

COMMISSION OF THE EUROPEAN COMMUNITIES

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Draft

DECISION OF THE ACP-EEC COUNCIL OF MINISTERS

In application of Annex XLVII of
the Fourth ACP-EEC Convention

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. Article 189, para. 3 of the Fourth ACP-EEC Convention specifies the conditions under which the STABEX system, which ordinarily seeks the stabilisation of earnings from exports to the Community, applies to earnings from exports to all destinations.

When the conditions are fulfilled⁽¹⁾, the ACP State concerned benefits, for the products covered by the system, from the stabilisation of export earnings to all destinations, more conveniently called : the "all destinations" derogation. It is important to note that this derogation is granted for a particular application year, after verification that the requirements of Article 189, para. 3 are fulfilled.

2. The previous ACP-EEC Conventions did not contain any comparable provisions, the stabilisation of export earnings to all destinations being granted to the requesting ACP State by decision of the ACP-EEC Council of Ministers after examination of the particular case. This *ad hoc* decision was for an unlimited period, and there was no provision for its withdrawal.
3. Annex XLVII of the Fourth ACP-EEC Convention provides that :

"The Contracting Parties agree that, without prejudice to the provisions of Article 189(3), the ACP States listed in Annex XXI to the third ACP-EEC Convention will continue to benefit from the "all destinations" derogation for an interim period of three years".

The interim period of three years corresponds to the application years 1990, 1991 and 1992. The ACP States referred to are those which benefitted from the "all destinations" derogation prior to the introduction of the Fourth ACP-EEC Convention, that is to say : Burundi, Cape Verde, the Comoros, Ethiopia, Guinea-Bissau, Lesotho, Rwanda, Western Samoa, the Seychelles, the Solomon Islands, Swaziland, Tonga and Tuvalu.

4. Annex XLVII of the Fourth ACP-EEC Convention provides also that the ACP-EEC Council of Ministers shall review the situation of the abovementioned countries, notably in the light of the trends in the intervening period in their exports of the products covered by the STABEX system, before the end of the calendar year 1993 (corresponding to the application year 1992, application years in the context of each STABEX exercise being treated *ex-post*).

(1) "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." (Art. 189, para. 3 of the Lomé IV Convention)

5. The statistical information necessary for the examination in reference not being available on the occasion of the 18th Session of the ACP-EEC Council of Ministers (Brussels, 17 and 18 May 1993), it delegated its powers in the matter to the ACP-EEC Committee of Ambassadors.

6. With the exception of the Seychelles⁽¹⁾, all the ACP States covered by Annex XLVII of the Fourth ACP-EEC Convention, and listed at point 3 above, have now provided the Commission with the statistical information required to allow the review of their situation to take place.

A summary of this statistical information will be found in the Table attached to the Proposal for a Decision of the ACP-EEC Council of Ministers in annex.

On this basis, the ACP States in question, all of which have least-developed status, can be divided into three categories :

6.1 A series of States whose exports of all the products covered by the STABEX system to extra-Community destinations vary (on the basis of the 1990-1991 and 1991-1992 averages) between 65.7 % and 100 %. These are : Guinea-Bissau, Lesotho, Western Samoa, the Solomon Islands, Swaziland, Tonga and Tuvalu. These States currently fulfill the conditions, having regard to the Fourth ACP-EEC Convention (Art. 189, para. 3), for the coverage by the system of their exports to all destinations.

6.1 One State, Cape Verde, the totality of whose exports of all the products covered by STABEX is destined for the Community (more precisely Portugal). The "all destinations" derogation was granted to Cape Verde on joining the Lomé Convention (28-3-1977), at a time when Portugal was not yet part of the Community.

6.3 A series of States - Burundi, Comores, Ethiopia, Rwanda - whose exports of all the products covered by the STABEX system to extra-Community destinations vary (on the basis of the 1990-1991 and 1991-1992 averages) between 37.3 % and 56.2 %.

Having regard to the existing provisions of the Fourth ACP-EEC Convention (Art. 189, para. 3), the States referred to at points 6.2 and 6.3 above do not fulfill the conditions to benefit from the coverage by STABEX of their export earnings to all destinations.

7. In view of the above, it appears :

7.1 that there are no grounds for granting an "all destinations" derogation to the countries mentioned at point 6.1, because these countries already have it in application of the existing provisions of the Fourth ACP-EEC Convention;

(1) In a letter of 22 April 1993 (Ref. ER/352/20), the authorities of the Seychelles informed the Commission that they did not find it necessary to provide the statistics, as none of the STABEX products exported by that country currently reaches the dependence threshold governing the eligibility of transfers (Art. 196 of the Lomé IV Convention).

7.2 that there are no grounds for granting an "all destinations" derogation to the country mentioned at point 6.2, because the totality of its exports of the products covered by STABEX is destined for the Community;

7.3 that, in relation to the countries referred to at point 6.3, the continuation of the coverage by STABEX of their exports to all destinations, by special derogation from the existing provisions of Article 189, para. 3 of the Fourth ACP-EEC Convention, is not desirable for the following reasons :

7.3.1. In general terms, it should be noted that the "all destinations" derogation as provided at Article 189, para. 3 of the Fourth ACP-EEC Convention already constitutes an exception to the general rule (that is to say : coverage of exports to Community destinations) and that in the interests of a coherent management of the system it is not desirable to add a further special derogation to the existing exception;

7.3.2. as the conditions of application of Article 189, para. 3 have already been specified in the Fourth ACP-EEC Convention, any special derogation from these conditions would mean the introduction of a new requirement, difficult to establish and justify, in contradiction with the provisions of Article 189, para 3;

7.3.3. such a requirement would evidently create a precedent, in the sense that every ACP State which would come close to fulfilling it would find itself justified in claiming the granting, by way of a special derogation, of coverage by STABEX of its exports to all destinations; it would in addition lead to discrimination between ACP States, as some of them would benefit, in relation to the granting of the "all destinations" derogation, from more favourable conditions than others.

8. Finally, it should be noted that, in the absence of a decision of the ACP-EEC Committee of Ambassadors by 31 December 1993 to continue the special derogation under Annex XLVII, the Commission will have no option, as manager of the system, but to apply Article 189, para. 3 to all ACP States.

DECISION

9. On the basis of these considerations, the Commission is requested :

- to approve the attached proposal for a Decision of the ACP-EEC Council of Ministers, under the terms of which the derogation mentioned at Annex XLVII of the Fourth ACP-EEC Convention is no longer applicable as and from 1993. The ACP States referred to in that Annex will, in relation to the granting of coverage by STABEX of exports to all destinations, be governed by the provisions of Article 189, para. 3 of the Fourth ACP-EEC Convention, from the 1993 application year.

DECISION N°
OF THE ACP-EEC COUNCIL OF MINISTERS

OF

In application of Annex XLVII of
the Fourth ACP-EEC Convention

THE ACP-EEC COMMITTEE OF AMBASSADORS,

HAVING REGARD to the Fourth ACP-EEC Convention, signed at Lomé on 15 December 1989, and notably Annex XLVII thereof,

HAVING REGARD to the decision of the ACP-EEC Council of Ministers, of 17 May 1993, delegating its authority in relation to the aforementioned Annex to the ACP-EEC Committee of Ambassadors,

CONSIDERING that Annex XLVII of the Fourth ACP-EEC Convention provides that coverage by the STABEX system of exports to all destinations, more conveniently called the "all destinations" derogation, continues to apply, for an interim period corresponding to the application years 1990, 1991 and 1992, to a series of ACP States which benefitted from it under previous Conventions, the States in question appearing at Annex XXI of the Third ACP-EEC Convention,

CONSIDERING that Annex XLVII of the Fourth ACP-EEC Convention provides also that the ACP-EEC Council of Ministers shall review the situation of the aforementioned countries, notably in the light of trends in the intervening period in their exports of products covered by the STABEX system, before the end of the interim period,

CONSIDERING that, on the basis of the statistical information provided by the ACP States concerned, some of them may benefit from coverage by STABEX of exports to all destinations having regard to existing provisions, that is to say Article 189, para. 3 of the Fourth ACP-EEC Convention,

CONSIDERING that it is not desirable, in relation to the other ACP States covered by Annex XLVII of the Fourth ACP-EEC Convention, to apply a special and supplementary derogation allowing the coverage by STABEX of exports to all destinations, such a special derogation implying the introduction of a requirement which would be in contradiction with the existing provisions of Article 189, para. 3 of the Fourth ACP-EEC Convention;

HAS DECIDED :

First Article

The derogation mentioned at Annex XLVII of the Fourth ACP-EEC Convention is no longer applicable as and from 1993. The ACP States referred to are covered, from the application year 1993, and in relation to the coverage by STABEX of exports to all destinations, by the provisions of Article 189 paragraph 3 of the abovementioned Convention.

Article 2

This decision comes into force on the date of its adoption.

ACP States covered by Annexe XLVII of Lomé IV
Percentage of total exports of Stabex products to extra-Community destinations

Country	1990	1991	1992	90/91	91/92
Burundi	20.59%	67.35%	32.62%	47.24%	51.39%
Cape Verde	0.00%	0.00%	0.00%	0.00%	0.00%
Comoros	2.87%	60.31%	50.66%	37.30%	56.24%
Ethiopia	53.29%	44.05%	63.72%	49.56%	54.57%
Guinea-Bissau	70.79%	86.17%	56.09%	80.32%	74.11%
Lesotho	100.00%	100.00%	100.00%	100.00%	100.00%
Rwanda	40.58%	42.15%	40.05%	41.55%	41.30%
Western Samoa	67.48%	100.00%	100.00%	77.86%	100.00%
Seychelles (1)	-	-	-	-	-
Solomon IIs	63.28%	68.22%	72.75%	65.68%	71.17%
Swaziland	82.70%	99.29%	100.00%	91.72%	99.57%
Tonga	92.53%	90.94%	100.00%	91.74%	95.10%
Tuvalu	100.00%	100.00%	100.00%	100.00%	100.00%

(1) In a letter of 22 April 1993 (Ref. ER/352/20), the authorities of the Seychelles informed the Commission that they did not find it necessary to provide the statistics, as none of the STABEX products exported by that country currently reaches the dependence threshold governing the eligibility of transfers (Art. 196 of the Lomé IV Convention).