

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(78) 93 final

Brussels, 9 March 1978

Proposal for a

COUNCIL REGULATION (EEC)

relating to the

Creation of a European Agency for Cooperation

(submitted to the Council by the Commission)

COM(78) 93 final

Creation of a European Agency for Cooperation (EAC).

For the purposes of implementing the Lomé Convention and similar agreements (Maghreb, Mashrek, Israel) the Commission assumes administrative responsibilities particularly in the sphere of financial and technical cooperation. A large part of these responsibilities involves the Commission applying a staff policy, since its task is:

- i. to set up, maintain and run delegations in the developing countries linked to the Community by comprehensive preferential cooperation agreements;
- ii. to recruit and manage technical cooperation staff placed at the disposal of these countries;
- iii. finally, to administer a scholarship programme for students attending the training establishments of Member States and associated states.

A specialized instrument was obviously needed to undertake these tasks. The Commission provided this instrument in 1964 in the form of a structure governed by private law which has proved effective and useful but which time has shown to be not completely satisfactory.

The purpose of this communication is therefore:

- to outline the features of the structure which was set up and the conditions under which it operates;
- to explain why this structure must develop and in what direction;
- finally, to present the draft text required for the creation of the proposed new structures.

I. THE EXISTING INSTRUMENT: THE EUROPEAN ASSOCIATION FOR COOPERATION

- (1) Origin: the Implementing Convention on the Association annexed to the Treaty of Rome

In the initial phase, from 1958 to 1964, the texts in force did not cover technical cooperation. Training programmes were likewise non-existent. In the case of capital aid, the only concern was to provide technical supervision

of the execution of projects financed by the EDF. This task was entrusted exclusively to firms of consulting engineers chosen from within the Community, which were bound by contract to the Commission and set up teams of technicians locally.

In this phase, the very idea of Commission representation was not even considered. However, events rapidly demonstrated the need to go beyond this simple technical role: circumstances required the firms of engineering consultants to answer questions raised by the Governments of the associated states which went far beyond the technical field and involved relations between the Commission and non-member countries. Consultancy firms, which were engaged in profit making activities, were not suited to assuming such a role of representation.

(2) Evolution: first and second Yaoundé Conventions

It is for this reason that 1964 saw the beginning of a second phase. Technical cooperation, which had been formalized, gave rise to extensive training programmes and the provision of experts in the most varied fields. Gradually, the Commission set up a network of 21 "EDF resident supervisors" which still existed at the end of 1975.

These resident supervisors were assisted by teams of technicians and administrative and financial staff, made up one-third of the staff of the consultancy firms retained from the preceding phase and two-thirds of staff recruited directly, like the resident supervisors themselves, under individual contracts of employment.

During this phase emphasis was placed mainly on the financial and technical supervision of the execution of projects and programmes financed by the EDF. At the end of 1975, these local teams were supervising annually the execution of 100 international invitations to tender and 2 000 contracts of various kinds, involving total disbursements of 200 million units of account. The value of these teams was generally acknowledged.

At that time, the staff of the teams totalled 120 expatriates, 78 of whom were university graduates or equivalent (like A staff officials at the Commission) and 42 were non-graduates (B category). The staff was mainly technical: 11 administrators, as against 67 civil engineers or architects, 30 agricultural and 12 financial experts. In addition to this expatriate staff there was a total of 320 staff recruited locally - secretaries, chauffeurs, caretakers and messengers (equivalent to categories C and D in the Commission). The smallest delegation employed two expatriates, the largest eight, while the average was about six.

However, as circumstances would have it, the next phase began with the appearance of new forms of aid (food aid, the Cheysson Fund, exceptional aid from budget appropriations) and the associated Governments' desire to deal with all aspects of cooperation with the Community and the Commission.

(3) The administrative structure created in 1964: the EAC

To carry out the already considerable administrative tasks described above, the Commission in 1964 chose a structure governed by private law since it did not think it advisable to enter the necessary posts in the Commission budget. Under Belgian law this structure is constituted as the European Association for Cooperation (EAC), a non-profit making association governed by international law.

The Administrative Council of the EAC is composed of Commission officials, under the chairmanship of the Director-General for Development. The EAC is responsible, under agreements concluded with the Commission, for recruiting and managing not only the resident supervisors and their staff but also the technical cooperation staff made available to the governments of the associated countries at their request, and finally, for administering scholarship-holders and trainees placed in Belgian training establishments.

The EAC budget and accounts are approved and checked by the Commission and audited by the Audit Board. The head office in Brussels has a staff of 40,

of categories A, B and C, whose terms of employment, though obviously different, can be compared with those of temporary staff. The administrative cost of this head office, financed by a grant from the Commission budget, amounts to no more than 5% of the EAC's total operating expenditure, which is financed by the EDF.

II. REASONS FOR CHANGING THE EXISTING STRUCTURE

1. Evolution after the Lomé Convention

While the administrative requirements relating to the extent of the technical cooperation and training programmes still had to be met, the Lomé Convention was signed on 28 February 1975 and came into force on 1 April 1976. It considerably widened the geographical scope of cooperation, trebled the volume of aid - which amounts to more than 3 000 million units of account for four years - and enlarged, diversified and improved the various forms of cooperation.

Very logically therefore and at the express request of the ACP States a new phase is emerging, the outline of which was already visible at the end of the preceding phase: in accordance with a specific provision of the Lomé Convention the posts of EDF resident supervisor were abolished and the Commission set up delegations in each ACP State concerned. The Delegates were officially responsible for the whole range of relations between the Community and the corresponding ACP State, in particular the various forms of cooperation defined by the Convention (trade, industrial cooperation, sales promotion, stabilization of export earnings, training, financial and technical cooperation and also those provided for outside the Convention (food aid, specific measures outside the terms of Convention: meat, cereals, NGOs). However, their role in relation to projects and programmes financed by the EDF remains vital and is even growing in importance: in their desire to decentralize from Brussels, the delegates are becoming involved in the appraisal and evaluation of projects. Economists will therefore now be needed for the task of supervising annually the execution of 200 international invitations to tender and 5 000 contracts of various kinds, involving a total annual disbursement of 600 million units of account.

In 1976, in accordance with the Convention and at the request of the ACP States, the Commission increased the number of delegations from 21 to 41. It recruits the new Delegates, establishes their teams, transfers staff to provide a mixture of nationalities and uses the experience of senior staff to help new employees settle in. Little now remains to be done to complete a network of representation which, when fully operational, will comprise 250 expatriate staff of categories A and B and 700 local staff of categories C and D.

The Lomé policy is, however, extending to the limits which were set.

In Africa and the Pacific other countries are gaining independence and acceding to the Convention; in these countries new delegations have to be set up. At the same time, three Maghreb countries, Israel and four Mashrek countries have concluded development cooperation agreements with the Community. These eight countries expressly asked that delegations be set up and this was accepted in the 1977 Budget in the case of the three Maghreb countries. In the 1978 Budget the Commission has proposed opening four delegations in the Mashrek countries and a delegation in Israel: credits have been opened to this effect in Chapter 100 of the budget. Finally, the Commission sends technical cooperation experts and develops training schemes outside the associated countries, the practical problems involved must obviously be dealt with by the same offices.

2. Role of the Commission Delegates

The Commission Delegates are concerned with all aspects of cooperation both within and outside the terms of the association agreements; their role therefore differs greatly from that of the resident supervisors of the Yaoundé Conventions and their task is singularly more delicate. For obvious political reasons the spirit of "partnership" characteristic of the Lomé policy is tending to replace the supervisory role by an advisory one, although this does not mean that the monitoring of the execution of projects or supervision of the proper use of Community funds are to be relaxed. And yet it is not always easy to reconcile these two ideas.

The extent of relations with the Member States' diplomatic missions is increasing. The deliberately non-diplomatic style of the delegates, the technical nature of their activities, the practical and operational nature of the programmes which

they monitor, have helped greatly to create and maintain a climate of cooperation which is developing smoothly: systematic exchanges of information on bilateral and Community aid, joint visits to projects financed by European aid, inaugurations, consultation. Since Lomé this aspect has increased because the Member States have stated that they wish to approve Community schemes only after there has been careful coordination with bilateral aid.

Events have also necessitated a network for the coordination of efforts with those of non-member countries' aid organizations (in particular those of the Arab countries, but also those of the United States, Canada, etc.) and international organizations; here the Commission plays a leading role, in Brussels via its departments and on a local level via its Delegates. The organization of numerous cofinancing operations with the IBRD, US, Canadian, Arab and Member States' aid has even enabled the Commission on a number of occasions to take the lead by using EDF procedures and the Delegates' services to monitor, on behalf of all providers of funds, the execution of cofinanced projects. This trend is even being accentuated, for the number of large-scale projects is increasing, while, on the other hand, the Arab funds are now making their appearance and they show confidence in the Commission, whose "triangular" policy is known and appreciated.

3. Reasons for changing the structure and principles to be applied

At the final stage of this evolution, it has to be noted that the exercise of such responsibilities by the Commission and its Delegates is somewhat surprising, if not abnormal when it has to be done through and under the administrative control of a private company. It is also shocking that because the Association is a private company, the Community must, under common law, pay taxes to a Member State on sums which come from the contributions of the other Member States and will in future come from the Community budget (for the wages and salaries of the EAC staff, the Delegates, services, etc.). Clearly, in view of the facts of the matter and the way in which the Association has evolved the structure must undergo a radical transformation. Budgetization of Community development aid, begun in the 1976 Budget with provision for aid to non-associated developing countries, followed up in the 1978 Budget with aid to the countries of the Maghreb and Mashrek, will be completed by the budgetization of the EDF which is proposed by the Commission in its memorandum on the renewal of the Lomé Convention. This can only underline the need to set up a new structure in accordance with three fundamental principles.

- (a) Whatever the responsibilities assumed and the functions performed, these responsibilities and functions are concerned essentially with the representation of public authority. What is more, these responsibilities and functions derive from an international treaty. A direct hierarchical link of the kind provided for under the Staff Regulations must therefore be created between the Commission Delegates and the Commission itself. Only a public structure, replacing a private association, can enable such an objective to be attained.
- (b) This public structure must, however, preserve the advantages which have constituted the strength and contributed towards the effectiveness of the twelve-year old private organization, namely flexibility and autonomy of management. Experience has shown that this is essential. It is a matter of administering, from afar - between 5 000 and 20 000 kilometres from headquarters - a relatively small but high-quality staff in respect of which the avalanche of minor day-to-day practical problems can be properly dealt with only by a flexible and understanding organization capable of reacting immediately.
- (c) Finally, this structure must allow a proper staff mobility policy to be organized, for the benefit of the employees as well as of the Commission itself, which will permit osmosis between headquarters staff and the staff of the overseas branches. Here too, only a public structure, dependent on the Commission and organized by it, can permit the necessary interpenetration.

III. THE NEW INSTRUMENT PROPOSED: THE EUROPEAN AGENCY FOR COOPERATION

The way in which the Association has evolved - the main features of which have been outlined - the reasons for transforming the existing structures and the principles to be observed in directing this transformation all combine to justify the new structure which it is proposed to the Parliament and the Council be created: a public Commission agency, set up by the Council on the basis of Article 235 of the Treaty, which would have to administer the following five categories of staff:

- The Commission Delegates; the first steps towards bringing them under the Staff Regulations applying to Commission staff was taken with the creation in the 1977 Budget of ten temporary posts and the allocation of three posts under the 1978 Budget. This category of staff will be administered directly by the Commission, and the Agency will merely see to the practical administration

- The advisers and members of the delegations, for whom it would be inadvisable to create a direct link with the Commission under the staff Regulations by requesting that the corresponding 210 posts be created in the list of posts. These are experts whose work requires them to travel a lot and whose job involves carrying out technical tasks of limited duration; depending on the nature of the programme to be carried out in each country or the stage reached in the implementation of those programmes they may be transferred to another country or given other duties (technical cooperation made available to States) or replaced by other experts with a different technical training.
- Technical cooperation experts placed at the disposal of States receiving Community aid, who take their instructions from those States and who could not therefore be linked directly to the Commission.
- Staff recruited in accordance with the laws and regulations of the States in which they are required to perform their function and subject to local conditions of employment.

The staff of the Agency headquarters have been the subject of submissions to the Court of Justice suggesting that they be recognized as civil servants. The Commission will make proposals at the appropriate time taking account of the verdict of the Court.

In addition, the Agency will participate in the execution of the programme of scholarships and traineeships in Belgium, and possibly in other European countries, for nationals of the developing countries, in particular with regard to the aspect of following up training and that of welfare: assignment to educational establishments and enrolment of candidates, organization of traineeships, travel arrangements, reception of scholarship-holders and assistance in finding accommodation, etc.

The Commission therefore has the honour to propose in the Annex a draft Council Regulation establishing a European Agency for Cooperation.

This text lays down the conditions governing the establishment of the Agency, its objectives - which are no different from those of the present Association - the composition of its Administrative Board, its powers and those of its director, its resources, the conditions governing the establishment of its budget, the rendering of its accounts to the Parliament and the Council, the auditing of its operations by the Court of Auditors and the law applicable to contracts concluded by the Agency under the supervision of the Court of Justice

Since the proposed body will be a Commission agency, set up to enable the Commission to assume the administrative responsibilities incumbent upon it under the cooperation agreements concluded by the Community, the draft Council Regulation refers to a Commission regulation for the practical details.

Main features of the proposed new instrument

- (a) Under the present conditions, the Agency budget will amount to approximately 30 million units of account per year, shared between headquarters expenditure (financed by the Commission budget) and overseas operating expenditure financed by the EDF until the budgetization of the latter in 1980. Headquarters expenditure will not exceed 5% of the total operating expenditure.
- (b) The Agency staff will include the staff of the Delegations and the technical cooperation staff placed at the disposal of Governments at their request. The arrangements applied to all these categories of staff will be determined by contracts, the clauses of which will be established by the Agency and will be subject to approval by the Commission.

They will be based mainly on the provisions in force but will of course observe the principle of maintaining the advantages acquired.

- (c) In short, the Agency will be not so much a new creation as the legal transformation of an existing instrument. The staff exists and the budgetary resources have been earmarked. The proposed reform does not therefore entail any immediate financial consequences, except in the sense of a reduction in expenditure, since as a result of the transformation of the EAC into a public Commission agency, taxes paid in Belgium and other Member States in the form of tax on the income of the staff of a private company will no longer be payable.

The reform is, however, a far-reaching one. It will provide the Commission with a public structure for implementing a policy which is public and not private. It will put an end to a paradox brought about by circumstances but which has been totally called into question by the course of events, by the change in the form in which the Commission is represented in the developing countries, and by the progressive budgetization of Community development aid.

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COUNCIL REGULATION

establishing a European Agency for Cooperation

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,
and in particular Article 235 thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament,

Whereas the ACP-EEC Convention of Lomé, and in particular Protocol No 2 thereto,
had led to the opening in the ACP States of forty-one Commission Delegations,
the staff of which must be administered under the best possible conditions;

Whereas similar Delegations will be opened in other countries linked to the
Community by comprehensive preferential cooperation agreements;

Whereas, under or independently of the Lomé Convention, the ACP States and
other developing countries enjoy a range of technical assistance and cooperation
schemes financed by the Community, and whereas it is necessary to recruit and
administer the experts responsible for executing those schemes and to undertake
the practical organization of training schemes;

Whereas, in order to facilitate the Commission's task and ensure the necessary
flexibility, effectiveness and mobility in the administration of the experts
serving overseas, a European Agency for Cooperation should be set up in the form
of a Community body with public status under the aegis of the Commission, from
which it will receive its directives;

Whereas the powers required for the creation of such an Agency are not provided
for in the Treaty;

Whereas the Agency will be set up within the framework of the European Communities
and will function in accordance with Community law and in compliance with the

directives which it receives from the Commission; whereas the conditions under which certain general provisions will apply should be defined,

HAS ADOPTED THIS REGULATION:

Article 1

A European Agency for Cooperation, hereinafter referred to as "the Agency", is hereby established.

Article 2

The task of the Agency shall be to assist the Commission in:

- (a) recruiting, installing and administering experts:
 - placed at the disposal of Commission Delegations established in developing countries which are linked to the Community by comprehensive preferential cooperation agreements;
 - who are to undertake technical assistance or cooperation tasks financed by the Community in favour of the developing countries;
- (b) administering the locally-recruited Delegation staff;
- (c) participating in executing the programme of scholarships and traineeships in Belgium and possibly other European countries for nationals from the developing countries, with regard to the aspect of following up training schemes and that of welfare.

Article 3

1. The Agency shall be non-profit making. It shall enjoy in the Member States the most extensive legal capacity accorded to legal persons.
2. The seat of the Agency shall be in Brussels.

Article 4

The Agency shall comprise:

- an Administrative Board,
- a Director.

Article 5

1. The Administrative Board shall consist of not less than five and not more than thirteen members designated by the Commission and chosen from within its staff.
2. The term of office of members of the Administrative Board shall be five years. It shall be renewable. Upon the expiry of their term of office or in the event of their resignation, members shall remain in office until their appointments are renewed or until they are replaced.
3. The Administrative Board shall elect its chairman, a deputy chairman, an Administrator-Delegate and a secretary from among its members.

Article 6

The Administrative Board shall meet as often as the interests of the Agency require and at least once a year. Its members shall be convened by the Chairman or Deputy Chairman.

The members shall be entitled to be represented by one of their colleagues with special authorization to attend the meeting in question. A member may represent only one of his colleagues.

Article 7

If the Chairman is unable to attend, the Board shall be chaired by the Deputy Chairman or, if the latter is unable to attend, by the Administrator-Delegate.

Article 8

For decisions to be adopted, not less than five of the members must be present. Decisions shall be taken by a simple majority of those voting. In the event of a tie, the Chairman shall have the casting vote.

Article 9

1. The Administrative Board shall administer the Agency, whose guidelines it shall lay down.
2. It shall decide whether to accept any legacy, donation or subsidy from sources other than the Community

Article 10

1. The director of the Agency shall be appointed by the Commission from a list of candidates submitted by the Administrative Board.
2. The director shall be appointed for a maximum period of five years. His term of office shall be renewable.

Article 11

1. The director shall implement the decisions of the Administrative Board and shall be responsible for the day-to-day running of the Agency. He shall be the legal representative of the Agency.
2. The director shall prepare and organize the work of the Administrative Board. He shall participate in an advisory capacity in the work of the Board.
3. The director shall be accountable to the Administrative Board for the running of the Agency.

Article 12

1. By 31 March of each year at the latest, the director shall prepare a general report on the activities, financial situation and future guidelines of the Agency and shall submit it to the Administrative Board.
2. After its adoption by the Administrative Board, the report shall be forwarded to the Commission.

Article 13

The Administrative Board shall draw up a balanced statement of all revenue and expenditure for each financial year, which shall be the same as the calendar year.

Article 14

The Agency's revenue shall comprise:

- the subsidy included under a specific entry in the budget of the European Communities,
- the subsidy authorized by the Commission from the resources of the European Development Fund,
- any other resources.

Article 15

1. The Administrative Board shall, by 31 March each year, at the latest, send the Commission an estimate of revenue and expenditure. This estimate shall be adopted by the Commission who will forward it to the budgetary authority with the preliminary draft budget of the European Communities.
2. The Commission will also forward this estimate, for their opinion, to the European Development Fund Committee set up by the Internal Agreement on the financing and administration of Community aid, signed on 11 July 1975, accompanied by the financing proposal covering the Delegations' expenditure.
3. The Commission shall adopt the estimate of revenue and expenditure before beginning of the financial year, adjusting it to the subsidies granted by the budget authorities.

Article 16

Without prejudice to the provisions of the general Financial Regulation and of the EDF Financial Regulation, the provisions concerning the Agency's relations with the Commission and the internal administrative and financial arrangements applicable to the Agency shall be the subject of a regulation adopted by the Commission, the text of which shall be published in the Official Journal of the European Communities. This Regulation shall lay down the principles governing the financial administration and the execution of the estimate, the auditing of revenue and expenditure, the conclusion of contracts, the keeping of accounts and the inventory of movable and immovable assets.

Article 17

1. The general terms of employment, the general system of remuneration, allowances and additional payments for staff shall be determined, by analogy with the provisions applicable to the temporary staff of the Communities, by the Commission.

Article 18

1. The Administrative Board shall by 31 March at the latest send the accounts of all the revenue and expenditure of the Agency for the preceding financial year to the Commission and to the Court of Auditors.

The latter shall examine them in accordance with the second paragraph of Article 206(b) of the EEC Treaty.

2. The Commission shall submit the accounts and the report of the Court of Auditors together with its own comments, to the Council and to the European Parliament by 31 October at the latest. A discharge shall be given to the Administrative Board in respect of the financial administration of the Agency under the procedure laid down in Article 206(c) of the EEC Treaty.
3. The Financial Controller of the Commission shall be responsible for checking the commitment and payment of all expenditure and the recording and recovery of all revenue of the Agency.

Article 19

Members of the Administrative Board, the director, the staff and all other persons participating in the activities of the Agency shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy.

Article 20

The Protocol on the privileges and immunities of the European Communities shall apply to the Agency.

Article 21

1. The contractual liability of the Agency shall be governed by the law applicable to the contract in question.

The Court of Justice of the European Communities shall have jurisdiction in all disputes between the Agency and its staff within the limits and on the conditions laid down in the Staff Regulations applicable to the latter.

2. In the case of non-contractual liability, the Agency shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by the Agency or its staff in the performance of their duties.

The Court of Justice of the European Communities shall have jurisdiction in disputes relating to compensation for any such damage.

Article 22

The Agency shall be placed under the supervision of the Commission, which will give it its directives.

Member States, members of the Administrative Board and third parties directly and personally involved may refer to the Commission any act of the Agency, whether express or implied, for the Commission to examine the legality of that act.

Referral shall be made to the Commission within 15 days of the day on which the party concerned first became aware of the act in question.

The Commission shall take a decision within one month. If no decision has been taken within this period, the case shall be deemed to have been dismissed.

Article 23

This Regulation shall enter into force on the third day following its publication in the Official Journal of the European Communities.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at

For the Council
The President

FINANCIAL STATEMENT

1. Until the EDF is budgetized (i.e. until financial 1980), the creation of a European Agency for Cooperation will not involve **additional** expenditure for the Budget. The administrative expenditure incurred by the headquarters of the existing AEC is covered by a Commission subsidy (Article 9340 of the Budget). The headquarters of the Agency will be financed in the same way, which under present conditions will mean approximately 2.6 million EUA for the 1978 Budget. Similarly, the operating expenditure concerning the delegations in the Maghreb and Mashrek countries and in Israel has already been entered, and will continue to be, in Article 9431 of the Budget (820,000 EUA for financial 1978, plus 379,100 EUA in Chapter 100). The operating expenditure of the delegations in the ACP countries is covered by EDF appropriations.
2. Turning the AEC into an official Community Agency will mean a saving for the Budget since it will put an end to the payment to Belgium of taxes payable on the salaries of Brussels-based staff, to whom Belgian law applies. Going by the figures in the 1978 Budget, some 760,000 EUA will be saved in this way.
3. Once the EDF is budgetized (on 1 March 1980), as the Commission proposes in its memorandum on the future negotiations for the renewal of the Lomé Convention, the appropriations needed to finance the delegations in the ACP countries will have to be entered in the Commission's Budget, in addition to the volume of aid. How many ACP States will sign the future Convention, and therefore how many delegations will have to be maintained or opened, is not yet known, and so it is not possible to say exactly what the budgetary implications will be, but as a rough idea, the cost for the EDF of running 41 delegations in 1978 is 26.2 million EUA.