EUROPEAN COMMUNITIES
COMMISSION

THE SECOND YAOUNDE CONVENTION

Great Possibilities for Private Investment in Africa

SUMMARY

AASM : Associated African States and Madagascar
EEC : European Economic Community
EDF : European Development Fund
EIB : European Investment Bank

I. THE YAOUNDE CONVENTION

A new agreement between the European Economic Community (EEC), and the Associated African States and Madagascar (AASM) (1) came into force on January 1st 1971. Like the previous convention it was signed in Yaoundé, the Cameroon capital, and so is called the second Yaoundé agreement.

The business world has so far hardly noticed the attractive financial advantages offered by this agreement, probably because the text of this second convention is even more complex than the first. Although there are only 14 clauses which deal with financial and technical development aid, the protocols, rulings, internal agreements, regulations, decisions and declarations etc. run to several hundred articles. The following summary looks in detail at the inducements offered by the Second Convention to private investment in the 17 African states, Madagascar and those overseas territories (2) still dependent on France and the Netherlands. The information may also prove useful to firms interested in trade and in projects financed by the European Development Fund.

II. THE EVER-GROWING IMPORTANCE OF COMMUNITY AID TO AFRICA — A BRIEF LOOK AT ITS PAST, PRESENT AND FUTURE

There have been special links between « AASM » countries and the EEC since the latter was founded. It was then decided that in addition to the commercial advantages, the EEC member states would have a certain responsibility for providing development aid via the European Development Fund. After independence, existing links between African countries and the EEC were sustained by the first Yaoundé Convention (1964-1969). Those states which remained dependent on France and the Netherlands similarly continued to receive aid. Under this agreement the European Investment Bank undertook to make loans to Associate member states out of its own ressources.

Under the Second Convention, the fundamental principles of the First remain unchanged, namely : free trade and development aid. The states bound by this Convention remain the same and the overseas dependent territories will still be able to benefit from aid schemes.

The following table shows (a) the amount of aid already granted and (b) the amount still to be granted to the 18 AASM countries (population approx 70 million) and the overseas dependencies (population approx. 2.5 million).

(1) AASM : Burundi, Cameroon, Central African Republic, Chad, Congo (Brazzaville), Dahomey, Gabon, Ivory Coast, Madagascar, Mali, Mauritania, Niger, Rwanda, Senegal, Somali Republic, Togo, Upper-Volta, Zaïre.

(2) Overseas countries, territories and departments : Dutch Antilles, French territory of the Afars and the Issas, the Comoro Islands, Guadeloupe, Guyana, Martinique, New Caledonia, French Polynesia, Réunion, St-Pierre-et-Miquelon, Surinam, Wallis and Futuna.

	AASM	Overseas Dependencies	Total
	(In millions of european units of account 1 E.U.A. = 1 US $ before devaluation)		
1st European Development Fund (1-1-1958 - 31-12-1962)			
Subsidies alone			581,25
Yaounde 1 (1-6-1964 - 31-5-1969)	730	70	800
Breakdown:			
1. 2nd European Development Fund	666	64	730
a) subsidies	(620)	(60)	(680)
b) special loans	(46)	(4)	(50)
2. European Investment Bank loans	64	6	70
Yaounde 2 (1-1-1971 - 31-1-1975)	918	82	1.000
Breakdown:			
1. 3rd European Development Fund	828	72	900
a) subsidies	(748)	(62)	(810)
b) special loans and subscription to risk capital (*) . .	(80)	(10)	(90)
2. European Investment Bank loans	90	10	100
Total aid over the period 1-1-1958 - 31-1-1975			2.381,25
Breakdown:			
a) subsidies (1st, 2nd and 3rd European Development Fund)			(2.071,25)
b) Special loans (2nd and 3rd European Development Fund)			(140)
c) European Investment Bank loans			(170)

(*) To these must be added payments made to the Bank over the period of the new Convention, by the beneficiaries of special loans granted after 1-6-1964 (minus the European Investment Bank's commission). This includes « swapped » commodities and cash put up as risk capital (article 19, paragraphs 1 and 2 of the Internal Agreement on Financing). The financial ressources of European Development Fund are provided by the credits set aside in the member states' budgets. West Germany and France assume the largest share: about a third each of the total.

The finances for the EDF have been provided by loans to the budgets of the EEC member states. Germany and France have taken upon them the major part of this financial effort by each contributing about a third of the necessary funds.
It must be borne in mind, however, that with the imminent entry of the United Kingdom into the Community, it is likely that from 1975 almost all the former British colonies in black Africa will become associates of the enlarged Community. The Convention would then affect an African population almost three times as large as at present.

This is why private investors should begin to plan their investments and other commercial projects as soon as possible.
The following is a detailed account of the aspects of the new Convention which are most likely to interest private business.

III. BIG FINANCIAL INDUCEMENTS OFFERED BY YAOUNDE CONVENTION TO THE PRIVATE INVESTOR

a) **The economic sectors which benefit from aid**

As the table on page 6 shows, the EEC is providing the AASM countries and the Overseas Territories with a large amount of aid — a billion units of account (until 1971, a billion US dollars) — over the period January 1st, 1971 — December 31, 1975. This is how the Community aims to play its part in « promoting economic and social development in the Associate states » (and the Overseas Territories) « by complementing the action taken by the states themselves » (article 17 of the Yaounde Convention). Although almost all economic sectors qualify for aid, the Convention marks out the following for special attention :

— Industry
— Tourism
— Agriculture
— The Social and Economic Infrastructure (special measures are planned to provide facilities for the newly arrived industries and crafts)
— Promotion of exports from the Associate countries.

The financial aid will provide scientific and technical knowledge as well as direct investments.

b) **Types of project which qualify for aid**

Apart from subsidies granted to meet exceptional situations (article 20 of the Yaounde Convention) [1], only specifically designed, locally

(1) Exceptional situations causing the ruin of a country's economy by unforseeable events such as natural disasters or a drastic fall in world prices of a staple commodity qualify for aid under this heading. Appropriate aid is granted in kind or in agricultural supplies (chemical fertilizers, seeds etc.).

suitable schemes qualify for aid. Particular attention is paid to the difficulties posed by natural conditions in deciding which projects should receive Community finance. Other factors are the special problems of the least-favoured states and regional co-operation between African countries. As far as is possible, precedence is to be given to « integrated projects ». By this is meant a number of interdependent measures, the most important one being a capital investment in the productive sector concerned, designed to achieve the same object.

Community aid mostly finances « investments » in the broad sense given to the word in article 1 of Protocol 6. They include :

a) directly productive investments, above all in industry and tourism ;

b) development aid to rural economies, to raise productivity, diversify production and improve structures. Such projects may include short term schemes such as agricultural education campaigns as well as applied research programmes within the framework of each specific project ;

c) « investments in the economic and social infrastructure, including facilities for newly arrived industries and crafts ».

Technical aid can be tied in with these investments or granted separately too. Under article 2 of Protocol no. 6 are listed various examples of technical aid tied to investments :

a) « planning and once only and regional development studies ;

b) technical, economic and commercial studies as well as research and survey projects which are essential for plan formulation ;

c) aid in compiling studies ;

d) aid in carrying out and supervising the project ;

e) temporay aid for the setting up, starting up and operating of a specific investment project or plant. This includes giving necessary training to staff for the running and maintenance of the plant and its machinery ;

f) temporary supervision of technicians and provision of the materials needed for the completion of the plant and its start-up. »

Under article 3 of Protocol no. 6 are listed the main types of technical aid not tied to plant investment :

a) « granting to persons from Associate states of scholarships, traineeships and correspo de ce courses to be pursued i their home countries ;

b) organisation of special training programmes in the Associate states for the staff of public institutions and services and of private companies in such countries ;

c) posting to Associate states at their request, of experts, advisers, technicians and instructors from the EEC countries or Associate countries for specific jobs and limited periods ;

d) provision of equipment for experiments and educational demonstrations ;

e) organisations of short training courses for persons from Associate countries and refresher courses for civil servants from these states ;

f) sector-by-sector studies ;

g) surveys on the prospects and best means of developing and diversifying the economies of the Associate countries and studies of problems common to all these countries ;

h) the provision of general information and documentation for the economic and social development of Associate countries, for the development of trade between these countries and the EEC, as well as for the achievement of aims of technical and financial cooperation ».

It must also be mentioned that under article 25, paragraph 1 a) of the Yaounde Convention, aid can be granted in exceptional circumstances to private companies which offer to train more specialists than they need.

There are additional provisions for sales campaign assistance (article 4 of Protocol no. 6) especially in enabling AASM countries to take part in international fairs and exhibitions through substantial contributions to the relevant expenses. Also envisaged are market studies and rationalisation of sales campaign methods in the AASM countries.

c) **Who benefits from aid ?** (1)

For projects approved by the state concerned, private companies may receive loans and subscriptions to risk capital but not non-refundable subsidies unless the case is exceptional and involving specific actions of technical aid (see b).

A. The following may receive all forms of Community aid :

— the state concerned ;

— corporate bodies in the state concerned whose activities are not primarily profit-making but rather likely to benefit the community as a whole and which come under state control ;

— co-operatives and similar bodies recognised by the states concerned;

— where there are no co-operatives, the producers themselves ;

— regional and interstate bodies to which the Associate countries belong.

(1) Cf. III B : « Types of project which qualify for aid ».

The following may receive study and training grants :

— specialised institutes and centres ;
— private companies which undertake the training of more specialists than they need ;
— scholars and trainee-apprentices ;
— students on training courses.

B. Companies trading according to industrial and commercial practices may receive : ordinary loans from the EIB with or without interest rebates ; « special » loans from the EDF ; and subscriptions to risk capital provided that they are set up as companies in Associate states according to article 35, paragraph 2 of the Yaoundé Convention [1].

Leoans cannot be made unless the country concerned is already in a position to service its debts or will be able to as a result of the investment. The private investor should in all cases consult either the EIB or the Commission as early as possible.

The Community will usually finance directly productive investments. It will also provide aid if the project requires water supply or means of access. If these facilities also serve the community at large, the state concerned may receive unrefundable subsidies from the EDF. Productive investments are thus encouraged and their profitability more likely.

Private businesses may also receive certain forms of technical aid paid for by subsidies from the Community if their projects are connected with Community investments ; for example advance investment studies and specialist training of part of the work force.

d) Methods of financing prescribed by the Yaounde convention

1. *General Principles*

Community aid does not only meet foreign currency requirements but il can also cover costs denominated in local currencies.

The following types of financing are possible for investments :

a) ordinary loans from European Investment Bank ressources ;
b) ordinary EIB loans with various interest rebates covered by the European Development Fund ;

(1) Article 35, paragraph 2 reads : « Companies in Associate states are set up according to local legislation and have their legal base, head office or chief operating unit in the Associate state. Where companies have only their legal base in the Associate countries, there must be a real and continuing connection between its activity and the economy of that state ».

c) loans made under special terms from EDF ressources ;

d) subscription to risk capital ;

e) unrefundable subsidies.

The two main conditions governing the choice of method are the profitability of the project and the beneficiary country's debt servicing capacity. The more unprofitable the project and the less capable the country to service its debts the easier the terms. Consequently the aid which any one project receives will depend on its geographical location and its profitability.

N.B. Community aid will only be granted if :

a) the prospects for general development are good and

b) if the money is used « in the most economic way » (article 28, paragraph 1 of the Yaounde Convention).

Under normal circumstances Community aid may not be used for « the day-to-day expenses of administration and upkeep » ; unless such expenses are temporary and come under a general development scheme.

We have already pointed out certain exceptions to this rule under articles 2 d), e) and f) of Protocol no. 6 (1) which deal with technical aid tied to investments. This aid is only granted after close examination of the request. A private company would only benefit from this under very exceptional circumstances.

2. *Ordinary EIB loans*

These are financed out of the Bank's own ressources and are only granted if the project's profitability and the country's debt servicing capacities are proven. The Bank studies these projects according to the yardsticks laid down in its statutes. Interest rates are worked out in line with rates ruling on the European capital markets. The interest rate valid throughout the period of the loan is that fixed by the Bank at the time of signature. Since February 26th 1971, the rate has been 8½ %.

The duration of any loan depends on the economic and financial characteristics of the project but under article 8, paragraph 2 of Protocol no. 6 it cannot exceed 25 years (2).

The EIB requires the borrower to give the usual bank guarantees and the state's guarantee may be requested too.

(1) Cf. III b) : « Types of project which qualify for aid ».
(2) Under Yaounde I the EIB provided ordinary loans for 15 projects in the following countries : Ivory Coast, Cameroons, the Congo (Brazzaville), Gabon, Mauritania, Senegal and New Caledonia. Their duration was phased over 7 to 17½ year periods. (For further details see annex 1.)

One or several member state currencies or a third country convertible currency may be used. Each repayment and interest repayment must be in the same currencies and in the same proportion. The EIB only provides additional financing, the borrower must prove that he has enough of his own capital to cover it and other borrowings.

3. *Ordinary EIB loans with various interest rebates*

When the profitability of a project is not obvious and it would be useful to stimulate a particular region or economic sector, the Bank's loans may be eased by interest rebates. Under the terms of the Convention a distinction is made between standard rebates and individually fixed rebates. Their common link is that they come out of non-refundable subsidies provided by the European Development Fund and that they may not reduce the rate to the ultimate borrower to less than 3 % (or to less than 2 % when a local development bank acts as go-between).

Standard Interest Rebates

In the internal agreement on financing and management of Community aid, situations when standard interest rebates may be applied are listed in article 7.

The rates are as follows :

a) « 2 % up to the fifth repayment year for investments in manufacturing industries situated in the main development areas of the AASM countries. (These are Abidjan, Dakar-Thies, Douala-Edea, Kinshasa and Lubumbashi) ;

b) 3 % during the duration of the loan for similar investments in regions and countries which are less industrialised and much further from ports, and for investments in the tourist industry ;

c) 2 % for their duration for loans made through financing and development bodies ».

Rebate c) may be added to a) and b) or those fixed individually so that the ultimate beneficiary obtains in all circumstances similar conditions to those in a) and b).

Here are some examples of projects provided by the EEC Commission and the European Investment Bank's document « Lean financing and the provision of risk capital under the new Yaounde Convention » July 1970 (p. 9).

1. « In the case of a loan direct to the ultimate beneficiary, the rebate granted by the EDF would reduce the rate to be paid by the company :

- to 6 % for the first five years and 8 % from the sixth year (given an EIB rate of 8 %) for a textile factory in the Doula region (hereafter called project 1);
- for the same project in the north Cameroons (hereafter called project 2) the reduction would be to 5 % throughout the loan period.

If the EIB rate stood at 5.5 %, the rate for:

- project 1 would be reduced to 3.5 % for the first five years;
- project 2 to 3 % (minimum) throughout the loan period.

2. In the case of a loan arranged through the National Development Bank (NDB) the company would pay interest to the NDB at a rate reduced to 6 % (given an EIB rate of 8 %).

   The NDB would pay:

   - a 4 % interest rate to the EIB for the first five years in the case of project 1, followed by a 6 % rate to the end of the loan period;
   - for project 2 a 3 % rate throughout the duration of the loan.

   If the EIB rate stood at 5.5 %, the rate paid to the NDB by the company would be 3.5 % for the first five years.

   The NDB would pay the EIB a rate of:

   - 2 % for the first five years for project 1;
   - 2 % for the duration of the loan as in project 2.

Individually fixed rebates

When justified from an overall economic viewpoint of the country concerned, individually fixed rebates are possible. This depends on the profitability of the project and the ability of the country to service its debts. In effect, the principle whereby the interest rate to be paid by the ultimate borrower should at least equal 3 %, holds good. It would be useful here to give some additional examples from the EEC Commission and EIB document:

1. In the case of a loan direct to the ultimate beneficiary:

   - the maximum rebate would be 5 % if the Bank's rate stands at 8 %;
   - and 2.5 % if the Bank's rate stands at 5.5 %.

   In either case the ultimate beneficiary would never pay less than 3 % and he would pay more if the rebate is not fixed at the levels mentioned above.

2. Loan arranged through the NDB :

- there is a maximum rebate of 6 % if the Bank's rate is 8 % ;
- and a maximum of 3,5 % if it stands at 5,5 %.

The beneficiary must pay the same interest rate as in 1. whereas the rate to be paid by the intermediary will never be lower than 2 %.

4. *Loans made under special terms from European Development Fund ressources*

Projects whose profitability is less obvious, which require a lengthy gestation period and present greater risks may be granted loans under special conditions. This would be likely where projects which are themselves profitable, contribute to the economic infrastructure, to agriculture and to the industrialisation of undeveloped regions.

Here again the main condition is that the country concerned is able to service its debts. An importan consideration is whether the planned investment would not increase the economy's debt servicing capacity.

Although it is conceivable for an investment to be financed by this sort of loan, such a case would be exceptional. Where a company is trading on a commercial basis, it must always put up an adequate amount of its own capital. This amount is determined of the basis of the kind of holding. A purely private company can in general hardly get a loan for more than 1/3 of the sum invested.

The interest rate is not fixed a priori but is necessarily very low ; for example the rates for the 15 special loans was between 1 and 3 % (under Yaounde 1) — for further details see annex II.

These special loans can be granted for periods up to 40 years with up to ten years of grace. (The periods under Yaounde 1 varied between 17 and 40 years and the grace periods between 3½ and 10 years. For further details see annex II.)

Differentiated terms are possible as, for example, for a moderately profitable project where the ultimate beneficiary must pay a higher interest rate than the intermediary beneficiary - i.e. the country concerned. The lower interest rate would apply to a state whose debt servicing abilities were limited and the repayment period would also be extended for the intermediary borrower. State guarantees may also be required.

Special loans are paid in the currencies of the different member countries in proportion to their contributions to the EDF. This ratio also governs interest and amortisation payments.

5. *Subscription to Risk Capital*

Under Yaounde II, the Community may also provide aid in the form of its own capital to finance companies « managed according to usual industrial and commercial practices ». Although it is also possible in theory to buy stakes in the AAMS national development banks, the member countries have agreed not to do so except in exceptional circumstances.

During the negotiations about this type of financing, member states suggested the following formulae:

— « purchase of stakes in businesses when they are set up and when they increase their capital ;

— shareholder loans whose principal repayments and interest repayments would be in line with the company's financing policy and with the terms of its other creditors ;

— subscription of bonds convertible into shares after a period fixed at the outset ;

— subsidies whose repayment terms are left very open » (1).

Only minority and temporary stake purchases are allowed. In other words they are supposed to help the project get off the ground. Once this critical stage is passed one or more third parties must be found to relieve the Community of its commitments (2).

The capital involved would be supplied by the EDF and managed by the EIB.

6. *Unrefundable Subsidies*

All technical aid is in the form of subsidies (see above for types of technical aid). A large number of investments are also financed by subsidies (in addition to loans).

Investments may be financed by non-refundable subsidies from the EEC when there is no question of profitability or when this is insufficient to cover loans — even on special terms. This also applies when the country's debt servicing capacity is insufficient and the investment in question will not in the medium term improve this adequately. In all cases the project must contribute to the economic and social development of the country and affect large sections of the population.

(1) EEC Commission and EIB document op. cit. p. 19.

(2) « Although the EIB reserves the right to offer any interested parties purchasing options, nevertheless it must aim to facilitate the transfer of the holdings to persons or institutions of the Associate states. At the same time it must not exclude the possibility of selling the holdings to other public or private persons ».
Declaration concerning article 55 (3) of the Financial Regulations.

This concerns primarily investment in the economic and social infrastructure, in agriculture, in crafts and light industries. However, within these three sectors only co-operatives and similar organisations may benefit in general from these subsidies (article 25, paragraph 1 of the Yaounde Convention). For further details concerning beneficiaries see **3 c)**.

Considerable help can be given new industries in the Associate countries by financing investments (or by providing subsidies) in the economic and social infrastructure ; for example in the construction of power stations, feeder roads, ports, workers' housing and water supply systems.

This is true even if these schemes are only subsidiary to a specific industrial project, they then become the property of the state concerned or of a public body.

7. *Possibilities of combining different forms of aid*

As a rule a project may receive a combination of various kinds of aid — including technical assistance — however, under article 9, paragraph 2 of Protocol no. 6 subscriptions to risk capital and « special » loans can be combined only in exceptional cases.

In addition the EEC can grant aid in conjunction with other foreign lenders or with credit and development institutions in the AASM countries on condition that credit terms are not more favourable for the other participants in the scheme.

IV. THE OTHER ADVANTAGES OF THE YAOUNDE CONVENTION FOR INVESTORS IN AFRICA

a) **Trade Preferences**

The Second Yaounde Convention has created a free trade area for EEC and each one of the AASM. Thus there are no customs barriers between them and no quotas laid down (with certain exceptions).

Consequently, agricultural produce covered by common agreements is subject to special regulations, and imports from AASM countries into the EEC also benefit from certain privileges, from which those from third countries are excluded.

Neither is the flow of imports from the EEC into AASM countries hindered by the Convention, although «in view of the needs of developing countries or in the event of balance of payments difficulties » (article 7, paragraph 2 of the Yaounde Convention) or « to boost their revenues » (article 3, paragraph 2 of the Yaounde Convention) the AASM states are allowed to retain or set up quota restrictions and customs duties on imports from the EEC.

b) **Advantages for those setting up companies**

In addition to the commercial and financial advantages offered by the AASM countries, the investor should also be aware of how the Yaounde Convention can help him set up a company in one of these African states and also give him financial aid for his projects.

« The right to set up companies, given the restrictions on capital movement, includes the right to engage in non-wage-earning activities ; the right to create and manage companies and firms, including agencies branches and subsidiaries. » (Article 33 of the Yaounde Convention.)

« Services are defined as activities normally rendered in return for payment, provided they are not subject to the laws : on trade, on the setting up of companies and on capital movements. Services include primarily activities connected with industry and trade, and the liberal professions and crafts, but do not include wage-earning occupations. » (Article 34 of the Yaounde Convention.)

With regard to the setting up of companies and the provision of services, no associate member country may « de jure or de facto, directly or indirectly, discriminate against persons or companies from EEC member states » (article 31, line 1 of the Yaounde Convention). Naturally, persons and companies from EEC member states are in no way to enjoy better conditions than persons or companies of the country concerned. Neither are they, however, to be treated less favourably than persons or companies from third countries unless these also are developing countries and party to regional agreements [1].

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(1) The interpretative declaration by AASM members regarding the right to set up companies, which was approuved by EEC member states goes even further :

a) « The Associate members welcome persons and companies from Member countries in the sectors where their own persons and companies do not suffice.

b) The Associate members will do their best to promote the professional activities of persons and companies from member countries especially in their relations with the public institutions and professional organisations of the country.

c) The Associate members will eliminate difficulties in the provision of visas, residence permits, identity cards, entry and exit visas to persons from EEC member states. There will bo no discrimination against persons from EEC countries as regards the taxes payable on these documents.

d) The EEC member states will promote in their countries the setting up of companies whose activities relate to the marketing of goods from Associate memberstates ».
(Document P.C./97/69 [Min 37] Annex VI.)

N.B. During the Yaounde Convention negotiations, the AASM countries also declared that they could not « limit their sovereign powers with regard to the right to set up companies and provide services by undertaking not to introduce more restrictive measures at a later date ».

(Document P.C./97/69 [Min 37] pp. 47 and 48.)

c) **Advantages for capital movement**

« Each signatory state undertakes as far as possible, to authorize payments for commercial deals, services, investments and salaries, as well as to allow payment transfers to the Member state or Associate state where the creditor resides. This applies where the movement of goods, services, capital and persons is freed under the articles of this Convention » (article 37 of the Yaounde Convention).

During the lifespan of the loans or other contributions to risk capital, « The Associate states undertake to make available to debtors sufficient foreign currency to pay off the interest commission and repayments on sums lent for projects in their countries. » (article 38 of the Yaounde Convention).

In addition, the Associate members are doing their utmost to « apply a more liberal exchange rate policy for the investments and current payments the necessary capital movements imply, when these are made by persons residing in the EEC countries » (article 39, paragraph 1 of the Yaounde Convention).

« The Associate states will consider all persons and companies from member states equal and treat their investments on an equal footing as well as the capital movements these entail » (article 39, paragraph 2 of the Yaounde Convention).

As the above shows clearly, the Associate members have retained on all these points a fairly large sphere of independent action. It is therefore advisable to check out in advance each individual case in each state involved.

V. THE MECHANICS OF COMMUNITY AID

a) **Beneficiaries**

The procedure for applications is given under article 22, paragraph 2 of the Yaounde Convention as follows :

« A dossier on each scheme or project for which an application is made must be submitted to the Community either by the Associate state or group of states themselves or by a company or regional or interstate body with the agreement of the state concerned. »

b) **The address for applications**

Applications for ordinary loans from the EIB including those with interest rebates and those for subscriptions to risk capital must be sent to :

The European Investment Bank
Department of Loans to Associate Countries.
2, place de Metz
LUXEMBURG - Ville
Grand Duchy of Luxemburg

For all other aid :

The EEC Commission,
Department of Development Aid,
European Development Fund Office,
rue de la Loi 200
1040 BRUXELLES
Belgium

These two bodies are required to keep each other informed of all applications for information and aid.

The EIB and the Commission jointly examine all applications submitted to find the best way or ways of financing particular project. The Community is in no respect bound to grant aid in the form requested.

Therefore it is always best to seek advice first before making an application to either institution. Six copies of the application must be provided and in the case of a private company, the consent of the developing country concerned must accompany the request. It can not be emphasized too strongly that early contact with the relevant government bodies in the Associate country concerned is vital.

c) **How aid is granted**

When the EIB is approached for an ordinary loan, it is this body which examines the project in full. Although it then has to seek advice from the Commission the Bank's board has the final say in the granting of the request.

The EIB and the Commission act jointly when the application is for « special » loans, subscriptions to risk capital or interest payment rebates from the EDF. A careful examination determines whether the project will be dealth with by the EIB or by the Commission ; whichever it is, the other is always consulted.

Applications for subsidies may be examined by the Commission only. Once a project has qualified for aid, the Commission or the EIB (according to the aid to be granted) must prepare a financing scheme, which is submitted by the Commission to the EDF committee. This is made up of representatives from member state governments and presided over by a Commission representative.

Decisions are voted on a weighted majority basis where the votes are split so that France and Germany together cannot reject or change any project without the agreement of one other member state, although France and Germany each have 33 votes out of a total hundred.

Even after the committee has agreed, the Commission still has the final say. If however, the application is rejected by the committee and the Commission would like it to go through, it calls upon the Council of Ministers of the EEC to make a definitive pronouncement. In these matters the voting basis of the EDF committee applies in the Council.

Once the application is finally granted, the Commission — or the EIB, for ordinary loans — enacts a financing agreement or loan contract with the state concerned or with the beneficiary.

d) **Provision of investments**

Those who apply for aid from the EEC must accept the principle of international competition within the EEC and the Associate countries for the provision of materials and construction financed by the Community. « Any private persons or corporate bodies from member states or Associate countries may freely and equally compete for tenders and contracts for projects financed by the Community » (article 26, paragraph 1 of the Yaounde Convention). Article 26, paragraph 2 of the Yaounde Convention stipulates that when the projects are on a small-scale local construction companies and suppliers should be given preference over others, in the allocation of contracts.

The EEC-AASM Association Council has adopted a « General Handbook on the Allocation of Tenders for Projects financed by the EDF ». From 31st March 1972 these regulations will become binding in each Associate state. The 150 articles may well be the most comprehensive international guide to equal competition in the field of development projects.

These regulations do not apply however, when the Community is only providing a minority share of the financing or when overriding considerations dictate the purchase of a particular piece of equipment. This could apply where a private company is promoting the project out of its own funds. The Community would still make sure that the project was being carried out under the most profitable conditions, and if necessary consult with possible suppliers in the countries concerned.

e) **Customs and tax considerations**

The Association Council of the EEC-AASM drew up on April 22nd 1971 a customs and tax system for Community tenders in the Associate states. Contrary to previous practice, tenders are governed by a common system of taxation or exemption whatever the country involved.

In general terms the Association Council's rulings are as follows :

1. all tenders exclude stamp and registration duty (apart from some temporary exceptions);
2. surveys, supervision and control of work on projects are not taxed on turnover, but profits are taxed if the contractor owns a permanent establishment in the country concerned or if the duration of the contract is greater than 6 months ;
3. consumer goods are exempt from customs duties, import duties and taxes but materials to be used in project, including fuel, lubricants and binding materials are liable ;
4. specialist equipment for carrying out construction work benefits from temporary entry regulations up to three months after the completion of the project ;
5. specialist equipment imported temporarily for surveys, supervision and control work as well as the personal effects of private individuals engaged on the work are exempt from customs and excise duties ;
6. in all other cases local legislation applies.

These tax and customs regulations, however, do not exclude the possibility of a state granting as a part of its investments policy more favourable conditions to a recognised firm engaged on a project in which Community aid is involved.