4. The following procedure shall apply for restricted invitation to tender and direct-agreement contracts:

- (a) in the case of works and supply contracts, a short-list of prospective tenderers shall be drawn up by the ACP State or States concerned in agreement with the delegate following, where applicable, a call for prequalification of tenders;
- (b) in the case of service contracts, the short-list of prospective tenderers shall be drawn up by the ACP States, in agreement with the Commission on the basis of the proposals of the ACP State or States concerned and the proposals submitted by the Commission;
- (c) in direct-agreement contracts, the ACP State shall enter freely into such discussions as it may consider appropriate with the prospective tenderers whom it has short-listed in accordance with the paragraphs above and award the contract to the tenderers whom it has selected.

## **Article 299. Direct Labour**

1. Contracts shall be performed by direct labour through public or semi-public agencies or departments of the State or States concerned, where the ACP State concerned has the qualified management staff available in its national departments, in case of emergency assistance, service contracts and all other operations the estimated cost of which is less than ECU 5 million.

2. The Community shall contribute to the costs of the department involved by providing the equipment and/or materials that it lacks and/or resources to allow it to acquire additional staff required in the form of experts from within the ACP

States concerned or other ACP States. The 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.

### **Article 300. Emergency Assistance Contracts**

Contracts under emergency assistance shall be undertaken in such a way as to reflect the urgency of the situation. To this end, for all operations relating to emergency assistance, the ACP State may, in agreement with the delegate, authorize:

- (a) the conclusion of contracts by direct agreement; (b) the performance of contracts by direct labour;
- (c) implementation through specialized agencies;
- (d) direct implementation by the Commission.

### **Article 301. Accelerated Procedure**

1. With the aim of ensuring the rapid and effective implementation of projects and programmes, an accelerated tendering procedure shall be used except as otherwise indicated by the ACP State concerned, or by the Commission by way of a proposal for the agreement of the ACP State concerned. The accelerated procedure for issuing invitations to tender shall involve shorter time limits for tendering and the call for tender is confined to the ACP State concerned and the neighbouring ACP States, in accordance with the rules in force in the ACP State concerned. The accelerated procedure shall apply in the following cases:

- (a) works contracts: the estimated cost of which is less than ECU 5 million;
- (b) emergency assistance: irrespective of the value of the contract.

2. By way of derogation, the national authorizing officer, in agreement with the delegate, may procure supplies and/or services for a limited amount where they are available in the ACP States concerned or in neighbouring ACP States.

### **Article 302.**

In order to speed up the procedure, the ACP States may request the Commission to negotiate, draw up and conclude service contracts on their behalf directly or through its relevant agency.

### **Article 303. Preference**

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

- (a) for works contracts of a value of less than ECU 5 million, tenderers of the ACP States, provided that at least one quarter of the capital stock and management staff originates from one or more ACP States, shall be accorded a 10 % price preference where tenders of an equivalent economic, technical and administrative quality are compared;
- (b) for supply contracts, irrespective of the value of the supplies, tenderers of the ACP States who offer supplies of at least 50 % in contract value of ACP origin shall be accorded a 15 % price preference where tenders of equivalent economic, technical and administrative quality are compared;
- (c) in respect of service contracts, given the required competence, preference shall be given to experts, institutions or consultancy companies or firms from ACP States where tenders of equivalent economic and technical quality are compared;
- (d) where subcontracting is envisaged, preference shall be given by the successful tenderer to natural persons, companies and firms of ACP States capable of performing the contract required on similar terms;
- (e) the ACP State may, in the invitation to tender, propose to the prospective tenderers the assistance of other ACP States' companies or firms or national experts or consultants selected by mutual agreement. This cooperation may take the form either of a joint-venture or of a subcontract or of on-the-job training of trainees.

### **Article 304. Selection**

1. The ACP State shall award the contract to the tenderer:



- (a) whose tender is found to be responsive to the tender dossier;
  - (b) for a works or supply contract, who has offered the most advantageous tender as assessed inter alia on the basis of:
    - (i) the price, the operating and maintenance costs;
    - (ii) the qualifications of, and the guarantees offered by the tenderers, as well as the technical qualities of the tender, including the offer of an after-sales service in the ACP State;
    - it) the nature of, the conditions and the time limit for executing the contracts, and the adaptation to local conditions;
  - (c) for a service contract, who offers the most advantageous tender taking into account inter alia the price, the technical value of the tender, the organization and the methodology proposed for the provision of the services, as well as the competence, independence and availability of the personnel proposed.
2. Where two tenders are acknowledged to be equivalent on the basis of the criteria stated above, preference shall be given:
- (a) to the tenderer of an ACP State; or
  - (b) if no such tender is forthcoming, to the tenderer who:
    - (i) permits the best possible use of the physical and human resources of the ACP States;
    - (ii) offers the greatest subcontracting possibilities to ACP companies, firms or natural persons; or
    - (ii) is a consortium of natural persons, companies and firms from ACP States and the Community.

### **Article 305. General Regulations**

The award of contracts financed from the resources of the Fund shall be governed by this Convention and the general regulations which shall be adopted by decision of the Council of Ministers at the first meeting following the signing of this Convention, upon the recommendation of the ACP-EEC Development Finance Cooperation Committee referred to in Article 325 of this Convention.

### **Article 306. General Conditions**

Performance of works, supply and service contracts financed from the resources of the Fund shall be governed by:

- (a) the general conditions applicable to contracts financed by the Fund which shall be adopted by decision of the Council of Ministers, at the first meeting following the signing of this Convention, upon the recommendation of the ACP-EEC Development Finance Cooperation Committee referred to in Article 325 of this Convention; or
- (b) in the case of cofinanced projects and programmes, or where a derogation to third parties has been granted, or in accelerated procedures or in other appropriate cases, such other general conditions as may be agreed by the ACP State concerned and the Community, i.e.:
  - (i) the general conditions prescribed by the national legislation of the ACP State concerned or its established practices regarding international contracts; or
  - (ii) any other international general conditions for contracts.

### **Article 307. Settlement of Disputes**

Any dispute arising between the authorities of an ACP State and a contractor, supplier or provider of services during the performance of a contract financed by the Fund shall:

- (a) in the case of a national contract be settled in accordance with the national legislation of the ACP State concerned; and
- (b) in the case of a transnational contract be settled either:
  - (i) if the parties to the contract so agree, in accordance with the national legislation of the ACP State concerned or its established international practices; or
  - (ii) by arbitration in accordance with the procedural rules which will be adopted by decision of the Council of Ministers, at the first meeting following the signing of this Convention, upon the recommendation of the ACP-EEC Development Finance

Cooperation Committee referred to in Article 325 of this Convention.

## **Section 6. Tax and Customs Arrangements**

### **Article 308.**

The ACP States shall apply to contracts financed by the Community tax and customs arrangements no less favourable than those applied by them to the most-favoured States or international development organizations with which they have relations. For the purpose of determining the most-favoured-nation treatment, account shall not be taken of arrangements applied by the ACP State concerned to other ACP States, or to other developing countries.

### **Article 309.**

Subject to Article 308 above, the following shall apply to contracts financed by the Community:

(a) the contract shall not be subject in the beneficiary ACP State to stamp or registration duties or to fiscal charges having equivalent effect, whether such charges already exist or are to be instituted in the future; however, such contracts shall be registered in accordance with the laws in force in the ACP State and a fee corresponding to the service rendered may be charged for it;

(b) profits and/or income arising from the performance of contracts shall be taxable according to the internal fiscal arrangements of the ACP State concerned, provided that the natural or legal persons who realize such profit and/or income have a permanent place of business in that State, or that the performance of the contract takes longer than six months;

(c) enterprises which must import professional equipment in order to carry out works contracts shall, if they so request, benefit from the system of temporary admission as laid down by the national legislation of the beneficiary ACP State in respect of the said equipment;

(d) professional equipment necessary for carrying out tasks defined in a service contract shall be temporarily admitted into the beneficiary ACP State or States in accordance with its national legislation free of fiscal, import and customs duties and of other charges having equivalent effect where duties and charges do not constitute remuneration for services rendered;

(e) imports under supply contracts shall be admitted into the beneficiary ACP State without customs duties, import duties, taxes or fiscal charges having equivalent effect. The contract for supplies originating in the ACP State concerned shall be concluded on the basis of the ex-works price of the supplies, to which may be added such internal fiscal charges as may be applicable to those supplies in the ACP State;

(f) fuels, lubricants and hydrocarbon binders and, in general, all materials used in the performance of works contracts shall be deemed to have been purchased on the local market and shall be subject to fiscal rules applicable under the national legislation in force in the beneficiary ACP State;

(g) personal and household effects imported for use by natural persons, other than those recruited locally, engaged in carrying out tasks defined in a service contract and members of their families, shall be exempt from customs or import duties, taxes and other fiscal charges having equivalent effect, within the limit of the national legislation in force in the beneficiary ACP State.

### **Article 310.**

Any matter not covered by the provisions of Articles 308 and 309 shall remain subject to the national legislation of the ACP State concerned.

## **Chapter 6. Management and Executing Agents**

### **Section 1. Chief Authorizing Officer**

#### **Article 311.**

1. The Commission shall appoint the chief authorizing officer of the Fund, who shall be responsible for managing the resources of the Fund.

2. The chief authorizing officer shall:

- (a) commit, clear and authorize expenditure and keep accounts of commitments and authorizations;
  - (b) ensure that financing decisions are carried out;
  - (c) in close cooperation with the national authorizing officer make commitment decisions and financial arrangements that prove necessary to ensure proper execution of approved operations from the economic and technical viewpoints;
  - (d) approve the tender dossier before invitations to tender are issued, subject to the powers exercised by the delegate under Article 317;
  - (e) ensure publication in reasonable time of invitations to tender in accordance with Article 295;
  - (f) approve the proposal for placing of the contract, subject to the powers exercised by the delegate under Article 317.
3. The chief authorizing officer shall, at the end of the each year, make available a detailed balance sheet of the Fund showing balances of contributions paid into the Fund by the Member States, global disbursements in respect of each financing heading including regional cooperation, emergency assistance, Stabex, Sysmin and structural adjustment.

## **Section 2. National Authorizing Officer**

### **Article 312.**

1. The Government of each ACP State shall appoint a national authorizing officer to represent it in all operations financed from the resources of the Fund managed by the Commission. The national authorizing officer shall also be kept informed of operations financed from the resources managed by the Bank.
2. The national authorizing officer may delegate some of these functions and shall inform the chief authorizing officer of any such delegation.

### **Article 313.**

1. The national authorizing officer shall:
  - (a) in close cooperation with the delegate be responsible for the preparation, submission and appraisal of projects and programmes;
  - (b) in close cooperation with the delegate, issue invitations to tender, receive tenders, preside over the examination of tenders, establish the results of this examination, sign contracts and riders thereto, and approve expenditure;
  - (c) submit, before issuing invitations to tender, the invitation to tender dossier to the delegate who shall give his agreement within the time limit set in Article 317;
  - (d) complete the evaluation of tenders within the tender validity period taking into consideration the period required for the approval of contracts;
  - (e) transmit the result of the examination of the tenders and a proposal for placing the contract to the delegate who shall, within 30 days or such other time limit as set in Article 317, give his approval;
  - (f) clear and authorize expenditure within the limits of the funds assigned to him;
  - (g) during the execution operations, make any adaptation arrangements necessary to ensure the proper execution of approved projects or programmes from the economic and technical viewpoint.
2. The national authorizing officer shall, during the execution of operations and subject to the requirement to inform the delegate, decide on:
  - (a) technical adjustments and alterations in matters of detail, so long as they do not affect the technical solution adopted and remain within the limits of the reserve for adjustments;
  - (b) alterations to estimates during execution;
  - (c) transfers from item to item within estimates;
  - (d) changes of site for multiple-unit projects or programmes where justified on technical, economic or social 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, provided that the delegate is present at provisional acceptance, endorses the corresponding minutes and, where appropriate, is present at the final acceptance, in particular where the extent of the reservations recorded at the provisional acceptance necessitates major additional work;
- (k) hiring of consultants and other technical assistance experts.

### **Article 314.**

All documents and proposals submitted by the national authorizing officer to the Commission or the delegate for agreement or approval in accordance with this Convention shall be approved or deemed to be approved within the time limits laid down by this Convention, or within 30 days, where no time limit is stated in the Convention.

### **Article 315.**

At the end of each year of the period of application of the Convention, the national authorizing officer shall prepare a report on the operations covered by the national indicative programme and regional programmes in the ACP State concerned. The report shall include, inter alia:

- (a) the report referred to in Article 284 of this Convention relating to commitments, disbursements and the implementation timetable for the indicative programme as well as a Progress report on projects and programmes;
- (b) commitments, disbursements, implementation timetable and progress on regional projects and programmes in that State;
- (c) in consultation with the Commission delegate, the report referred to in Article 290 of this Convention relating to multiannual programmes;
- (d) an assessment of the operations in financial and technical cooperation in the ACP State, including regional programmes,

A copy of the report shall be submitted simultaneously to the delegate and to the ACP General Secretariat not later than 90 days from the end of the year under review.

## **Section 3. The Delegate**

### **Article 316.**

1. The Commission shall be represented in each ACP State, or in each regional grouping which expressly so requests, by a delegate approved by the ACP State or States concerned.
2. 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 in which the delegate is not resident.

### **Article 317.**

The delegate shall have the necessary instructions and delegated powers to facilitate and expedite the preparation, appraisal and execution of projects and programmes and shall be provided with the necessary back-up support to do so. To this end, and in close cooperation with the national authorizing officer, the delegate shall:

- (a) at the request of the ACP State concerned, participate and give assistance in the preparation of projects and programmes and in negotiating technical assistance contracts;
- (b) participate in appraising projects and programmes, preparing tender dossiers, and seeking ways to simplify project and

programme appraisal and implementation procedures;

(c) prepare financing proposals;

(d) for accelerated procedures, direct agreement contracts, and contracts for emergency assistance, approve, before the national authorizing officer issues them, the invitation to tender dossier within 30 days of its submission to him by the national authorizing officer;

(e) for all cases other than those mentioned in (d), transmit the invitation-to-tender dossier to the chief authorizing officer for approval within 30 days of its submission to the delegate by the national authorizing officer;

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

(g) approve within 30 days the national authorizing officer's proposal for the placing of the contract for all:

(i) direct-agreement contracts;

(ii) service contracts;

(iii) contracts relating to emergency assistance; and

(iv) contracts by accelerated procedures, works contracts worth less than ECU 5 million and supply contracts worth less than ECU 1 million;

(h) approve within 30 days the national authorizing officer's proposal for the placing of the contract not covered by paragraph (g) wherever the following conditions are fulfilled; the tender selected is the lowest of those conforming to the requirements of the tender dossier, meets all the selection criteria stated therein, and does not exceed the sum earmarked for the contract;

(i) where the conditions set out in point (h) are not fulfilled, forward the proposal for the placing of the contract to the chief authorizing officer who shall decide thereon within 60 days of the receipt by the delegate. Where the price of the selected tender exceeds the sum earmarked for the contract, the chief authorizing officer shall, upon giving approval to the award, make the necessary financial commitment;

(j) endorse contracts and estimates in the case of direct labour, riders thereto, as well as payment authorizations issued by the national authorizing officer;

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

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

(m) maintain close and continuous contacts with the national authorizing officer for the purpose of analysing and remedying specific problems encountered in the implementation of development finance cooperation;

(n) in particular, make regular checks to see that operations are proceeding in accordance with the schedule laid down in the advance timetable in the financing decision;

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

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

## **Article 318.**

At the end of each year of the period of the Convention, the delegate shall prepare a report on the implementation of the national indicative programme and regional programmes in particular as it relates to operations of the Fund managed by the Commission and covering inter alia:

(a) the amount of the indicative programme, commitments, disbursements and the timetable for the implementation of the indicative programme and regional programmes;

(b) a progress report on projects and programmes;

(c) an assessment of the operations of the Fund in the ACP State and regional programmes.

A copy of the report shall be submitted simultaneously to the ACP States concerned and the Community.

## **Section 4. Payments and Paying Agents**

### **Article 319.**

1. For the purpose of effecting payments in the national currencies of the ACP States, accounts denominated in the currencies of the Member States or in ecus shall be opened in each ACP State in the name of the Commission with a national public or semi-public financial institution, chosen by agreement between the ACP State and the Commission. This institution shall exercise the functions of national paying agent.
2. The accounts referred to above shall be replenished by the Commission in the currency of one of the Member States or in ecus, based on estimates of future cash requirements, which shall be made sufficiently in advance to avoid need for pre-financing by ACP States and to prevent delayed disbursements.
3. The national paying agent shall receive no remuneration for its services, and no interest shall be payable by it on deposited funds.
4. For the purpose of effecting payments in ecus, accounts denominated in ecus shall be opened in the name of the Commission with financing institutions in the Member States. These institutions shall exercise the functions of paying agents in Europe. Payments from these accounts, which shall be executed on the instruction of the Commission or by the delegate acting on its behalf, may be made in respect of expenditure authorized by the national authorizing officer or by the chief authorizing officer with the prior authorization of the national authorizing officer.
5. Within the limits of the funds available in the accounts, the paying agents shall make disbursements authorized by the national authorizing officer or, as appropriate, the chief authorizing officer, after verifying that the supporting documents provided are substantially correct and in order, and that the discharge given for payment is valid.
6. The procedures for clearance, authorization and payment of expenditure shall be completed within a period of 90 days from the date on which the payment becomes due. The national authorizing officer shall process and deliver the payment authorization to the delegate not later than 45 days before the due date.
7. Claims for delayed payments shall be borne by the ACP State or States concerned, and by the Commission from its own resources, for that part of the delay for which each party is responsible in accordance with paragraph 8.
8. The paying agents, the national authorizing officer, the delegate and the responsible Commission departments shall remain financially liable until the Commission gives final clearance for the operations for the execution of which they are responsible.

## **Section 5. Monitoring and Evaluation**

### **Article 320.**

The objective of monitoring and evaluation shall consist in the external assessment of development operations (preparation, implementation and subsequent operation) with a view to improving the development effectiveness of ongoing and future operations. This work shall be done jointly by the ACP States and the Community.

### **Article 321.**

1. More specifically, this work will notably serve the following purposes:
  - (a) provide regular, joint and independent monitoring and evaluation of the Fund's operations and activities;
  - (b) organize the joint monitoring and evaluation of ongoing and completed operations, and compare the results of operations with their objectives. Administration, functioning and maintenance of operations should systematically be reviewed;
  - (c) account to the Council of Ministers for the outcome of the evaluation work and feed that experience back into the design and execution of future operations;

- (d) ensure that the ACP States' comments are sought on all monitoring and evaluation reports, and further ensure, in all cases, that the ACP States' experts participate directly in monitoring, evaluation and preparation of the reports;
- (e) ensure that the ACP States and the Community regularly programme evaluation work;
- (f) synthesize results of monitoring and evaluation by sector, instrument, theme, country and region. To this end:
  - (i) reports on the results of monitoring and evaluation shall be drawn up and published at agreed intervals;
  - (ii) an annual review of operations performance results shall be prepared;
- (g) ensure the adequate operational feed-back of monitoring and evaluation results into development policy and practice, by devising effective feed-back mechanisms, organizing seminars and work-shops and producing and distributing concise documentation highlighting the most important findings, conclusions and recommendations and, through a process of discussion and follow-up with policy and operating staff, bring that experience to bear on the design and execution of future operations and help to re-orient them;
- (h) identify and disseminate lessons that can contribute to improvements in the design and implementation of future operations;
- (i) collect and exploit relevant information available with national and international development cooperation organizations.

2. Areas of work to be covered will notably include the following:

- (a) development sectors;
- (b) development instruments and themes;
- (c) country and regional reviews;
- (d) individual development operations.

### **Article 322.**

In order to ensure its practical relevance to the objectives of the Convention and to improve the exchange of information, the Commission shall:

- (a) maintain close contacts with national evaluation units in ACP States and in the Community, as well as with the national authorizing officers, Commission delegations and other interested services in the ACP national administrations and regional organizations;
- (b) assist the ACP States in initiating or strengthening monitoring and evaluation capacities, through consultation or through courses on monitoring and evaluation.

### **Article 323.**

The ACP-EEC Development Finance Cooperation Committee shall ensure the joint character of monitoring and evaluation operations in accordance with the joint declaration in Annex LV.

## **Section 6. ACP-EEC Development Finance Cooperation Committee**

### **Article 324.**

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

### **Article 325.**

To this end, an ACP-EEC Development Finance Cooperation Committee, hereinafter referred to as "the ACP-EEC Committee", shall be set up within the Council of Ministers. The Committee shall:

- (a) collect information on existing procedures relating to the implementation of development cooperation and give any necessary clarification required on these procedures;
- (b) examine, at the request of the Community or the ACP States and on the basis of concrete examples, any general or specific problems arising from the implementation of development cooperation;
- (c) examine any problems in connection with the implementation of the timetables of commitments and disbursements and for implementation of projects and programmes, with a view to facilitating the removal of any difficulties and bottlenecks discovered;
- (d) ensure that the objectives and principles of development cooperation are attained;
- (e) help to establish general guidelines for development cooperation;
- (f) formulate or adapt general conditions applicable to the award and performance of contracts in accordance with the provisions of the Convention;
- (g) review the results of monitoring and evaluation, and formulate any suggestions with a view to ensuring the effective implementation of monitoring and evaluation work and: further consider proposals for future monitoring and evaluation activities;
- (h) review measures taken to ensure the cost-effectiveness of technical cooperation schemes and in particular the encouragement and development of ACP States' national and/or regional manpower capacities;
- (i) review the measures taken to ensure improved conditions and a better environment for the award of contracts to ACP firms;
- (j) examine the ways in which the instruments provided for in the Convention have been utilized to contribute to the attenuation of the financial burden caused by the, debt of ACP States;
- (k) examine the economic, technical, legal and institutional instruments deployed within the framework of the Convention to attain the objectives of promoting private investment in order to discover the obstacles which currently hamper the development of the ACP States, as well as to determine the actions required to remove these obstacles;
- (l) review the measures which will facilitate an increased and more stable flow of private capital, and which will enhance:
  - (i) joint financing of productive investment with the private sector;
  - (ii) access by interested ACP States to international finance markets;
  - (iii) the creation, activity and effectiveness of domestic financial markets;
- (m) review the issues relating to the promotion and protection of investment in the ACP States and the Member States of the Community which affect their development cooperation;
- (n) report to the Council on any matter examined by it, and submit to the Council any suggestions likely to improve or expedite the implementation of development cooperation;
- (o) prepare and submit to the Council the results of evaluation of projects and programmes;
- (p) follow up and implement guidelines and resolutions adopted by the Council on development cooperation;
- (q) perform such other tasks as are entrusted to it by the Council.

## **Article 326.**

1. The ACP-EEC Committee, which shall meet every quarter, 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 at ministerial level whenever one of the parties so requests and at least once a year. A representative of the Bank shall be present at committee meetings.
2. The Council of Ministers shall lay down the ACP-EEC 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.
3. The ACP-EEC Committee may convene meetings of experts to study the cause of any difficulties and bottlenecks which



may impede the efficient implementation of development cooperation. These experts shall make recommendations to the Committee on possible ways of removing such difficulties and bottlenecks.

4. Where a specific problem arising from the implementation of financial or technical cooperation is submitted to the committee, the committee shall examine it within 60 days of its submission with a view to providing an appropriate solution.

5. (a) The ACP-EEC Committee shall regularly review progress made in the implementation of regional cooperation. It shall in particular examine problems and policy issues submitted to it by the ACP States or by the Community and make any appropriate proposals.

(b) Implementation of the provisions under development of services will be monitored and followed up by the ACP-EEC Committee.

6. The ACP-EEC Committee shall review the implementation of special measures in favour of least- developed, landlocked and island ACP States and in particular those which are identified as desirable in order to improve the attractiveness of those States to private investors.

## **Article 327.**

1. To facilitate the work of the committee:

(a) the ACP States and their beneficiary regional organizations in collaboration with the ACP Secretariat, on the one hand, and the Commission in collaboration with the Bank, on the other hand, shall submit to the committee annual reports on the management of development finance cooperation;

(b) an annual report on monitoring and evaluation operations/activities will be submitted to the committee in accordance with the joint declaration in Annex LV;

(c) the Commission, in collaboration with the Bank, shall produce reports for the information of the committee on results of coordination in the field of investment and private sector support;

(d) the Commission shall produce reports and studies for the information of the committee on:

- investment flows between the Community and the ACP States; economic, legal or institutional obstacles hampering those investments; measures which will facilitate private capital movements, joint financing, access by the ACP States to international financial markets and the operation of domestic financial markets,

- activities undertaken by national and international systems of investment guarantee,

- investment promotion and protection agreements between Community Member States and ACP States.

2. The ACP-EEC Committee shall examine the reports on development finance cooperation, monitoring and evaluation and investment which shall be submitted to it pursuant to paragraph 1. It shall:

(a) prepare an annual progress report, which shall be examined by the Council of Ministers at its annual meeting on the definition of the general guidelines for development finance cooperation;

(b) submit to the Council any observations, information or proposals on the problems concerning the implementation of the economic development finance cooperation, and also on the general problems of this cooperation; and

(c) draw up for the attention of the Council of Ministers, recommendations and resolutions relating to measures directed towards attainment of the objectives of development finance cooperation, within the framework of the powers conferred upon it by that Council.

3. On the basis of the information referred to in paragraph 2, the Council of Ministers shall establish the general guidelines for development finance cooperation and shall adopt resolutions or guidelines 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.

## **Title IV. GENERAL PROVISIONS FOR THE LEAST-DEVELOPED, LANDLOCKED AND ISLAND ACP STATES**

### **Article 328.**

Special attention shall be paid to the least-developed, landlocked and island ACP States and the specific needs and problems

of each of these three groups of countries in order to enable them to take full advantage of the opportunities offered by the Convention, so as to step up their respective rates of development.

Independently of the specific measures and provisions for the least-developed, landlocked and island countries in the different chapters of the Convention, special attention shall be paid, in respect of these groups, to:

- the strengthening of regional cooperation,
- transport and communications infrastructure,
- the efficient exploitation of marine resources and: the marketing of products so produced and, in the case of landlocked countries, inland fisheries,
- structural adjustment where account will be taken of the level of development of these countries and equally, at the implementation stage, of the social dimension of adjustment,
- the implementation of food strategies and integrated development programmes.

## **Chapter 1. Least-developed ACP States**

### **Article 329.**

The least-developed ACP States shall be accorded special treatment in order to enable them to overcome the serious economic and social difficulties hindering their development, so as to step up their respective rates of development.

### **Article 330.**

1. The following shall be considered least-developed

- ACP States for the purposes of this Convention:

Antigua and Barbuda  
Mauritania

Belize

Mozambique

Benin

Niger

Botswana

Rwanda

Burkina Faso

Saint Christopher and Nevis

Burundi

Cape Verde

Saint Lucia

Central African Republic

Chad

Saint Vincent and the Grenadines

Comoros

Sao Tomé and Príncipe

Djibouti

Seychelles  
Dominica  
Sierra Leone  
Equatorial Guinea  
Solomon Islands  
Ethiopia  
Somalia  
Gambia  
Sudan  
Grenada  
Swaziland  
Guinea  
Tanzania  
Guinea-Bissau  
Togo  
Haiti  
Tonga  
Kiribati  
Tuvalu  
Lesotho  
Uganda  
Malawi  
Vanuatu  
Mali  
Western Samoa

2. The list of least-developed ACP States may be amended by decision of the Council of Ministers where:

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

### **Article 331.**

The provisions laid down pursuant to Article 329 in respect of the least-developed ACP States are contained. in the following Articles.

1. Objectives

- Articles 8 and 26

2. Agricultural cooperation, food security and rural development

- Article 52

### 3. Technical Centre for Agricultural and Rural Development

- Article 53 (3)

### 4. Development of fisheries

. Article 62

### 5. Industrial cooperation

- Article 97 (1) and (2)

### 6. Development of services

- Article 116

### 7. Trade development.

- Article 136 (5)

### 8. Regional cooperation

- Article 165

### 9. Safeguard measures - trade cooperation

- Article 180

### 10. Stabex

- Article 189 (3)

- Article 196 (2)

- Article 197 (3) and (4)

### 11. Sysmin

- Article 215 (1)

### 12. Development finance cooperation

- Article 220 (0)

### 13. Recurrent cost financing

- Article 227 (2)

### 14. Allocation of resources

- Article 238

### 15. Structural adjustment

- Article 246 (3)

### 16. Micro-projects

- Article 252 (4)

### 17. Appraisal of projects

- Article 287 (3)

### 18. Implementation of special measures

- Article 324

- Article 326 (6)

### 19. Protocol on rules of origin

- Article 30 (2)

- Article 31 (5)

## **Chapter 2. Landlocked ACP States**

### **Article 332.**

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

### **Article 333. The Landlocked ACP States Are:**

Botswana

Mali

Burkina Faso

Niger

Burundi

Rwanda

Central African Republic

Swaziland

Chad

Uganda

Lesotho

Zambia

Malawi

Zimbabwe

2. The list of landlocked ACP States may be amended by decision of the Council of Ministers where a third State in a comparable situation accedes to this Convention.

### **Article 334.**

The provisions laid down pursuant to Article 332 in respect of the landlocked ACP States are contained in the following Articles.

#### 1. Objectives

- Article 8

#### 2. Agricultural cooperation, food security and rural development

- Article 52

#### 3. Development of fisheries

- Article 62

#### 4. Industrial cooperation

- Article 97 (1)

## 5. Development of services

- Article 116

## 6. Trade development

- Article 136 (5)

## 7. Regional cooperation

- Article 159 (g)

- Article 165

## 8. Safeguard measures - trade cooperation

- Article 180 .

## 9. Stabex

- Article 196 (2)

- Article 197 (4)

## 10. Sysmin

- Article 215 (1)

## 11. Allocation of resources

- Article 238

## 12. Development finance cooperation

- Article 220 (0)

## 13. Implementation of special measures

- Article 324

- Article 326 (6)

# Chapter 3. Island ACP States

## Article 335.

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

## Article 336.

The Island ACP States Are:

Antigua and Barbuda

Papua New Guinea

Bahamas

Saint Christopher and Nevis

Barbados

Cape Verde

Saint Lucia

Comoros  
Saint Vincent and the Grenadines  
Dominica  
Dominican Republic  
Sao Tomé and Príncipe  
Fiji  
Seychelles  
Grenada  
Solomon Islands  
Haiti  
Tonga  
Jamaica  
Trinidad and Tobago  
Kiribati  
Tuvalu  
Madagascar  
Vanuatu  
Mauritius  
Western Samoa

2. The list of island ACP States may be amended by a decision of the Council of Ministers where a third State in a comparable situation accedes to this Convention.

### **Article 337.**

The provisions laid down pursuant to Article 335 in respect of the island ACP States are contained in the following Articles.

#### 1. Objectives

- Article 8

#### 2. Agricultural cooperation, food security and rural development

- Article 52

#### 3. Development of fisheries

- Article 62

#### 4. Industrial cooperation

- Article 97 (1).

#### 5. Development of services

- Article 116

#### 6. Trade development

- Article 136 (5)

## 7. Regional cooperation

- Article 165

## 8. Safeguard measures - trade cooperation

- Article 180

## 9. Stabex

- Article 196 (2)

- Article 197 (4)

## 10. Sysmin

- Article 215 (1)

## 11. Development nance cooperation

- Article 220 (0)

## 12. Allocation of resources

- Article 238

## 13. Implementation of special measures

- Article 324

- Article 326 (6)

## 14. Protocol on rules of origin

- Article 31 (5)

# **Part Four. OPERATION OF THE INSTITUTIONS**

## **Chapter 1. The Council of Ministers**

### **Article 338.**

The Council of Ministers shall act by agreement between the Community on the one hand and the ACP States on the other.

### **Article 339.**

1. 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 members representing the governments of the ACP States are present.

2. Any member of the Council of Ministers unable to attend may be represented. The representative shall exercise all the rights of that member.

3. The Council of Ministers shall lay down its rules of procedure. These rules shall provide for the possibility at each Council meeting of a thorough examination of major areas of cooperation, if need be after preparatory work in accordance with Article 342 (6).

### **Article 340.**

The office of the 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.

### **Article 341.**



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 co-Presidents assisted by advisers may have regular consultations and exchanges of views between meetings of the Council of Ministers.

### **Article 342.**

1. The Council of Ministers shall review periodically 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 shall, to that end and at the request of one of the parties, examine and may take into consideration any resolutions or recommendations made in that respect by the Joint Assembly.

2. 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.
3. 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 this Convention.
4. The Council of Ministers shall publish an annual report and such other information as it considers appropriate.
5. The Community or the ACP States may raise in the Council of Ministers any problems arising from the application of this Convention.
6. The Council of Ministers may set up committees or ad hoc working parties to undertake such activities as it deems necessary, in particular, to prepare, if appropriate, its deliberation on specific cooperation areas or problems, in accordance with the provisions of Article 346 (2).

### **Article 343.**

Pursuant to Articles 30 (2) (h), and Articles 20, 21 and 22 concerning decentralized cooperation, the Council of Ministers shall organize contacts between the relevant organizations in the Community and the ACP States (decentralized public authorities and unofficial bodies) to examine in practical terms how and under what conditions their initiatives can be organized, with a view to contributing to the pursuit of the development objectives of the ACP States. Which of the abovementioned, bodies attend these meetings will depend on the items on the agenda and the practical capacity of the bodies concerned to contribute to development objectives in the areas under discussion.

These contacts shall improve the access of the parties concerned to information on the development policies conducted by the ACP States and on ACP-EEC cooperation operations and shall provide for an exchange of information and discussions on the opportunities for decentralized cooperation operations.

### **Article 344.**

Without prejudice to Article 342 (6), the Council of Ministers may, at its meetings, delegate the task of preparing its discussions and conclusions on specific items on the agenda to restricted ministerial working parties constituted on a basis of parity.

### **Article 345.**

The Council of Ministers may 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 338.

## **Chapter 2. The Committee of Ambassadors**

### **Article 346.**

1. 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.

2. The Committee of Ambassador shall supervise the work of all the committees and all other bodies, groups or working parties, whether standing or ad hoc, established or provided for below ministerial level under this Convention and submit periodic reports to the Council of Ministers.

3. In the performance of its duties the Committee of Ambassadors shall meet at least once every six months.

#### **Article 347.**

1. The office of chairman of the Committee of Ambassadors shall be held alternately by a Permanent Representative of a Member State designated by the Community, and a head of mission representing an ACP State designated by the ACP States.

2. Any member of the Committee of Ambassadors unable to attend may be represented. The representative shall exercise all the rights of that member.

3. The Committee of Ambassadors shall lay down its rules of procedure, which shall be submitted to the Council of Ministers for approval. :

### **Chapter 3. Provisions Common to the Council of Ministers and the Committee of Ambassadors**

#### **Article 348.**

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 349.**

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.

### **Chapter 4. The Joint Assembly**

#### **Article 350.**

The Joint Assembly shall consider the annual report drawn up under Article 342 (4).

It may adopt resolutions on matters concerning or covered by this Convention.

It may, in order to attain the objectives of this Convention, 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.

#### **Article 351.**

1. The Joint Assembly shall appoint its bureau and shall adopt its own rules of procedure.

2. It shall hold a general session twice a year, alternately in the Community and in an ACP State.

3. It may set up ad hoc working parties to undertake such specific preparatory activities as it shall determine.

4. The Secretariat duties and other work necessary for the functioning of the Joint Assembly shall be carried out on the basis of parity and in accordance with the conditions laid down in its rules of procedure.

### **Chapter 5. Other Provisions**

#### **Article 352.**

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 shall be referred to the Council of Ministers.

2. Between meetings of the Council of Ministers, such disputes shall be referred to the Committee of Ambassadors for settlement.

3. If the Committee of Ambassadors fails to settle the dispute, it shall refer the matter to the Council of Ministers at its next meeting.

4. If the Council of Ministers fails to settle the dispute at that meeting it may, at the request of either Contracting Party, initiate a good offices procedure, the result of which shall be transmitted to the Council in the form of a report at its next meeting.

5. (a) If a settlement of the dispute is not reached, the Council of Ministers shall initiate an arbitration procedure at the request of either Contracting Party. Two arbitrators shall be appointed by the parties to the dispute within 30 days, one by either side as set out in paragraph 1. The two arbitrators in question shall then appoint a third arbitrator within two months. Should the latter not be appointed within the time limit set, he shall be appointed by the co-President of the Council of Ministers from among eminent persons providing every guarantee of independence.

(b) The decision of the arbitrators shall be taken by majority vote, as a general rule within five months.

(c) Each party to the dispute must take the measures required for the implementation of the arbitrators' decision.

### **Article 353.**

The Contracting Parties shall make every endeavour, without prejudice to the provisions of this Convention, to reach a joint interpretation where there are differences of opinion between the Community and the ACP States as to the interpretation of the texts in connection with the application of this Convention. To this end, such problems shall undergo joint examination by the institutions with a view to resolving them.

### **Article 354.**

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

### **Article 355.**

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

## **Part Five. FINAL PROVISIONS**

### **Article 356.**

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

### **Article 357.**

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 is applied and under the conditions laid down in that Treaty and, on the other hand, to the territories of the ACP States.

### **Article 358.**

1. Should a third country wish to accede to the Community, the latter shall, as soon as it has decided to enter into negotiations on such accession, inform the ACP States of its decision.

2. The Contracting Parties further agree:

(a) to establish, in the course of accession negotiations, regular contacts during which:

- the Community shall provide the ACP States with all relevant information on the progress of the negotiations,
- the ACP States shall inform the Community of their concerns and positions so that they may be taken fully into account;

(b) to examine without delay, after the conclusion of the accession negotiations, the effects of such accession on this Convention, and to engage in negotiations in order to establish a protocol of accession and adopt the measures of adaptation or transition that may become necessary, to be annexed to the said protocol, of which they shall constitute an integral part.

3. Without prejudice to any transitional arrangements that may be adopted, the Contracting Parties recognize that the provisions of the Convention do not apply in relations between the ACP States and a new Member State of the Community as long as the protocol of accession to the Convention referred to in paragraph 2 (b) has not entered into force.

### **Article 359.**

1. (a) As regards the Community, this Convention shall be validly concluded in accordance with the provision of the EEC and ECSC Treaties; the conclusion shall be notified to the parties.

(b) This Convention shall be ratified by the Signatory States in conformity with their respective constitutional requirements.

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 give notice thereof forthwith to the Signatory States and the Community.

### **Article 360.**

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 this Convention by the Community.

2. Any ACP State which has not completed the procedures set out in Article 359 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 intentions to complete these procedures not later than six months after this period 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 359 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 359, 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 joint 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 359 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 361.**

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 362.**

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 country 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 development finance cooperation and on the stabilization of export earnings.

### **Article 363.**

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 development finance cooperation, the stabilization of export earnings and industrial cooperation.

### **Article 364.**

If Namibia, on becoming independent, requests accession to the Convention and its request is received after the actual process for the ratification of the Convention has begun but before its entry into force, the Council of Ministers shall act on the request and take a decision on the accession of that State. At the same time it shall also take any necessary decision regarding that State in areas falling under Part Three, Titles I and IV of the Convention and the Annexes to the Final Act regarding these parts of the Convention, including beef.

In the event of a positive decision, Namibia will be added to the States Signatory to the Convention, particularly as regards the ratification and entry into force thereof.

### **Article 365.**

As from the entry into force of this Convention, the powers conferred upon the Council of Ministers by the third ACP-EEC Convention shall be exercised, insofar 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 366.**

1. This Convention is hereby concluded for a period of 10 years, commencing on 1 March 1990.
2. The Community and the Member States, on the one hand, and the ACP States, on the other, shall notify the other Party not later than 12 months before the expiry of the first five-year period of any review of the provisions they desire to make with a view to a possible amendment of the Convention. Notwithstanding this time limit, if one Party requests the review of any provisions of the Convention, the other Party shall have a period of two months in which to request the extension of the review to other provisions related to those which were the subject of the initial request.

Ten months before the expiry of this five-year period, the Contracting Parties shall enter into negotiations with a view to examining any possible amendments to the provisions that were the subject of the notification.

Articles 359 and 360 on the conclusion, ratification and entry into force of the Convention shall also apply to amendments

thus made to the Convention.

The Council of Ministers shall adopt any transitional measures that may be required in respect of the amended provisions until they come into force.

3. 18 months before the end of the total period of the Convention, 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.

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

### **Article 367.**

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 368.**

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

### **Article 369.**

This Convention, drawn up in two copies in the Danish, Dutch, English, French, German, Greek, Italian, Portuguese and Spanish 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 signed this Convention.

Done at Lomé on the fifteenth day of December, in the year one thousand nine hundred and eighty-nine.

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 HELLENIC REPUBLIC,

FOR HIS MAJESTY THE KING OF SPAIN,

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 THE PRESIDENT OF THE PORTUGUESE REPUBLIC,

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

FOR THE COUNCIL AND THE COMMISSION OF THE EUROPEAN COMMUNITIES,

FOR THE PRESIDENT OF THE PEOPLE'S REPUBLIC OF ANGOLA,

FOR HER MAJESTY THE QUEEN OF ANTIGUA AND BARBUDA,

FOR THE HEAD OF STATE OF THE COMMONWEALTH OF THE BAHAMAS,

FOR THE HEAD OF STATE OF BARBADOS,  
FOR HER MAJESTY THE QUEEN OF BELIZE,  
FOR THE PRESIDENT OF THE PEOPLE'S REPUBLIC OF BENIN,  
FOR THE PRESIDENT OF THE REPUBLIC OF BOTSWANA,  
FOR THE PRESIDENT OF THE PEOPLE'S FRONT, HEAD OF THE STATE, HEAD OF THE GOVERNMENT OF BURKINA FASO,  
FOR THE PRESIDENT OF THE REPUBLIC OF BURUNDI,  
FOR THE PRESIDENT OF THE 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 ISLAMIC FEDERAL REPUBLIC OF THE COMOROS,  
FOR THE PRESIDENT OF THE PEOPLE'S REPUBLIC OF THE CONGO,  
FOR THE PRESIDENT OF THE REPUBLIC OF THE COTE D'IVOIRE,  
FOR THE PRESIDENT OF THE REPUBLIC OF DJIBOUTI,  
FOR THE GOVERNMENT OF THE COMMONWEALTH OF DOMINICA,  
FOR THE PRESIDENT OF THE DOMINICAN REPUBLIC,  
FOR THE PRESIDENT OF THE PEOPLE'S DEMOCRATIC REPUBLIC OF ETHIOPIA,  
FOR THE PRESIDENT OF THE REPUBLIC OF FIJI,  
THE PRESIDENT OF THE GABONESE REPUBLIC, FOR  
FOR THE PRESIDENT OF THE REPUBLIC OF THE GAMBIA,  
FOR THE HEAD OF STATE AND CHAIRMAN OF THE PROVISIONAL NATIONAL DEFENCE COUNCIL OF THE REPUBLIC OF GHANA,  
FOR HER MAJESTY THE QUEEN 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 COOPERATIVE REPUBLIC OF GUYANA,  
FOR THE PRESIDENT OF THE REPUBLIC OF HAITI,  
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 CHAIRMAN OF THE MILITARY COMMITTEE FOR NATIONAL SAFETY, HEAD OF STATE OF THE ISLAMIC REPUBLIC OF

MAURITANIA,  
FOR HER MAJESTY THE QUEEN OF MAURITIUS,  
FOR THE PRESIDENT OF THE PEOPLE'S REPUBLIC OF MOZAMBIQUE,  
FOR THE PRESIDENT OF THE SUPREME MILITARY COUNCIL, HEAD OF STATE OF NIGER,  
FOR THE HEAD OF THE FEDERAL GOVERNMENT OF NIGERIA,  
FOR THE PRESIDENT OF THE REPUBLIC OF UGANDA,  
FOR HER MAJESTY THE QUEEN OF PAPUA NEW GUINEA,  
FOR THE PRESIDENT OF THE RWANDESE REPUBLIC,  
FOR HER MAJESTY THE QUEEN OF SAINT CHRISTOPHER AND NEVIS,  
FOR HER MAJESTY THE QUEEN OF SAINT LUCIA,  
FOR HER MAJESTY THE QUEEN OF SAINT VINCENT AND THE GRENADINES,  
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 HER MAJESTY THE QUEEN OF THE SOLOMON ISLANDS,  
FOR THE PRESIDENT OF THE SOMALI DEMOCRATIC REPUBLIC,  
FOR THE PRESIDENT OF THE REPUBLIC OF THE SUDAN,  
FOR THE PRESIDENT OF THE REPUBLIC OF SURINAME,  
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 TOGOLESE REPUBLIC,  
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 GOVERNMENT OF THE REPUBLIC OF VANUATU,  
FOR THE PRESIDENT OF THE REPUBLIC OF ZAIRE,  
FOR THE PRESIDENT OF THE REPUBLIC OF ZAMBIA,  
FOR THE PRESIDENT OF THE REPUBLIC OF ZIMBABWE.

## **Protocol 2. On the operating expenditure of the joint institutions**

THE CONTRACTING PARTIES HAVE AGREED upon the following provisions, which shall be annexed to the Convention:

### **1.**



The Member States and the Community on the one hand, and the ACP States on the other, shall be responsible for such expenditure as they shall incur by reason of their participation in the meetings of the Council of Ministers and its dependent bodies, both with regard to staff, travel and subsistence expenditure and to postal and telecommunications expenses.

Expenditure in connection with interpreting at meetings, translation and reproduction of documents, and the practical arrangements for meetings (such as premises, equipment and messengers) shall be borne by the Community or by one of the ACP States, according to whether the meetings take place in the territory of a Member State or in that of an ACP State.

## **2.**

The Community and the ACP States shall be severally responsible for the travel and subsistence expenditure of their respective participants at the meetings of the Joint Assembly.

They shall likewise be responsible for the travel and subsistence, expenditure of the personnel required for such meetings and for postal and telecommunications expenses.

Expenditure in connection with interpreting at meetings, translation and reproduction of documents, and the organization of meetings (such as premises, equipment, messengers) shall be borne by the Community or by the ACP States, according to whether the meetings take place in the territory of a Member State or in that of an ACP State.

## **3.**

The arbitrators appointed in accordance with Article 352 of the Convention shall be entitled to a refund of their travel and subsistence expenditure. The latter shall be determined by the Council of Ministers.

One-half of travel and subsistence expenditure incurred by the arbitrators shall be borne by the Community and the other half by the ACP States.

Expenditure relating to any registry set up by the arbitrators, to preparatory inquiries into disputes, and to the organization of hearings (such as premises, personnel and interpreting) shall be borne by the Community.

Expenditure relating to special inquiries shall be settled together with the other costs and the parties shall deposit advances as determined by an order of the arbitrators.

## **Protocol 3. On privileges and immunities**

THE CONTRACTING PARTIES,

Desiring, by the conclusion of a Protocol on privileges and immunities, to facilitate the smooth functioning of the Convention, the preparation of its work and implementation of the measures adopted for its application;

Whereas it is therefore necessary to specify the privileges and immunities which may be claimed by persons participating in work relating to the application of the Convention and to the arrangements applicable to official communications connected with such work, without prejudice to the provisions of the Protocol on the privileges and immunities of the European Communities, signed at Brussels on 8 April 1965;

Whereas it is also necessary to lay down the treatment to be accorded to the property, funds and assets of the Council of ACP Ministers and its staff;

Whereas the Georgetown Agreement of 6 June 1975 constituted the ACP Group of States and instituted a Council of ACP Ministers and a Committee of Ambassadors; whereas the organs of the ACP Group of States are to be serviced by the Secretariat of the ACP States;

HAVE AGREED upon the following provisions, which shall be annexed to the Convention:

## **Chapter 1. Persons Taking Part In the Work of the Convention**

### **1.**

The representatives of the Governments of the Member States and of the ACP States and the representatives of the institutions of the European Communities, as also their advisers and experts and the members of the staff of the Secretariat

of the ACP States taking part, in the territory of the Member States or of the ACP States, in the work either of the institutions of the Convention or of the coordinating bodies, or in work connected with the application of the Convention, shall enjoy the customary privileges, immunities and facilities. while carrying out their duties and while travelling to or from the place at which they are required to carry out such duties.

The preceding paragraph shall also apply to members of the Joint Assembly of the Convention, to the arbitrators who may be appointed under the Convention, to members of the consultative bodies of the economic and social sectors which may be set up, to the officials and employees of these institutions, and also to the members of the agencies of the European Investment Bank and its staff, and to the staff of the Centre for the Development of Industry and the Technical Centre for Agricultural and Rural Cooperation.

## **Chapter 2. Property, Funds and Assets of the Council of ACP Ministers**

### **2.**

The premises and buildings occupied by the Council of ACP Ministers for official purposes shall be inviolable. They shall be exempt from search, requisition, confiscation or expropriation.

Except when: required for the purposes of investigating an accident caused by a motor vehicle belonging to the said Council or being used on its account, or in the event of an infringement of road traffic regulations or of an accident caused by such a vehicle, the property and assets of the Council of ACP Ministers shall not be the subject of any administrative or legal measures of constraint without the authorization of the Council of Ministers set up under the Convention.

### **3.**

The archives of the Council of ACP Ministers shall be inviolable.

### **4.**

The Council of ACP Ministers, its assets, income and other property shall be exempt from all direct taxes.

The host State shall, wherever possible, take the appropriate measures to remit or refund the amount of indirect taxes or sales taxes included in the price of movable or immovable property, where the Council of ACP Ministers makes, strictly for its official use, substantial purchases, the price of which includes taxes of this kind.

No exemption shall be granted in respect of taxes, charges, duties or fees which represent charges for services rendered.

### **5.**

The Council of ACP Ministers shall be exempt. from all customs duties, prohibitions and restrictions on imports in respect of articles intended for its official use; articles so imported may not be sold or otherwise disposed of, whether or not in return for payment, in the territory of the country into which they have been imported, except under conditions approved by the government of that country.

## **Chapter 3. Official Communications**

### **6.**

For their official communications and the transmission of all their documents, the European Economic Community, the institutions of the Convention and the coordinating bodies shall enjoy in the territory of the States party to the Convention the treatment accorded to international organizations.

Official correspondence and other official communications of the European Economic Community, the joint institutions of the Convention and the coordinating bodies shall not be subject to censorship.

## **Chapter 4. Staff of the Secretariat of the ACP States**

### **7.**

1. The secretary or secretaries and deputy secretary or deputy secretaries of the Council of ACP Ministers and the other permanent members of the staff of senior rank as designated by the ACP States, of the Council of ACP Ministers shall enjoy, in the State in which the Council of ACP Ministers is established, under the responsibility of the chairman-in-office of the Committee of ACP Ambassadors, the advantages accorded to the diplomatic staff of diplomatic missions. Their spouses and their children under age living in their household shall be entitled, under the same conditions, to the advantages accorded to the spouses and children under age of such diplomatic staff.

2. Permanent ACP staff members not referred to in paragraph 1 shall be exempted by their host country from any taxes on salaries, emoluments or allowances paid to them by the ACP States from the day on which such income becomes subject to tax levied for the benefit of the ACP States.

The above provision shall not apply either to pensions paid by the ACP Secretariat to its former staff members or their dependants, or to salaries, emoluments or allowances paid to its local staff.

## **8.**

The State in which the Council of ACP Ministers is established shall grant immunity from legal proceedings to permanent members of the staff of the Secretariat of the ACP States, apart from those referred to in Article 7 (1), only in respect of acts done by them in the performance of their official duties. Such immunity shall not, however, apply to infringements of road traffic regulations by a permanent member of the staff of the Secretariat of the ACP States or to damage caused by a motor vehicle belonging to, or driven by, him or her.

## **9.**

The names, positions and addresses of the chairman- in-office of the Committee of ACP Ambassadors, the secretary or secretaries and deputy secretary or deputy secretaries of the Council of ACP Ministers and of the permanent members of the staff of the Secretariat of the ACP States shall be communicated periodically by the President of the Council of ACP Ministers to the Government of the State in whose territory the Council of ACP Ministers is established.

## **Chapter 5. Commission Delegations In the ACP States**

### **10.**

1. The Commission delegate and staff appointed to the delegations, with the exception: of locally recruited staff, shall be exempted from any direct taxes in the ACP State where they are in post.

2. Article 309 (g) shall also apply to the staff referred to in paragraph 1.

## **Chapter 6. General Provisions**

### **11.**

The privileges, immunities and facilities provided for in this Protocol shall be accorded to those concerned solely in the interests of the proper execution of their official duties.

Each institution or body referred to in this Protocol shall be required to waive immunity wherever it considers that the waiver of such immunity is not contrary to its own interest.

### **352.**

Article 352 of the Convention shall apply to disputes relating to this Protocol.

The Council of ACP Ministers and the European Investment Bank may be party to proceedings during an arbitration procedure.