

ANNEXES TO THE AGREEMENT

TABLE OF CONTENTS

ANNEX I: FINANCIAL PROTOCOL		1
ANNEX II: TERMS AND CONDITIONS OF FINANCING		
Chapter 1	Investment financing	1
Chapter 2	Special operations	9
Chapter 3	Financing for short-term fluctuations in export earnings	10
Chapter 4	Other provisions	13
Chapter 5	Investment protection agreements	15
ANNEX III: INSTITUTIONAL SUPPORT – CDE AND CTA		1
ANNEX IV: IMPLEMENTATION AND MANAGEMENT PROCEDURES		
Chapter 1	Programming (national)	1
Chapter 2	Programming and preparation (regional)	9
Chapter 3	Project implementation	15
Chapter 4	Competition and preferences	21
Chapter 5	Monitoring and evaluation	34
Chapter 6	Management and executing agents	36
ANNEX V: TRADE REGIME APPLICABLE DURING THE PREPARATORY PERIOD REFERRED TO IN ARTICLE 37(1)		
Chapter 1	General trade arrangements	1
Chapter 2	Special undertaking on sugar and beef and veal	9
Chapter 3	Final provisions	10
PROTOCOL 1 CONCERNING THE DEFINITION OF THE CONCEPT OF "ORIGINATING PRODUCTS" AND METHODS OF ADMINISTRATIVE COOPERATION		11
TITLE I GENERAL PROVISIONS		13
TITLE II DEFINITION OF THE CONCEPT OF "ORIGINATING PRODUCTS"		15
TITLE III TERRITORIAL REQUIREMENTS		27
TITLE IV PROOF OF ORIGIN		30
TITLE V ARRANGEMENTS FOR ADMINISTRATIVE COOPERATION		45
TITLE VI CEUTA AND MELILLA		56
TITLE VII FINAL PROVISIONS		57
ANNEX I to Protocol 1	Introductory notes to the list in Annex II	58
ANNEX II to Protocol 1	List of working or processing required to be carried out on non-originating materials in order that the product manufactured can obtain originating status	70

ANNEX III to Protocol 1 Overseas countries and territories	190
ANNEX IV to Protocol 1 Form for movement certificate	192
ANNEX V to Protocol 1 Invoice declaration	197
ANNEX VIA to Protocol 1 Supplier declaration for products having preferential origin status	200
ANNEX VIB to Protocol 1 Supplier declaration for products not having preferential origin status	201
ANNEX VII to Protocol 1 Information certificate	202
ANNEX VIII to Protocol 1 Form for application for a derogation	205
ANNEX IX to Protocol 1 List of working or processing conferring the character of ACP origin on a product obtained when working or processing is carried out on textile materials originating in developing countries referred to in Article 6(11) of this Protocol	207
ANNEX X to Protocol 1 Textile products excluded from the cumulation procedure with certain developing countries referred to in Article 6(11) of this Protocol	216
ANNEX XI to Protocol 1 Products for which the cumulation provisions with South Africa referred to in Article 6(3) apply after 3 years from the provisional application of the Agreement on Trade, Development and Cooperation between the European Community and the Republic of South Africa	217
ANNEX XII to Protocol 1 Products for which the cumulation provisions with South Africa referred to in Article 6(3) apply after 6 years from the provisional application of the Agreement on Trade, Development and Cooperation between the European Community and the Republic of South Africa	282
ANNEX XIII to Protocol 1 Products to which Article 6(3) shall not be applicable	311
ANNEX XIV to Protocol 1 Fishery products to which Article 6(3) shall temporarily not be applicable	363
ANNEX XV to Protocol 1 Joint declaration on cumulation	373
PROTOCOL 2 ON THE IMPLEMENTATION OF ARTICLE 9	374
PROTOCOL 3 CONTAINING THE TEXT OF PROTOCOL 3 ON ACP SUGAR	377
ANNEX to Protocol 3 Declarations on Protocol 3	383
ANNEX to Protocol 3 Exchanges of letters	385
PROTOCOL 4 ON BEEF AND VEAL	395
PROTOCOL 5 THE SECOND BANANA PROTOCOL	398
ANNEX VI: LIST OF LDLICS	1
PROTOCOLS	
PROTOCOL 1 ON THE OPERATING EXPENDITURE OF THE JOINT INSTITUTIONS	P1-2
PROTOCOL 2 ON PRIVILEGES AND IMMUNITIES	
Chapter 1 Persons taking part in the work of the Agreement	P2-1
Chapter 2 Property, funds and assets of the Council of ACP Ministers	P2-2
Chapter 3 Official communications	P2-5
Chapter 4 Staff of the Secretariat of the ACP States	P2-6
Chapter 5 Commission Delegations in the ACP States	P2-8
Chapter 6 General provisions	P2-9
PROTOCOL 3 ON SOUTH AFRICA	P3-1

FINANCIAL PROTOCOL

1. For the purposes set out in this Agreement and for a period of five years commencing 1 March 2000, the overall amount of the Community's financial assistance to the ACP States shall be EUR 15 200 million.
2. The Community's financial assistance shall comprise an amount up to EUR 13 500 million from the 9th European Development Fund (EDF).
3. The 9th EDF shall be allocated between the instruments of cooperation as follows:
 - (a) EUR 10 000 million in the form of grants shall be reserved for an envelope for support for long-term development. This envelope shall be used to finance national indicative programmes in accordance with Articles 1 to 5 of Annex IV "Implementation and management procedures" to this Agreement. From the envelope for support for long-term development :
 - (i) EUR 90 million shall be reserved for the financing of the budget of the Centre for the Development of Enterprise (CDE);

- (ii) EUR 70 million shall be reserved for the financing of the budget of the Centre for the Development of Agriculture (CTA); and
 - (iii) an amount not exceeding EUR 4 million shall be reserved for the purposes referred to in Article 17 of this Agreement (Joint Parliamentary Assembly).
- (b) EUR 1 300 million in the form of grants shall be reserved for the financing of support for regional cooperation and integration of the ACP States in accordance with Articles 6 to 14 of Annex IV "Implementation and management procedures" to this Agreement.
- (c) EUR 2 200 million shall be allocated to finance the Investment Facility according to the terms and conditions set out in Annex II "Terms and conditions of financing" to this Agreement without prejudice to the financing of the interest rate subsidies provided for in Articles 2 and 4 of Annex II to this Agreement funded from the resources mentioned in paragraph 3(a) of this Annex.
4. An amount of up to EUR 1 700 million shall be provided from the European Investment Bank in the form of loans made from its own resources. These resources shall be granted for the purposes set out in Annex II "Terms and conditions of financing" to this Agreement in accordance with the conditions provided for by its statutes and the relevant provisions of the terms and conditions for investment financing as laid down in the aforementioned Annex. The Bank may, from the resources it manages, contribute to the financing of regional projects and programmes.

5. Any balances remaining from previous EDFs on the date of entry into force of this Financial Protocol, as well as any amounts that shall be decommitted at a later date from ongoing projects under these Funds, shall be transferred to the 9th EDF and shall be used in accordance with the conditions laid down in this Agreement. Any resources thus transferred to the 9th EDF that previously had been allocated to the indicative programme of an ACP State or region shall remain allocated to that State or region. The overall amount of this Financial Protocol, supplemented by the transferred balances from previous EDFs, will cover the period of 2000 – 2007.

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

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

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

TERMS AND CONDITIONS OF FINANCING

CHAPTER 1

INVESTMENT FINANCING

ARTICLE 1

The terms and conditions of financing in relation to the operations of the Investment Facility (Facility), the loans from own resources of the European Investment Bank (Bank) and special operations shall be as laid down in this Chapter. These resources may be channelled to eligible enterprises, either directly or indirectly, through eligible investment funds and/or financial intermediaries.

ARTICLE 2

Resources of the investment facility

1. The resources of the Facility may be used, *inter alia*, to:
 - (a) provide risk capital in the form of:
 - (i) equity participation in ACP enterprises, including financial institutions;
 - (ii) quasi-capital assistance to ACP enterprises, including financial institutions; and

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

(b) provide ordinary loans.

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

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

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

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

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

4. The remuneration of each operation shall be specified when the loan is made. However:
 - (a) in the case of conditional or participating loans, the remuneration shall normally comprise a fixed interest rate of not more than 3% and a variable component related to the performance of the project; and
 - (b) in the case of subordinated loans, the interest rate shall be market related.
5. Guarantees shall be priced so as to reflect the risks insured and the particular characteristics of the operation.
6. The interest rate of ordinary loans shall comprise a reference rate applied by the Bank for comparable loans with the same terms and conditions as to grace and repayment periods and a mark up determined by the Bank.
7. Ordinary loans may be extended on concessional terms and conditions in the following cases:
 - (a) for infrastructure projects in the Least Developed Countries or in post-conflict countries that are prerequisites for private sector development. In such cases, the interest rate of the loan will be reduced by 3%; and

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

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

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

9. Interest subsidies may be capitalised or may be used in the form of grants to support project-related technical assistance, particularly for financial institutions in the ACP countries.

ARTICLE 3

Operations of the investment facility

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

- (a) be managed as a revolving fund and aim at being financially sustainable. Its operations shall be on market-related terms and conditions and shall avoid creating distortions on local markets and displacing private sources of finances; and
 - (b) endeavour to have a catalytic effect by encouraging the mobilisation of long-term local resources and attracting foreign private investors and lenders to projects in the ACP States.
2. On expiry of the Financial Protocol, and in the absence of a specific decision by the Council of Ministers, the cumulative net reflows to the Investment Facility shall be carried over to the next Protocol.

ARTICLE 4

Bank own resource loans

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

- (b) establish close cooperation links with national and regional development banks and with banking and financial institutions of the ACP States and of the EU; and
- (c) in consultation with the ACP State concerned, adapt the arrangements and procedures for implementing development finance cooperation, as set out in this Agreement, if necessary, to take account of the nature of the projects and programmes and to act in accordance with the objectives of this Agreement, within the framework of the procedures laid down by its statute.

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

- (a) the reference rate of interest shall be the rate applied by the Bank for a loan with the same conditions as to currency, and repayment period on the day of signature of the contract or on the date of disbursement;
- (b) however :
 - (i) in principle, public sector projects shall be eligible for an interest rate subsidy of 3%;
 - (ii) private sector projects falling into the categories specified in Article 2 (7)(b) shall be eligible for interest rates subsidies on the same terms as those specified in Article 2(7)(b).

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

- (c) the amount of the interest rate subsidy calculated in terms of its value at the times of disbursement of the loan shall be charged against the interest subsidy allocation of the Investment Facility as defined in Article 2(8) and 2(9), and paid directly to the Bank; and
 - (d) the repayment period of loans made by the Bank from its own resources shall be determined on the basis of the economic and financial characteristics of the project, but may not exceed 25 years. These loans shall normally comprise a grace period fixed by reference to the construction period of the project.
3. For investments financed by the Bank from its own resources in public sector companies, specific project-related guarantees or undertakings may be required from the ACP State concerned.

ARTICLE 5

Conditions for foreign exchange rate risk

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

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

- (b) in the case of risk capital financing for small-and medium-sized enterprises (SMEs), the exchange rate risk shall, as a general rule, be shared by the Community, on the one part, and by the other parties involved, on the other. On average, the foreign exchange rate risk shall be shared equally; and
- (c) where feasible and appropriate, particularly in countries characterised by macroeconomic and financial stability, the Facility will endeavour to extend loans in local ACP currencies, thus de facto taking the foreign exchange risk.

ARTICLE 6

Conditions for foreign exchange transfer

The ACP States concerned shall, in respect of operations under the Agreement, and in respect of which they have given their written approval within the framework of this Agreement:

- (a) grant exemption from all national or local duties, fiscal charges on interest, commission and amortisation 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 amortisation of loans due in terms of financing contracts granted for the implementation of projects and programmes on their territories; and

- (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 Euro or other currencies of transfer and the national currency at the date of the transfer. These include all forms of remuneration, such as, inter alia, interest, dividends, commissions and fees, as well as the amortisation of loans and the proceeds from the sale of shares due in terms of financing contracts granted for the implementation of projects and programmes on their territories.

CHAPTER 2

SPECIAL OPERATIONS

ARTICLE 7

1. Cooperation shall support from the grant allocation:

- (a) low-income housing to promote long-term development of the housing sector, including secondary mortgage facilities;
- (b) micro-finance to promote SMEs and micro-enterprises; and
- (c) capacity building to strengthen and facilitate the effective participation of the private sector in social and economic development.

2. The ACP-EC Council of Ministers shall, after the signature of this Agreement and on a proposal by the ACP-EC Development Finance Cooperation Committee, decide on the modalities and the amount of resources allocated from the long-term development envelope to attain these objectives.

CHAPTER 3

FINANCING FOR SHORT-TERM FLUCTUATIONS IN EXPORT EARNINGS

ARTICLE 8

1. The Parties recognise that losses of export earnings as a result of short-term fluctuations may jeopardise the development financing requirements and the implementation of macroeconomic and sectoral policies. The degree of dependence of an ACP State's economy on the export of goods, and in particular from agricultural and mining products shall, therefore, be a criterion for determining the allocation of long-term development.

2. In order to mitigate the adverse effects of instability of export earnings and safeguard the development programme jeopardised by the drop in revenue, additional financial support may be mobilised from the programmable resources for the country's long-term development on the basis of Articles 9 and 10.

ARTICLE 9

Eligibility criteria

1. Eligibility for additional resources shall be established by:
 - (a) a 10 % (2% in the case of least-developed countries) loss of export earnings from goods compared with the arithmetical average of the earnings in the first three years of the first four years preceding the application year;

or

a 10 % (2% in the case of least-developed countries) loss of export earnings from the total of agricultural or mineral products compared with the arithmetical average of the earnings in the first three years of the first four years preceding the application year for countries where the agricultural or mineral export revenues represent more than 40 % of total export revenues from goods; and
 - (b) a 10 % worsening in the programmed public deficit programmed for the year in question or forecast for the following year.
2. Entitlement to additional support shall be limited to four successive years.

3. The additional resources shall be reflected in the public accounts of the country concerned. They shall be utilised in accordance with programming rules and methods including the specific provisions in Annex IV "Implementation and management procedures", on the basis of agreements drawn up in advance between the Community and the ACP State concerned in the year following the application. By agreement of both Parties the resources may be used to finance programmes included in national budget. However a part of the additional resources may also be set aside for specific sectors.

ARTICLE 10

Advances

The system for allocating additional resources shall provide for advances to cover any delays in obtaining consolidated trade statistics and to ensure that the resources in question can be included in the budget of the year following the application year. Advances shall be mobilised on the basis of provisional export statistics drawn up by the government and submitted to the Commission in advance of the official final consolidated statistics. The maximum advance shall be 80 % of the estimated amount of additional resources for the application year. The amounts thus mobilised shall be adjusted by common agreement between the Commission and the government in the light of final consolidated export statistics and the final figure of the public deficit.

ARTICLE 11

The provisions in this Chapter shall be subject to review at the latest after two years of operation and subsequently at the request of either Party.

CHAPTER 4

OTHER PROVISIONS

ARTICLE 12

Current payments and capital movements

1. Without prejudice to paragraph 3 hereafter, the Parties undertake to impose no restrictions on any payments, in freely convertible currency, on the current account of balance of payments between residents of the Community and of the ACP States.
2. With regard to transactions on the capital account of balance of payments, the Parties undertake to impose no restrictions on the free movement of capital relating to direct investments made in companies formed in accordance with the law of the host country and investments made in accordance with this Agreement, and the liquidation or repatriation of these investments and of any profit stemming therefrom.
3. Where one or more ACP State or one or more Member State of the Community is in serious balance of payments difficulties, or under threat thereof, the ACP State, the Member State or the Community may, in accordance with the conditions established under the GATT, GATS and Article VIII and XIV of the Articles of Agreement of the International Monetary Fund, adopt restrictions on current transactions which shall be of limited duration and may not go beyond what is necessary to remedy the balance of payments situation. The Party taking the measures shall inform the other Parties forthwith and shall submit to them as soon as possible a timetable for the elimination of the measures concerned.

ARTICLE 13

Qualification and treatment of business entities

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.

ARTICLE 14

Definition of "companies and firms"

1. For the purpose of this Agreement, "companies or firms of a Member State or 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-profit-making, 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 a Member State or an ACP State.
2. 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 ACP State.

CHAPTER 5

INVESTMENT PROTECTION AGREEMENTS

ARTICLE 15

1. When implementing the provisions of Article 78 of this Agreement, the Parties shall take into account the following principles :

- (a) a Contracting State may request where appropriate, the negotiation of an investment promotion and protection agreement with another Contracting State;
- (b) the States party to such agreements shall practise no discrimination between Contracting States party to this Agreement 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;
- (c) the Contracting States shall have the right to request a modification or adaptation of the non-discriminatory treatment referred to above when international obligations or changed circumstances so necessitate;
- (d) the application of the principles referred to above does not purport to and cannot in practice infringe the sovereignty of any Contracting Party to the Agreement; and

(e) 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 the provisions set out above. The Contracting Parties confirm that retroactivity shall not apply as a general principle unless Contracting States stipulate otherwise.

2. With a view to facilitating the negotiation of bilateral agreements on investment promotion and protection, the Contracting Parties agree to study the main clauses of a model protection agreement. The study, drawing on the provisions of the existing bilateral agreements between the States Parties, will give particular attention to the following issues:

- (a) legal guarantees to ensure fair and equitable treatment and protection of foreign investors;
- (b) the most-favoured-investor clause;
- (c) protection in the event of expropriation and nationalisation;
- (d) the transfer of capital and profits, and
- (e) international arbitration in the event of disputes between investor and host State.

3. The Parties agree to study the capacity of the guarantee systems to give a positive answer to the specific needs of small and medium-sized enterprises of insuring their investments in ACP States. The studies referred to above shall be started as soon as possible after the signing of the Agreement. The result of these studies shall be submitted, upon completion to the ACP-EC Development Finance Cooperation Committee for consideration and appropriate action.

INSTITUTIONAL SUPPORT - CDE AND CTA

ARTICLE 1

Cooperation shall support the institutional mechanisms that provide assistance for businesses and enterprises and promote agriculture and rural development. In this context, cooperation shall help to:

- (a) strengthen and enhance the role of the Centre for the Development of Enterprise (CDE) so as to provide the ACP private sector with the necessary support in the promotion of private sector development activities; and
- (b) strengthen and reinforce the role of the Centre for the Development of Agriculture (CTA) in ACP institutional capacity development, particularly information management, in order to improve access to technologies for increasing agricultural productivity, commercialisation, food security and rural development.

ARTICLE 2

CDE

1. The CDE shall support the implementation of private-sector development strategies in the ACP countries by providing non-financial services to ACP companies and businesses and support to joint initiatives set up by economic operators of the Community and of the ACP States.

2. The CDE shall aim to assist private ACP enterprises to become more competitive in all sectors of the economy. It shall in particular:

- (a) facilitate and promote business cooperation and partnerships between ACP and EU enterprises;
- (b) assist with the development of business support services through support for capacity building in private sector owned organisations or support for providers of technical, professional, management, commercial and training support services;
- (c) provide assistance for investment promotion activities, such as investment promotion organisations, organisation of investment conferences, training programmes, strategy workshops and follow-up investment promotion missions; and
- (d) support for initiatives that contribute to develop and transfer technologies and know-how and best practices on all aspects of business management.

3. The CDE shall also:

- (a) inform the ACP private sector about the provisions of the Agreement;

- (b) diffuse information within the local ACP private sector about the product quality and standards required in external markets; and
- (c) provide information to European companies and private sector organisations on business opportunities and modalities in ACP countries.

4. The CDE shall extend its support for enterprises through qualified and competent national and/or regional service-providing intermediaries.

5. The activities of the CDE shall be based on the concept of coordination, complementarity and added value in respect of any private sector development initiatives taken by public or private entities. The CDE shall exercise selectivity in undertaking its tasks.

6. The Committee of Ambassadors shall be the supervisory authority of the Centre. It shall, after the signature of this Agreement:

- (a) lay down the statutes and rules of procedure of the Centre, including its supervisory bodies;
- (b) lay down the statutes relating to staff, financial and staff regulations;

- (c) supervise the work of the bodies of the Centre; and
- (d) lay down the rules of operation and the procedures for the adoption of the Centre's budget.

7. The Committee of Ambassadors shall, in accordance with the procedures and criteria determined by it, appoint the members of the bodies of the Centre.

8. The budget of the Centre shall be financed in accordance with the rules laid down in this Agreement in respect of development finance cooperation.

ARTICLE 3

CTA

1. The mission of the CTA shall be to strengthen policy and institutional capacity development and information and communication management capacities of ACP agricultural and rural development organisations. It shall assist such organisations in formulating and implementing policies and programmes to reduce poverty, promote sustainable food security, preserve the natural resource base, and thus contribute to building self-reliance in ACP rural and agricultural development.

2. The CTA shall:

- (a) develop and provide information services and ensure better access to research, training and innovations in the spheres of agricultural and rural development and extension, in order to promote agriculture and rural development; and
- (b) develop and reinforce ACP capacities in order to:
 - (i) improve the formulation and management of agricultural and rural development policies and strategies at national and regional levels including improved capacity for data collection, policy research, analysis and formulation;
 - (ii) improve the information and communication management, in particular within the National Agricultural Strategy;
 - (iii) promote effective intra-institutional Information and Communication Management (ICM) for performance monitoring, as well as consortia with regional and international partners;
 - (iv) promote decentralised ICM at local and national levels;

- (v) strengthen initiatives via regional cooperation; and
- (vi) develop approaches for assessing the impact of policy on agricultural and rural development.

3. The Centre shall support regional initiatives and networks and shall progressively share capacity development programmes with appropriate ACP organisations. To this end, the Centre shall support decentralised regional information networks. Such networks shall be built up gradually and efficiently.

4. The Committee of Ambassadors shall be the supervisory authority of the Centre. It shall, after the signature of this Agreement:

- (a) lay down the statutes and rules of procedures of the Centre, including its supervisory bodies;
- (b) lay down the statutes relating to staff, financial and staff regulations;
- (c) supervise the work of the bodies of the Centre; and
- (d) lay down the rules of operation and the procedures for the adoption of the Centre's budget.

5. The Committee of Ambassadors shall, in accordance with the procedures and criteria determined by it, appoint the members of the bodies of the Centre.

6. The budget of the Centre shall be financed in accordance with the rules laid down in this Agreement in respect of development finance cooperation.

IMPLEMENTATION AND MANAGEMENT PROCEDURES

CHAPTER 1

PROGRAMMING (NATIONAL)

ARTICLE 1

Operations financed by grants within the framework of this Agreement shall be programmed at the beginning of the period covered by the Financial Protocol. Programming for this purpose shall mean:

- (a) the preparation and development of a Country Support Strategy (CSS) based on the country's own medium-term development objectives and strategies;
- (b) a clear indication from the Community of the indicative programmable financial allocation from which the country may benefit during the five-year period as well as any other relevant information;
- (c) the preparation and adoption of an indicative programme for implementing the CSS; and
- (d) a review process covering the CSS, the indicative programme and the volume of resources allocated to it.

ARTICLE 2

Country support strategy

The CSS shall be prepared by the ACP State concerned and the EU following consultations with a wide range of actors in the development process, and shall draw on lessons learned and best practices. Each CSS shall be adapted to the needs and respond to the specific circumstances of each ACP State. The CSS shall be an instrument to prioritise activities and to build local ownership of cooperation programmes. Any divergences between the country's own analysis and that of the Community shall be noted. The CSS shall include the following standard elements:

- (a) an analysis of the political, economic and social country context, constraints, capacities and prospects including an assessment of basic needs, such as income per capita, population size and social indicators, and vulnerability;
- (b) a detailed outline of the country's medium-term development strategy, clearly defined priorities and expected financing requirements;
- (c) an outline of relevant plans and actions of other donors present in the country, in particular including those of the EU Member States in their capacity as bilateral donors;
- (d) response strategies, detailing the specific contribution the EU can provide. These shall, to the extent possible, enable complementarity with operations financed by the ACP State itself and by other donors present in the country; and
- (e) a definition of the nature and scope of the most appropriate support mechanisms to be applied in implementing the above strategies.

ARTICLE 3

Resource allocation

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

In this context:

- (a) needs shall be assessed on the basis of criteria pertaining to per capita income, population size, social indicators and level of indebtedness, export earning losses and dependence on export earnings, in particular from the sectors of agriculture and mining. Special treatment shall be accorded to the least developed ACP States and the vulnerability of island and landlocked states shall duly be taken into account. In addition, account shall be taken of the particular difficulties of post-conflict countries; and
 - (b) performance shall be assessed in an objective and transparent manner on the basis of the following parameters: progress in implementing institutional reforms, country performance in the use of resources, effective implementation of current operations, poverty alleviation or reduction, sustainable development measures and macroeconomic and sectoral policy performance.
2. The allocated resources shall comprise two elements:
- (a) an allocation to cover macroeconomic support, sectoral policies, programmes and projects in support of the focal or non focal areas of Community assistance; and
 - (b) an allocation to cover unforeseen needs such as emergency assistance where such support cannot be financed from the EU budget, contributions to internationally agreed debt relief initiatives and support to mitigate adverse effects of instability in export earnings.

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

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

ARTICLE 4

Preparation and adoption of the indicative programme

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

- (a) the focal sector, sectors or areas on which support should be concentrated;
- (b) the most appropriate measures and operations for attaining the objectives and targets in the focal sector, sectors or areas;
- (c) the resources reserved for projects and programmes outside the focal sector(s) and/or the broad outlines of such activities, as well as an indication of the resources to be deployed for each of these elements;

- (d) identification of eligible non-State actors and the resources allocated for non-State actors;
- (e) proposals for regional projects and programmes; and
- (f) a reserve for insurance against possible claims and to cover cost increases and contingencies.

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

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

- (a) specific and clearly identified operations, especially those that can be committed before the next review;
- (b) a timetable for implementation and review of the indicative programme, including commitments and disbursements of resources; and
- (c) the parameters and criteria for the reviews.

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

ARTICLE 5

Review process

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

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

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

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

- (a) take all necessary measures to ensure adherence to the provisions of the indicative programme, including ensuring that the timetable of commitments and disbursements agreed at the time of programming is adhered to; and
- (b) determine any causes of delay in implementation and propose suitable measures to remedy the situation.

4. The annual operational review of the indicative programme shall consist of a joint assessment of the implementation of the programme and take into account the results of relevant activities of monitoring and evaluation. This review shall be conducted locally and shall be finalised between the National Authorising Officer and the Head of Delegation within a period of 60 days. It shall in particular cover an assessment of:

- (a) the results achieved in the focal sector(s) measured against the identified targets and impact indicators and sectoral policy commitments;
- (b) projects and programmes outside the focal sector(s) and/or in the framework of multi-annual programmes;
- (c) the use of resources set aside for non-State actors;
- (d) the effectiveness in implementation of current operations and the extent to which the timetable for commitments and payments have been respected; and
- (e) an extension of the programming perspective for the following years.

5. The National Authorising Officer and the Head of Delegation shall submit the report on the conclusion of the annual review to the Development Finance Cooperation Committee, within 30 days of the completion of the operational review. The Committee shall examine the report in accordance with its responsibilities and powers under the Agreement.

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

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

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

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

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

CHAPTER 2

PROGRAMMING AND PREPARATION (REGIONAL)

ARTICLE 6

Participation

1. Regional cooperation shall cover operations benefiting and involving:
 - (a) two or more or all ACP States; and / or
 - (b) a regional body of which at least two ACP States are members.
2. Regional cooperation can also involve Overseas Countries and Territories and outermost regions. The funding to enable participation of these territories shall be additional to funds allocated to the ACP States under the Agreement.

ARTICLE 7

Regional programmes

The ACP States concerned shall decide on the definition of geographical regions. To the maximum extent possible, regional integration programmes should correspond to programmes of existing regional organisations with a mandate for economic integration. In principle, in case the membership of several relevant regional organisations overlaps, the regional integration programme should correspond to the combined membership of these organisations. In this context, the Community will provide specific support from regional programmes to groups of ACP States who are committed to negotiate economic partnership agreements with the EU.

ARTICLE 8

Regional programming

1. Programming shall take place at the level of each region. The programming shall be a result of an exchange of views between the Commission and the duly mandated regional organisation(s) concerned, and in the absence of such a mandate, the National Authorising Officers of the countries in that region. Where appropriate, programming may include a consultation with eligible non-State actors.

2. Programming for this purpose shall mean:
 - (a) preparation and development of a Regional Support Strategy (RSS) based on the region's own medium-term development objectives and strategies;

 - (b) a clear indication from the Community of the indicative resource allocation from which the region may benefit during the five-year period as well as any other relevant information;

 - (c) preparation and adoption of a Regional Indicative Programme (RIP) for implementing the RSS; and

 - (d) a review process covering the RSS, the RIP and the volume of resources allocated to each region.

3. The RSS shall be prepared by the Commission and the duly mandated regional organisation(s) in collaboration with the ACP States in the region concerned. The RSS will be an instrument to prioritise activities and to build local ownership of supported programmes. The RSS shall include the following standard elements:

- (a) an analysis of the political, economic and social context of the region;
- (b) an assessment of the process and prospects of regional economic integration and integration into the world economy;
- (c) an outline of the regional strategies and priorities pursued and the expected financing requirements;
- (d) an outline of relevant activities of other external partners in regional cooperation; and
- (e) an outline of the specific EU contribution towards achievement of the goals for regional cooperation and integration, complementary insofar as possible to operations financed by the ACP States themselves and by other external partners, particularly the EU Member States.

ARTICLE 9

Resource allocation

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

ARTICLE 10

Regional indicative programme

1. On the basis of the resource allocation indicated above, the duly mandated regional organisation(s), and in the absence of such a mandate, the National Authorising Officers of the countries in the region, shall draw up a draft Regional Indicative Programme. In particular, the draft programme shall specify:
 - (a) the focal sectors and themes of Community aid;
 - (b) the most appropriate measures and operations to achieve the objectives set for those sectors and themes; and
 - (c) the projects and programmes enabling those objectives to be attained, insofar as they have been clearly identified as well as an indication of the resources to be deployed for each of these elements and a timetable for their implementation.
2. The Regional Indicative Programmes shall be adopted by common agreement between the Community and the ACP States concerned.

ARTICLE 11

Review process

Financial cooperation between each ACP region and the Community shall be sufficiently flexible to ensure that operations are kept constantly in line with the objectives of this Agreement and to take account of any changes occurring in the economic situation, priorities and objectives of the region concerned. A mid-term and end-of-term review of the regional indicative programmes shall be undertaken to adapt the indicative programme to evolving circumstances and to ensure that they are correctly implemented. Following the completion of mid-term and end-of-term reviews, the Community may revise the resource allocation in the light of current needs and performance.

ARTICLE 12

Intra-ACP cooperation

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

ARTICLE 13

Requests for financing

1. Requests for financing of regional programmes shall be submitted by:
 - (a) a duly mandated regional body or organisation; or
 - (b) a duly mandated sub-regional body, organisation or an ACP State in the region concerned at the programming stage, provided that the operation has been identified in the RIP.
2. Requests for intra-ACP programmes shall be submitted by:
 - (a) at least 3 mandated regional bodies or organisations belonging to different geographic regions, or the National Authorising Officers of such regions; or
 - (b) the ACP Council of Ministers, or, by specific delegation, the ACP Committee of Ambassadors; or
 - (c) international organisations carrying out operations that contribute to the objectives of regional cooperation and integration, subject to prior approval by the ACP Committee of Ambassadors.

ARTICLE 14

Procedures for implementation

1. Regional programmes shall be implemented by the requesting body or any other duly authorised institution or body.
2. Intra-ACP programmes shall be implemented by the requesting body or their duly authorised agent. In the absence of a duly authorised implementing body, and without prejudice to ad hoc projects and programmes managed by the ACP Secretariat, the Commission shall be responsible for the implementation of intra-ACP operations.
3. Account being taken of the objectives and inherent characteristics of regional cooperation, operations undertaken in this sphere shall be governed by the procedures established for development finance cooperation where applicable.

CHAPTER 3

PROJECT IMPLEMENTATION

ARTICLE 15

Project identification, preparation and appraisal

1. Projects and programmes that have been presented by the ACP State shall be subject to joint appraisal. The ACP-EC Development Finance Cooperation Committee shall develop the general guidelines and criteria for appraisal of projects and programmes.

2. 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 Community by the ACP States or the other eligible beneficiaries in accordance with this Agreement.

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

ARTICLE 16

Financing proposal and decision

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

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

- (a) take into account the comments of the ACP State or States concerned; and
- (b) be forwarded simultaneously to the ACP State or States concerned and the Community.

3. The Commission shall finalise the financing proposal and forward it, with or without amendment, to the Community's decision-making body. The ACP State or States concerned shall be given an opportunity to comment on any amendment of substance which the Commission intends to make to the document. These comments shall be reflected in the amended financing proposal.
4. The Community's decision-making body shall communicate its decision within 120 days from the date of communication of the financial proposal referred to above.
5. 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-EC Development Finance Cooperation Committee set up under the Agreement; or
 - (b) that they be given a hearing by the Community's decision-making body.
6. 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.
7. Multi-annual programmes shall, inter alia, finance training, decentralised operations, micro-projects, trade promotion and trade development, sets of operations of a limited scale in a specific sector, project/programme management support and technical cooperation.

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

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

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

ARTICLE 17

Financing agreement

1. Save as otherwise provided for in this Agreement, for any project or programme financed by a grant from the Fund, a financing agreement shall be drawn up between the Commission and the ACP State or States concerned. Where the direct beneficiary is not an ACP State, the Commission shall formalise the financing decision by means of an exchange of letters with the beneficiary concerned.
2. The financing agreement shall be drawn up between the Commission and the ACP State or States concerned within 60 days of the decision of the Community's decision-making body. The agreement shall:
 - (a) 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; and
 - (b) make adequate provision for appropriations to cover cost increases and contingencies.
3. Once the financing agreement has been signed, disbursements shall be made in accordance with the financing plan laid down therein. Any unexpended balance left upon closure of the 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 Agreement for the financing of projects and programmes.

ARTICLE 18

Cost over-runs

1. Once it appears that cost over-runs beyond the limit set in the financing agreement are likely to be incurred, the National Authorising Officer shall, through the Head of Delegation, notify the Chief Authorising Officer accordingly, as well as of the measures which the National Authorising Officer intends to take in order to cover such cost over-runs over the allocated appropriations, either by reducing the scale of the 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 over-runs may be financed up to 20% of the financial commitment for the project or programme concerned from the indicative programme.

ARTICLE 19

Retroactive financing

1. In order to ensure early project start-up, avoid gaps between sequential projects and prevent delays, the ACP States, in agreement with the Commission, may, on completion of project appraisal and before the financing decision is taken:
 - (a) issue invitations to tender for all types of contracts, with a suspension clause; and

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

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 provision shall be retroactively financed under the project or programme, once the financing agreement is signed.

CHAPTER 4

COMPETITION AND PREFERENCES

ARTICLE 20

Eligibility

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

- (a) participation in invitations to tender and the award of the contracts financed by the Fund shall be open on equal terms to:
 - (i) natural persons, companies or firms or public or semi-public agencies of the ACP States and the Member States;
 - (ii) cooperative societies and other legal persons governed by public or private law, of the Member States and/or the ACP States; and
 - (iii) joint ventures or groupings of companies or firms of ACP States and/or of a Member State.

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

ARTICLE 21

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 Internet, 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 awarding 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 awarding criteria stated therein.

ARTICLE 22

Derogation

1. In order to ensure the optimum cost-effectiveness of the system, natural or legal persons from non-ACP developing countries may be authorised to participate in contracts financed by the Community at the request of the ACP States concerned. The ACP States concerned shall, on each occasion, provide the Head of Delegation with the information needed for the Community to decide on such derogation, with particular attention being given to:

- (a) the geographical location of the ACP State concerned;
- (b) the competitiveness of contractors, suppliers and consultants from the Member States and the ACP States;
- (c) the need to avoid excessive increases in the cost of performance of the contract;
- (d) transport difficulties or delays due to delivery times or other similar problems; and
- (e) technology that is the most appropriate and best suited to local conditions.

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

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

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

(c) in the case of emergency assistance.

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

ARTICLE 23

Competition

1. To simplify and streamline the general rules and regulations for competition and preferences for EDF financed operations, contracts shall be awarded through open and restricted procedures as well as framework contract, direct agreement contracts and direct labour as follows:

(a) open international invitation to tender through or after the publication of a procurement notice in accordance with the provisions of this Agreement;

(b) open local invitation to tender where the procurement notice is published exclusively in the beneficiary ACP State;

(c) restricted international invitation to tender where the Contracting Authority invites a limited number of candidates to take part in the call for tender after the publication of a pre-information notice;

(d) direct agreement contracts which involve simplified procedure where the publication of the procurement notice is dispensed with and the Contracting Authority invites a limited number of service providers to present their offers; and

(e) direct labour agreement where contracts are performed through public or semi-public agencies and departments of the beneficiary States concerned.

2. Contracts financed from the Fund shall be concluded in accordance with the following provisions:

(a) works contracts of a value :

(i) higher than EUR 5 000 000 shall be awarded in an open international invitation to tender;

(ii) between EUR 300 000 and EUR 5 000 000 shall be awarded through an open local invitation to tender; and

(iii) lower than EUR 300 000 shall be awarded by direct agreement contract which involves a simplified procedure without publication of a procurement notice.

(b) supply contracts of a value :

(i) higher than EUR 150 000 shall be awarded through an open international invitation to tender;

(ii) between EUR 30 000 and EUR 150 000 shall be awarded through an open local invitation to tender; and

(iii) below EUR 30 000 shall be awarded by direct agreement contract which involves a simplified procedure without publication of a procurement notice.

- (c) service contracts of a value :
- (i) higher than EUR 200 000 shall be awarded through a restricted international tender after publication of a procurement notice; and
 - (ii) below EUR 200 000 shall be awarded by direct agreement contract which involves a simplified procedure or a framework contract.
3. For works, supply and service contracts with a value of EUR 5 000 or less, these can be awarded directly without competition.
4. In case of restricted invitation to tender, a short-list of prospective tenderers shall be drawn up by the ACP State or States concerned in agreement with the Head of Delegation following, where applicable, a call for pre-qualification of tenders based on the publication of a procurement notice.
5. In case of 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 Articles 20 to 22 and award the contract to the tenderers whom it has selected.
6. The ACP States may request the Commission to negotiate, draw up, conclude and implement service contracts directly on their behalf or through its relevant agency.

ARTICLE 24

Direct labour

1. In case of direct labour operations, projects and programmes shall be implemented through public or semi-public agencies or departments of the State or States concerned or by the person responsible for executing the operation.
2. The Community shall contribute to the costs of the department involved by providing the equipment and/or materials that it lacks and/or resources to allow it to acquire additional staff required in the form of experts from within the ACP States concerned or other ACP States. The 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 25

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 Head of Delegation, authorise:

- (a) the conclusion of contracts by direct agreement;
- (b) the performance of contracts by direct labour;
- (c) implementation through specialised agencies; and
- (d) direct implementation by the Commission.

ARTICLE 26

Preferences

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 optimisation of the physical and human resources of those States. To this end:

- (a) for works contracts of a value of less than EUR 5 000 000, tenderers 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:
 - (i) experts, institutions or consultancy companies or firms from ACP States where tenders of equivalent economic and technical quality are compared,
 - (ii) offers submitted by an ACP firm in a consortium with European partners, and
 - (iii) offers presented by European tenderers with ACP sub-contractors or experts.

- (d) where subcontracting is envisaged, preference shall be given by the successful tenderer to natural persons, companies and firms of ACP States capable of performing the contract required on similar terms; and
- (e) the ACP State may, in the invitation to tender, 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 27

Award of contracts

1. Without prejudice to Article 24, 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; and
 - (iii) 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 organisation 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
 - (iii) is a consortium of natural persons, companies and firms from ACP States and the Community.

ARTICLE 28

General regulations for contracts

1. The award of contracts financed from the resources of the Fund shall be governed by this Annex and the procedures which shall be adopted by decision of the Council of Ministers at the first meeting following the signing of this Agreement, upon the recommendation of the ACP-EC Development Finance Cooperation Committee. These procedures shall respect the provisions of this Annex and the Community's procurement rules for cooperation with third countries.

2. Pending the adoption of these procedures, the current EDF rules as contained in the current general regulations and general conditions of contracts shall apply.

ARTICLE 29

General conditions for contracts

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 Agreement, upon the recommendation of the ACP-EC Development Finance Cooperation Committee; or
- (b) in the case of co-financed 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 for contracts 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 30

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 Agreement, upon the recommendation of the ACP-EC Development Finance Cooperation Committee.

ARTICLE 31

Tax and customs arrangements

1. 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 organisations with which they have relations. For the purpose of determining the most-favoured-nation (MFN) treatment, account shall not be taken of arrangements applied by the ACP State concerned to other ACP States, or to other developing countries.

2. Subject to the above provisions 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 realise 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 these 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; and
 - (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.
3. Any matter not covered by the above provisions on tax and customs arrangements shall remain subject to the national legislation of the ACP State concerned.

CHAPTER 5

MONITORING AND EVALUATION

ARTICLE 32

Objectives

The objective of monitoring and evaluation shall consist in the regular assessment of development operations (preparation, implementation and subsequent operation) with a view to improving the development effectiveness of on-going and future operations.

ARTICLE 33

Modalities

1. Without prejudice to evaluations carried out by the ACP States or the Commission, this work will be done jointly by the ACP State(s) and the Community. The ACP-EC Development Finance Cooperation Committee shall ensure the joint character of the joint monitoring and evaluation operations. In order to assist the ACP-EC Development Finance Cooperation Committee, the Commission and the ACP General Secretariat shall prepare and implement the joint monitoring and evaluations and report to the Committee. The Committee shall, at its first meeting after the signature of the Agreement, fix the operational modalities aimed at ensuring the joint character of the operations and shall, on a yearly basis, approve the work programme.

2. Monitoring and evaluation activities shall notably:
 - (a) provide regular and independent assessments of the Fund's operations and activities by comparing results with objectives; and thereby

 - (b) enable the ACP States and the Commission and the Joint Institutions, to feed the lessons of experience back into the design and execution of future policies and operations.

CHAPTER 6

MANAGEMENT AND EXECUTING AGENTS

ARTICLE 34

The Chief Authorising Officer

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

2. The Chief Authorising Officer shall:
 - (a) commit, clear and authorise expenditure and keep accounts of commitments and authorisations;

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

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

- (d) prepare the tender dossier before the invitations to tender are issued, for:
 - (i) open international tender, and
 - (ii) restricted international invitation to tender with prequalification.
 - (e) approve the proposals for the placing of contracts subject to the powers exercised by the Head of Delegation under Article 36;
 - (f) ensure publication in reasonable time of international invitations to tender.
3. The Chief Authorising Officer shall, at the end of each year, make available a detailed balance sheet of the Fund showing balances of contributions paid into the Fund by the Member States and global disbursements in respect of each financing heading.

ARTICLE 35

National Authorising Officer

1. The Government of each ACP States shall appoint a National Authorising Officer to represent it in all operations financed from the resources of the Fund managed by the Commission and the Bank. The National Authorising Officer may delegate some of these functions and shall inform the Chief Authorising Officer of any such delegation. The National Authorising Officer shall:
- (a) in close cooperation with the Head of Delegation be responsible for the preparation, submission and appraisal of projects and programmes;

- (b) in close cooperation with the Head of Delegation, issue invitations for local open tender, receive tenders, both local and international(open and restricted), preside over the examination of tenders, establish the results of this examination, sign contracts and riders thereto and approve expenditure;
- (c) submit, before issuing local open invitations to tender, the invitation to tender dossier to the Head of Delegation who shall give his agreement within 30 days;
- (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 results of the examination of and a proposal for placing the contract to the Head of Delegation for his approval within the time limits set out in Article 36;
- (f) clear and authorise expenditure within the limits of the funds assigned to him; and
- (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 Authorising Officer shall, during the execution of operations and subject to the requirement to inform the Head of Delegation, 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 Head of Delegation 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; and
- (k) hiring of consultants and other technical assistance experts.

ARTICLE 36

Head of delegation

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

2. To this end, and in close cooperation with the National Authorising Officer, the Head of Delegation shall:
 - (a) at the request of the ACP State concerned, participate and give assistance in the preparation of projects and programmes and in negotiating technical assistance contracts;
 - (b) participate in appraising projects and programmes, preparing tender dossiers and seeking ways to simplify project and programme appraisal and implementation procedures;
 - (c) prepare financing proposals;
 - (d) approve, before the National Authorising Officer issues them, the local open invitation to tender and the emergency assistance contract dossiers within 30 days of their submission to him by the National Authorising Officer;

- (e) be present at the opening of tenders and receive copies of them and of the results of their examination;
- (f) approve, within 30 days, the National Authorising Officer's proposal for the placing of local open tenders, direct agreement contracts, emergency assistance contracts, service contracts and works contracts with a value less than EUR 5 million and supply contracts with a value less than EUR 1 million;
- (g) for all other contracts not covered by the above, approve within 30 days the National Authorising Officer's proposal for the placing of the contract wherever the following conditions are fulfilled:
 - (i) the tender selected is the lowest of those conforming to the requirements of the tender dossier;
 - (ii) the tender selected meets all the selection criteria stated in the tender dossier; and
 - (iii) the tender selected does not exceed the sum earmarked for the contract.
- (h) where the conditions set out in paragraph (g) are not fulfilled, forward the proposal to the Chief Authorising Officer who shall decide thereon within 60 days of the receipt of the Head of Delegation. Where the price of the selected tender exceeds the sum earmarked for the contract, the Chief Authorising Officer shall, upon giving approval to the award, make the necessary financial commitment;
- (i) endorse contracts and estimates in the case of direct labour, riders thereto as well as payment authorisations issued by the National Authorising Officer;

- (j) ensure that the projects and programmes financed from the resources of the Fund managed by the Commission are properly executed from the financial and technical viewpoints;
- (k) cooperate with the national authorities of the ACP State where he represents the Commission in evaluating operations regularly;
- (l) communicate to the ACP State all information and relevant documents on the procedures for implementing development finance cooperation especially as regards appraisal criteria and tender evaluation criteria; and
- (m) on a regular basis, inform the national authorities of Community activities which may directly concern cooperation between the Community and the ACP States.

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

ARTICLE 37

Payments and paying agents

1. For the purpose of effecting payments in the national currencies of the ACP States, accounts denominated in the currencies of the Members States or in Euro shall 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 National Paying Agent shall receive no remuneration for its services and no interest shall be payable by it on deposited funds. The local accounts shall be replenished by the Commission in the currency of one of the Member States or in Euro, based on estimates of future cash requirements, which shall be made sufficiently in advance to avoid the need for pre-financing by ACP States and to prevent delayed disbursements.
3. For the purpose of effecting payments in Euro, accounts denominated in Euro shall be opened in the name of the Commission with financing institutions in the Member States. These institutions shall exercise the functions of Paying Agents in Europe.
4. Payments from the European accounts, which will be executed on the instruction of the Commission or by the Head of Delegation acting on its behalf, may be made in respect of expenditure authorised by the National Authorising Officer or by the Chief Authorising Officer with the prior authorisation of the National Authorising Officer.
5. Within the limits of the funds available in the accounts, the Paying Agents shall make disbursements authorised by the National Authorising Officer or, as appropriate, the Chief Authorising Officer, after verifying that the supporting documents provided are substantially correct and in order, and that the discharge given for payment is valid.
6. The procedures for clearance, authorisation and payment of expenditure must be completed within a period of 90 days from the date on which the payment becomes due. The National Authorising Officer shall process and deliver the payment authorisation to the Head of Delegation not later than 45 days before the due date.

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

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