



EUROPEAN COMMUNITIES
COMMISSION

THE EUROPEAN
DEVELOPMENT
FUND

From the introduction
of the project
to its completion

Revised edition
1973





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The European Development Fund (EDF) is the main instrument of financial and technical cooperation between the European Economic Community¹ and the thirty-two Associated Overseas States, countries, territories and departments.² It was established by the Implementing Convention annexed to the Treaty of Rome, that Convention being concluded for the five years 1958-1963. Most of the Overseas Countries and Territories having achieved independence by the end of the five years, the EDF was ratified and renewed twice over—firstly by Yaoundé Convention I (20 July 1963) with the Associated African States and Madagascar (AASM) and the EEC Council Decision relating to those Overseas Countries and Territories which were still dependent (OCT), for an initial five-year period—and later by Yaoundé Convention II (AASM) on 29 July 1969 and the Council Decision of 29 September 1969 (OCT), for a further five years (1970-1975).³

It is now clear that the enlargement of the European Communities, and particularly the entry of Great Britain, will lead to the expansion of the future EDF's sphere of action (African, Pacific and English-speaking Caribbean States) and the strengthening of its powers, when the forthcoming negotiations on the renewal of the Association take place in 1973.

The EDF's appropriations for the Association's three five-year periods (1958-63, 1964-69 and 1970-75) were 581 250 000 units of account,⁴ 730 000 000 u.a. and 900 000 000 u.a. respectively. These funds at present enable it to allocate more than 220 million u.a. a year to new projects; its total disbursements are over 150 million u.a. a year.

EDF funds come from budgetary contributions from the EEC Member States. The Fund is administered by the Commission of the European Communities and functions as one of its departments. It has no separate legal personality but enjoys financial autonomy.

¹ The European Community consists of: Belgium, the Federal Republic of Germany, France, Italy, Luxembourg and the Netherlands. The three new Members on 1 January 1973 will be Denmark, Great Britain and Ireland; as yet they do not contribute to the financing of the EDF nor, consequently, to its functioning or its operations.

² These are: Republic of Burundi, Federal Republic of Cameroon, Central African Republic, Republic of Chad, People's Republic of Congo (Brazzaville), Republic of Zaire, Republic of Dahomey, Gabon Republic, Republic of Ivory Coast, Malagasy Republic, Republic of Mali, Islamic Republic of Mauritania, Republic of Niger, Rwanda Republic, Republic of Senegal, Democratic Republic of Somalia, Togo Republic, Republic of Upper Volta; and Netherlands Antilles, Surinam, and the French Overseas Departments; French Guiana, Guadeloupe, Martinique and Reunion, and the French Overseas Territories.

³ The Convention will expire on 31 January 1975 at the latest.

⁴ 1 unit of account = 9.88867088 g of fine gold. This corresponds to the definition of the US dollar before 18 December 1971.

The EDF concerns the general public for two reasons. It makes a decisive contribution to the development of thirty-two countries with a total population of 70 million. It also offers professional people, contractors and industrialists in both the Member States and the Associated Countries day to day possibilities of contributing to the business activity developing under the Association.

Hence the publication of this brochure which is intended to provide in simple, concise form the basic information essential to anyone who, wishing to cooperate with the Fund, often wonders what it can do, how its decisions are taken, implemented and supervised and who, finally, anyone wishing to take part in the Fund's operations should consult.

1. SCOPE OF THE FUND

The Fund has a very wide scope and its activities can take extremely diverse forms:

It may finance

- (a) directly productive investment;
- (b) development activities in the sector of rural economy;
- (c) investment in economic and social infrastructure;
- (d) technical assistance preceding, accompanying or following investment;
- (e) vocational and staff training activities;
- (f) supply of experts and technical advisers;
- (g) research into development prospects;
- (h) action to obviate serious difficulties arising from a drop in world prices or from natural disasters;
- (i) advances to the Stabilization Funds to make good the consequences of temporary fluctuations in world prices;
- (k) action to encourage the marketing and sales promotion of products.

2. TYPES OF FINANCING

These have been progressively relaxed and diversified. They may take the form of grants (more than 80% of all financing), loans and special terms⁵ aid towards the payment of interest on ordinary loans granted by the European Bank or contributions to risk capital formation.

⁵ These are loans at a very low interest rate granted for up to 50 years with a 10 year amortization deferral. In exceptional cases two-tier loans may be granted: special loans are granted at very low rates to States which then grant them to bodies or firms at higher rates based on the profitability of the project.

Occasionally, different types of financing can be used simultaneously. Similarly, the EDF may contribute jointly with other bilateral or international aid bodies, and with contributions from the national budgets of the Associated States, to the financing of projects under joint operations.

3. BENEFICIARIES OF FINANCING

Beneficiaries of the Fund's aid might be any of the following:

- (a) Associated States;
- (b) non-profit-making legal persons in the Member States or in Associated States, whose status is of general or social interest and who are under Government control in those States;
- (c) producer groups and similar bodies approved by the Community and the Associated States or, in the absence of such groups, the producers themselves;
- (d) national or inter-State bodies of which the Associated States are members.

The following may also be beneficiaries:

- (a) of grants allocated to technical cooperation projects: Specialized Institutes and Bodies or, in exceptional cases, scholarship-holders and trainees;
- (b) of loans and special terms, contributions to risk capital formation, assisted European Bank loans: firms operating according to the industrial and commercial management methods of an Associated State and set up as companies in that State.

Financial aid may not be used to cover recurring administrative, maintenance and operational expenses.

4. PLACING OF REQUESTS FOR FINANCING

The Associated States and the competent authorities of the Overseas Countries and Territories inform the Commission of their development plans and programmes and the conditions governing their implementation. In particular, they indicate the fields for which they intend to request financial assistance from the EDF during the period of application of the Association Convention.

For each project or programme for which financing is requested, a dossier is submitted to the Commission either by the Associated State

concerned⁶ or, with the agreement of the latter, by the firm or the regional or inter-State body concerned.

The Community may propose technical cooperation projects or programmes. It obtains the previous assent of the Associated State or group of Associated States concerned as to the broad outlines of such projects or programmes.

5. EXAMINATION OF REQUESTS FOR FINANCING BY THE EDF

The Community examines requests for financing as soon as they are received. It maintains the necessary contacts with the Associated States so that it can act with full knowledge of the facts.

The Community is principally concerned to assess the influence which the submitted project is likely to have on the economic and social development of the country or countries concerned and of the area covered by the project.

To this end, the Commission examines the project from the following standpoints in particular:

1. Justification

- (a) extent and urgency of the needs it aims to satisfy;
- (b) place in an implementing programme or development plan;
- (c) contribution to the improvement of existing structures and especially to diversification of production;
- (d) contribution to the development of the region, especially to the creation or extension of a growth point;
- (e) contribution to the raising of standards of living, employment, workers' incomes and the development of savings;
- (f) influence on projects under execution or planned in other regions of the country;
- (g) importance for regional cooperation with other Associated Countries and, where appropriate, with non-associated countries;
- (h) effects on the trade balance and the balance of payments of the country or countries concerned;

⁶ or if necessary the competent authorities of the Overseas Countries and Territories or, jointly, the authorities of several Associated States where the projects concern a whole region.

- (i) effects on the national budget;
- (k) in the case of a directly productive investment: financial profitability and added value, internal and external markets for products and the possibility of processing such products on the spot;
- (l) in the case of investment in teaching and training: occupational openings likely to be offered to beneficiaries.

2. Internal economy

- (a) benefits of bringing together various forms of intervention in a combined project, i.e., investment, short-term productive projects, tied technical cooperation, training activities, marketing and sales promotion activities;
- (b) placing of investments and the additional investment needed to achieve the proposed objectives;
- (c) existence of executive staff and manpower and other resources needed to make the most of investment, bearing in mind the need to have available in good time qualified local replacements and, if necessary, the possibility of giving them a specific training;
- (d) comparison of the estimated costs and revenue of the project;
- (e) for directly productive projects, their financial profitability;
- (f) experimentation in realizing and using similar types of investment;
- (g) adaptation of the conception and the means of technically executing a project to the economic and social conditions of the country or countries concerned;
- (h) guarantees that the project will be properly completed.

When examining general technical cooperation projects devised for training purposes, the Commission is concerned to assess in particular:

- (a) correspondence between the proposed training programmes and the need for qualified executive and professional personnel;
- (b) distribution of educational levels and the requested specializations so as to achieve the balanced functioning of various sectors of economic, social and cultural activity;
- (c) possibilities of giving training in establishments in the AASM or the Member States or in Community departments, with maximum efficiency and rationalization;
- (d) employment guarantees for personnel thus trained.

Other specific criteria are used in the assessment of special cases such as:

- (a) action to encourage marketing and sales promotion of products exported by the Associated States, Countries and Territories;

- (b) aid to meet special, exceptional difficulties;
- (c) advances to help lessen the effects of temporary fluctuations in world prices.

The Commission may, in order to complete this examination, request, with the Associated State's agreement, that an additional investigation be carried out *in situ* or else a survey made. It may implement technical cooperation activities designed to supplement the dossiers for the submission of projects, to facilitate their assessment or to improve their execution. Such activities may be entrusted to public or private individuals or bodies belonging to a Member State of the Community or an Associated State and chosen by the Commission and approved by the Government of the beneficiary State.⁷

Studies or surveys are the property of the beneficiary Government. They are communicated to the Commission. They can also be sent to third parties, subject to the agreement of the State concerned.

6. FINANCING DECISION

The decision to provide financing rests with the Commission of the European Communities on examination of a financing proposal drafted, at the end of the examination of requests, by the Directorate-General for Development and Cooperation and previously approved by the EDF Committee. This is the usual procedure, applying particularly for the majority of operations financed by grants. It can however be adapted in a variety of ways as follows:

Financing proposals drafted by the Commission are accompanied by an opinion from the European Investment Bank or, where appropriate, a financing plan drafted by the latter, in the case of:

— a non-industrial project which seems likely to be financed by a loan and special terms.

Financing proposals are drafted by the Bank and accompanied by an opinion from the Commission, in the case of:

(a) a project in the industrial sector likely to be financed by a loan and special terms;

(b) a project which seems likely to give rise to a contribution to risk capital formation.

⁷ In such cases, contracts are drawn up by the Commission and usually put to the competent authorities of the Associated State concerned for signature, after counter signature by the Principal Certifying Officer of the EDF.

Where aid is granted towards the payment of interest on loans given by the European Bank, the EDF Committee examines :

- (a) a proposal for the granting of aid drafted by the Bank;
- (b) an opinion submitted by the Commission.

In the case of combined projects, financing proposals and schemes are drafted jointly by the Commission and the Bank, each being responsible for drafting the part concerning itself.

The EDF Committee consists of:

- (a) six delegations,⁸ each representing a Member State of the European Community at the time of signature of the Association Convention;
- (b) the Commission representative, who acts as Chairman of the Committee;
- (c) representative of the European Investment Bank.

A representative of the General Secretariat of the Councils attends meetings as an observer.

The EDF Committee votes by two-thirds majority, votes being weighted according to the Member States' contributions to the EDF. The Commission provides secretarial services for the Committee and reports to it orally on the financing proposals which it submits to the Committee in writing at least three weeks before the date of the meeting.

If the Commission decides to depart from the opinion expressed by the Committee, or in the absence of a favourable Committee opinion, it may withdraw the financing proposal or refer the matter to the Council of Ministers of the Communities which in turn takes a decision thereon by two-thirds majority.

7. FINANCING AGREEMENT

In general, any project or programme requiring a Commission financing decision gives rise to the drafting of a financing agreement by the EDF. This agreement is submitted to the Government of the Associated State or the Overseas Country which requested financing, for signature. In the case of several regional projects involving several Associated States, the signature of each of the Governments concerned is required.

Apart from its general and special clauses, the financing agreement contains an annex specifying the technical and administrative provisions

⁸ From 1 Jan. 1973, the three delegations of the acceding States also participate but do not vote.

governing the execution of the project and the following details in particular:

- (a) brief description of the project; its location;
- (b) brief cost analysis of the various operations;
- (c) procedure for implementing the project;
- (d) special terms binding the financing to be provided.

The EDF financial regulation⁹ and the Commission Regulation establishing procedures for the working of the Fund¹⁰ are an integral part of the financing agreement and binding on its signatories.

For special loans the financing agreement is supplemented and explicated by a financing contract binding the Commission, the authorized European Community Bank and the debtor.

Aid towards the payment of interest and contributions to risk capital formation are not covered by financing agreements.

8. SCOPE OF THE FINANCIAL COMMITMENT OF THE COMMISSION

For each intervention covered by a financing agreement the Commission binds the European Development Fund over for a given amount fixed on the basis of the estimated cost of the various projects required for the execution of the approved main project or programme. This restrictive agreement acts as a financing ceiling.

Credits which are not used under this agreement return to the Fund and are once more available for the financing of other projects benefiting the same Associated Overseas State or country.

If the estimated cost is exceeded or is likely to be exceeded, the beneficiary State or country must submit to the Commission one or more requests for additional financing, plus the necessary supporting documentation. The Commission determines whether the requests are justified and, where they are justified, complies with them to the extent permitted by available credits and on condition that the object, destination and nature of the original project are in no way altered thereby.

⁹ In respect of the 3rd EDF (1970-75) - Financial Regulation of the European Development Fund (1969) established by the internal agreement relating to the financing and the administration of Community aid (71/68/EEC).

¹⁰ In respect of the 3rd EDF - Regulation (EEC) No. 229/72 of the Commission of 28 January 1972 establishing procedures for the working of the European Development Fund.

The Commission's commitment cannot cover expenses incurred before signature of the financing agreement. Any transaction not covered by previous Fund commitment or which exceeds the commitment in respect of the original cost cannot be charged to the Fund unless an additional commitment is authorised by the Commission.

9. PRINCIPLES GOVERNING THE EXECUTION OF PROJECTS AND PROGRAMMES

The Governments of the Associated States and, where appropriate, the institutes and other specialized bodies of those States are responsible for the execution of investment projects and technical cooperation programmes.

Investments in particular are never handed over in a lump sum. They are realized under financing agreements and are administered and supervised by the national authorities, on the basis of the laws and regulations in force in the country of execution. Public works contracts or supplies contracts financed by the EDF are therefore drawn up on the basis of the laws of the Associated countries and signed by the competent authorities of those countries.

However the European Community, realising the difficulties which the diversity and complexity of the regulations governing the execution of public contracts in the various Associated States would raise for firms, negotiated with all the AASM for the drawing up of a single *set of general specifications* for use in all the Associated States, countries and territories for public works and supplies contracts financed by the EDF. This Set of General Specifications, which was adopted by the Council of Association on 30 November 1971, is not designed to set aside the laws of the Associated countries, from which it is, in any case, largely drawn. Since 1 April 1972 the set of general specifications¹¹ has governed all public works and supplies contracts financed by the EDF and has been gradually incorporated into the laws of each Associated State.

The Commission administers the EDF and must, for its part, ensure that projects and programmes that it has decided to finance are executed according to Commission rules and under the best economic and technical conditions. In particular, it must ensure¹² that participation in

¹¹ The full text of the set of general specifications was published in the Official Journal of the European Communities on 14 February 1972 - O.J. No. L 39.

¹² Articles 132-4 of the Treaty of Rome, Article 25 of Yaoundé Convention I, Article 26 of Yaoundé Convention II.

invitations to tender and in supplies is open to all natural or legal persons, who are nationals of the Member States and the Associated countries and territories, on equal terms.

In general, any project financed by the EDF is the object of an *open international invitation to tender* on equal terms to contractors in the Member States and the Associated countries. In certain circumstances, however, the *limited international invitation to tender* may be used, particularly after a preselection procedure, or else *regional or local invitations to tender*. Only in exceptional circumstances can the contract be awarded by direct or administrative agreement.

10. PUBLICITY MEASURES

EDF operations are the object of a number of publicity measures designed to ensure that all those concerned have maximum information on the principal stages in the development of these operations: financing approval, conclusion of financing agreements, publication of notices of calls to tender and of results of calls to tender.

These publicity measures are as follows:

(a) *Scrutiny of projects, financing decisions*

Financing decisions are taken by the Commission after consultation with the EDF Committee and are:

- (i) published as a note in the Official Journal of the European Communities describing the project and indicating what credits have been allocated to it;
- (ii) issued in a press release by the Spokesman's Group of the European Communities which is used by news agencies and newspapers in the Member States and the Associated countries.

In addition, information is available to the public for consultation on the spot:

- (i) at the Directorate-General for Development and Cooperation, 200 rue de la Loi, 1040 Brussels;
- (ii) at the information offices of the European Communities in the capitals of the Member States.¹³

(b) *Calls to tender*

Calls to tender are very widely publicized:

¹³ Bonn, Zitelmannstraße 22; Luxembourg, Centre Européen; The Hague, Alexander Gogelweg 22; Paris 16^e, 61 rue des Belles Feuilles; Rome, Via Poli 29.

(i) They are published simultaneously in the Official Journal of the European Communities and in the official gazette of the beneficiary country.

(ii) They are notified by the Government of the beneficiary country to the consular representatives of the Member States and of the Associated States and countries in office in that country.

(iii) In addition, a number of specialized newspapers have got into the habit of publishing these notices.

Any amendment to the notices of calls to tender is published at the same time and under the same conditions.

The file of the call to tender can be consulted locally at the address given in the notice of the invitation to tender. It may also be consulted

(i) at the EDF offices in Brussels;

(ii) in the capitals of the Member States at the information offices of the European Communities¹³;

(iii) through the Union of Industries in the European Community (UNICE), at the offices of the representatives of the industrial federations of the Member States.

Potential bidders may, if they wish, consult the EDF set of general specifications and the plans and technical specifications at the above addresses before ordering them from the addresses indicated in the notice of invitation to tender. The purchase price of files of invitations to tender is indicated air-carriage paid, as a rule.

The time allowed to send in bids or tenders is fairly generous, to allow all interested firms in the Member States or the Associated States, countries and territories to participate, bearing in mind the distance of the beneficiary country and the time needed for mailing. Time-limits are normally four months for public works contracts and three months for supplies contracts, except in the case of "public consultations" (cf. below: the time-limit in such cases is reduced to two months).

Where the work concerned is on a small scale and thus mainly of interest to firms in the Associated country concerned or of another Associated country in the same area, a short procedure is provided for issuing invitations to tender, with shorter time-limits for the submission of tenders. This procedure is only possible for public works contracts worth less than 500 000 u.a. It does not apply in respect of supplies. The proce-

¹³ Bonn, Zittelmannstraße 22; Luxembourg, Centre Européen; The Hague, Alexander Gogelweg 22; Paris 16^e, 61 rue des Belles Feuilles; Rome, Via Poli 29.

ture in no way prohibits the participation of outside firms. The only difference is that the time allowed for submitting tenders is considerably shorter.

For invitations to tender for supplies, the Commission has established since 1966 a rationalization and standardization scheme which has brought into general use a new device, the *international public consultation*.

The public consultation is a simplified call to tender under which the Official Journal of the European Communities publishes not a mere notice of invitation to tender but most of the general, technical and administrative clauses which normally go to make up the tender dossier itself. These clauses are drafted so as to give firms as much information as possible on the factors affecting the calculation of the tender. Since the Official Journal is published in the various official languages of the Community, firms contemplating bidding for supplies contracts financed by the EDF are fully informed in their own language on all the factors relevant to the drafting of tenders and the calculation of prices.

The public consultation is in two parts:

- (i) Part A, varying with each call to tender, describing the supplies and indicating the special conditions governing the project.
- (ii) Part B, which is standard and gives details of the general requirements common to all calls to tender for supplies.
- (c) *Publication of the result of the invitation to tender*

As soon as the winning firm is appointed, its name, the amount of the tender, and the number of participants are published in the Official Journal of the European Communities, under the heading "Results of calls for tender".

11. ELIMINATION OF DISCRIMINATION IN THE CONDITIONS FOR INVITATIONS TO COMPETE FOR CONTRACTS AND FOR THE AWARD OF CONTRACTS

Equality of conditions of access to contracts is essential if competition is to work normally so that the contract goes to the firm making the economically most attractive offer.

This rule constitutes a fundamental guarantee for firms, ensuring that each one has equal prospects of winning EDF contracts.

However, for supplies contracts, the tendering dossier may allow a certain degree of protection to be granted, when tenders are compared, so as to encourage participation of firms from the Associated States and countries (the maximum protection allowed is 15%).

Apart from this special system of protection of local industries, the Commission everywhere adheres scrupulously to the principle of equality of conditions.

It has built up a battery of measures and rules designed to ensure that firms compete in the normal way both at the tendering stage and at the stages of award and execution of contracts.

A. Preparation of tenders

The Commission makes an effort to provide firms both with as detailed tendering dossiers as possible including, in particular, a set of specifications, and also a programme of projects coordinated and scheduled as regards time and place.

1. Specifications and tendering dossiers

The specifications fall into two distinct parts:

(a) *the general specifications*, which are the general rules governing the letting and execution of EDF contracts. For public works and supplies contracts (excluding service contracts therefore), a single set of specifications has applied since 1 April 1972 in all the Associated States, countries and territories.

(b) *the special specifications*, which determine the special rules of execution of each contract. This document specifies, in particular, the technical content of the tendering dossier and numerous administrative clauses.

In order to ensure equality of the conditions for invitations to compete for contracts, before an invitation can be issued it must first be examined by the EDF from the technical, administrative, legal and financial points of view. In difficult cases, in particular where a balance has to be struck between too vague a description of the contract which might cause uncertainty among tenderers and too detailed a description which may come too close to a specific manufacture and thus entail a discrimination, the Commission calls for advice and technical assistance from neutral experts or from specialists from professional organizations.

The EDF also makes an effort to supply tenderers with the maximum general information on the country and contract in question.

To this end, a note is attached to the tender files which specifies the monetary, customs and tax systems involved and also all factors which have direct bearing on the calculation of prices: labour and wages, social security payments, transports costs etc. Outside companies also have the right to reexport materials imported for the execution of the contract. Similarly, all restrictions on the right of foreign contractors to retransfer wages are waived.

2. *Policy for projects*

With the consistent objective of improving conditions of competition, the Commission has tried to group contracts into homogeneous lots as large as is economically and technically desirable.

However, a distinction should be made in this context between public works and supplies contracts.

(a) for *public works contracts* the Commission endeavours to regroup in a single invitation to tender, subdivided into several lots, works of a similar nature to be carried out in closely neighbouring areas, or else to issue one after the other in a brief space of time invitations to tender for similar works in one or more neighbouring countries.

Such groupings or coordinated works encourage the formation of groups of firms, *as does the procedure for preselecting companies* for important contracts.¹⁴

(b) for *supplies contracts* the Commission endeavours to open to tender everything needed for the implementation of a specific project and everything sufficiently similar to be covered by a single call for tender.

B. *Award and performance of contracts*

1. *Comparison of tenders*

The Commission ensures that the comparison of tenders is made on equal terms.

(a) for *public works contracts*, the tenders are denominated in the currency of the beneficiary country and there are therefore no special problems of comparison.

(b) for *supplies contracts*, firms are free to denominate their tenders either in the currency of the country where they have their head office, the currency of the beneficiary country or the currency of the State producing the supplies. To ensure equality in the comparison of tenders, tenders are converted from the foreign currency used into local currency, on the basis of the parities declared to the International Monetary Fund on the first working day of the month preceding the final date fixed for the submission of tenders.

As regards taxation, duties and entry charges for outside firms and domestic taxation for local industries (ex-factory price) are not taken into account when prices are compared.

¹⁴ Such preselection is compulsory for all calls to tender for works of an estimated value exceeding 5 million u.a.

Tenders must be lodged on the basis of the prices covering costs, insurance and limited freight; distances covered by transport at approved tariffs (as indicated in the tender dossier) should be shown.

2. Supervision of performance of the contract

Throughout the period of performance, the approval of the EDF resident deputy supervisor governs payment for the contract. His supervision is not confined to the financial aspects of the payment file. It also covers the performance of the services and their technical conformity with the specifications.

The Commission is informed of any dispute between the foreman and the firm where this dispute has financial implications, and the matter is settled with the agreement of the Commission.

12. EXECUTIVE ORGANS

The EDF is administered financially on the principle of separating Certifying Officers and Accountants. The Commission therefore appoints a Principal Certifying Officer, a Financial Supervisor and an Accounting Officer.

Article 15 of the EDF Financial Regulation organised the delegation of certain of these functions to Local Certifying Officers, Deputy Supervisors and Deputy paymasters who are subject to the same rules as the central bodies in the exercise of their functions.

A. The central organs

The Principal Certifying Officer of the Fund, appointed by the Commission and assisted by Deputy Certifying Officers appointed by him with the approval of the Commission, administers credits and, in this context, pledges, settles and authorizes expenditure and holds the accounts of pledges and authorizations.

The Financial Supervisor is responsible for supervising the commitment of expenditure. To this end, any measure likely to involve expenditure should first be the subject of a commitment proposal forwarded to the Financial Supervisor whose approval attests the accuracy of the calculations, the availability of funds and that the expenditure is in order and conforms with the provisions concerning the administration of the Fund.

The Accounting Officer, who alone is qualified to handle funds, is responsible for their safe keeping; he takes charge of the payment docu-

ments issued by the Certifying Officer and settles payment thereof within the limits of available funds.

B. *Deputy organs*

The Local Certifying Officer

The local certifying officer is appointed by the Government of the beneficiary country. Subject to Commission approval, he commits expenditure within the limits of the funds delegated to him by the financing agreement.

He therefore issues invitations to tender, receives tenders, makes known the results of calls to tender, signs contracts and specifications or submits them to the competent authority for signature after he has endorsed them and makes them known to the Commission through the deputy supervisor.

Before issuing invitations to tender he places the specifications before the Principal Certifying Officer in order to eliminate discriminatory provisions which might prevent participation under equal conditions of all natural or legal persons in the Member States and the Associated States, countries and territories.

Where necessary, at the request of the Principal Certifying Officer, he suspends publication of the invitation to tender where corrections have to be made to the specifications. He notifies the Principal Certifying Officer of the result of the scrutiny of tenders and compulsorily requires the agreement of the latter when the lowest tender does not seem to be the most attractive one economically in view of the qualifications and guarantees put forward by the bidders and the nature of the works or supplies to be provided. When the lowest offer is economically the most attractive and comes within the limits of available credits, the Commission's agreement is given on the spot by the Deputy Supervisor.

In order to make payments, the local Certifying Officer obtains cash to cover expenditure involved, all transactions being subject to presentation of the necessary supporting documents (detailed accounts, invoices, statements of fees, memoranda etc.) attesting the rights of the creditor. The payment file, including the payment order issued by the local certifying officer and the supporting documents, is drawn up in four copies and forwarded to the Principal Certifying Officer to be examined and endorsed. It must include all reference material necessary for identifying the payment to be made, the reasons for payment and the calculations on which payment is based.

The Deputy Supervisor

The "foreman" of contracts financed by the EDF is an authority of the Associated State; he is responsible for directing and supervising execution of the contract; he certifies the firm's acquired rights before the payment order is drawn up by the local certifying officer, by checking accounts, invoices etc.

However, if, during the execution of a project, responsibilities are borne by both the firm and the competent authorities of the Associated State, the Commission maintains continuous technical and financial control through its Deputy Supervisor.

(a) During the award procedure and the execution of the contract, *on the spot supervision of commitments and authorizations* is carried out by the Deputy Supervisor on the authority of the Commission, from which he receives direct instructions and to which he is responsible.

He checks the validity of commitments made by the local Certifying Officer: no contract, specification or instrument of any kind involving expenditure by the EDF can be submitted to the Commission unless, before being signed, it has been passed and endorsed by the Deputy Supervisor, who will have checked the existence of the allocated credit and that the commitment is in order and conforms to the rules governing administration of the Fund.

In particular, the Deputy Supervisor receives dossiers for invitations to tender, reports of scrutiny of tenders, draft contracts and specifications and, more generally, any document drawn up by the local Certifying Officer for the execution of projects.

While a contract is being executed, the Deputy Supervisor constantly checks that whatever is being done or supplied complies with the descriptions given in the financing agreements, contracts, specifications etc. He is present at provisional and definitive approvals, the local Certifying Officer keeping him informed of these in good time, and endorses reports thereon.

He checks the accuracy of the information given on documents submitted in support of payment orders, endorses them and sends them to the deputy payments officer, the pay office designated by the latter, or the Commission, as appropriate to the currency of payment.

(b) In addition to supervising the commitment and encashing and authorizing expenditure, the Deputy Supervisor also *supervises the technical execution of projects*, under the Commission's instructions.

He has access to the firm's building sites at any time.

He helps the local Certifying Officer with opinions, in order to obtain maximum return on investment, but the Commission cannot take on through his actions the responsibilities normally assumed by the planner, the local Certifying Officer or the contractor.

He communicates directly with the local Certifying Officer, either orally or in writing, and keeps the Commission informed of such correspondence. Apart from the special reports he may send to the Commission, he submits regular reports at the following times and stages:

- (i) when he has studied the tender dossier, which the local Certifying Officer sends to him for endorsement,
 - (ii) after the opening of the bids, at which he is present as an observer,
 - (iii) when the contracts, subject to this endorsement, have been approved,
 - (iv) every quarter, throughout the execution of the project,
 - (v) after the provisional approval,
 - (vi) after the definitive approval,
- at which he must always be present, unless special arrangements are made.

In carrying out this second group of duties the deputy supervisor is assisted by one or more officers responsible particularly for supervising the technical execution of projects and programmes.

In general, so that the procedures of the Fund may be accelerated, the Commission follows a policy of *decentralization* with regard to Deputy Supervisors.

Deputy Payments Officer

Payment for deliveries and services arising from projects financed by the EDF is made, on the Commission's instructions, by drawing on the accounts of one of the Member States held in financial institutions chosen and authorized by the Commission and performing the functions of deputy payments officer.

The deputy payments officer, who is financially committed to the Commission in case of default or negligence, makes the payments authorized, within the limits of available funds, once the necessary checks have been made.

Where payment is suspended, he sets out the reasons therefor in a written statement to the local Certifying Officer and the Deputy Supervisor. In the event of dispute he immediately places the matter before the Commission.

For each transaction, a statement of account is drawn up, accompanied where necessary by a notice of the transaction addressed to the Commission. The deputy payments officer also forwards the payments file to the Commission.

Expenditure incurred by allocations is entered permanently into the Fund's accounts once the Commission has checked that the cash payment was of the correct amount, that the authorization and the payment were in order and that they conformed with the commitment.

Any amendments to transactions carried out on the spot are made at the request of the Principal Certifying Officer and the Accounting Officer.

13. PAYMENT OF CONTRACTS

The Commission's concern with regard to payments, is to avoid unnecessary transfers and to ensure that payments are made rapidly by making them in the country corresponding to the currency used.

The currency of payment is chosen on the basis of the nature of the contract and the country in which the successful tenderer has his registered head office.

(a) *Public works contracts*

These are denominated in the currency of the Associated country receiving aid. However, the tenderer is invited to give an indication in his tender of the percentage of the value of the contract he would like to have paid in his own currency. Tenderers must justify this amount. This proportion of the initial amount of the contract is covered by an *exchange guarantee*, the exchange rate used being that in force on the first day of the month preceding that during which tenders were submitted. These exchange rate are then written into the contract. When the payments are made the firm performing the contract states, in accordance with its budgetary needs and within the limits of the agreed percentage, the currency which it wishes each payment to be made in.

In addition, the tender dossiers allow firms, against certain guarantees, to draw one, two or all of the following advances:

(i) starting advance, the size of which varies with the nature of the contract and which is payable immediately on notification of approval of the contract;

(ii) equipment advance, normally representing four-fifths of the value of the equipment. This advance is made not later than the date on which the equipment arrives on the site;

(iii) advance payment against delivery of supplies to the site, payable as soon as supplies are received on the site.

Under the provisions governing the currency of payment, firms can draw these advances in the currency of the country in which they have their head office.

(b) *Supplies contracts*

Tenders may be denominated in local currency, or in the currency of the State to which the firm belongs or in which it has its head office, or in the currency of the State producing the supplies. The choice between these three possibilities is guided by the currency of the country in which the tenderer carries on his main business. The currency in which payment is made is the same as that indicated in the tender, thus eliminating any danger of fluctuating exchange rates for the holder of the contract.

Staggered payments were made compulsory to lighten the burden of interim financing borne by the supplier and to align EDF payment conditions on normal business practice. A standard practice has been recommended:

- (i) 30% of the amount of the order, as an advance, when the official order is placed;
- (ii) 30% of the amount of the order on production of a certificate of loading, issued by the shipping company;
- (iii) 30% of the amount of the order after provisional receipt of the supplies at the specified place of delivery;
- (iv) 10% of the amount of the order, as the balance, at the end of the guarantee period and after final receipt officially recorded.

(c) *General provisions*

It was found that suppliers had easier access to bank credit facilities where the contracts they held were shown clearly to be financed by the EDF. An authentication procedure was therefore instituted: at the request of the supplier, or of his bank, a certificate is issued by the EDF's Principal Certifying Officer stating that the contract is financed by the EDF.

The Commission has made full provisions to ensure that payments are made very promptly. Where an abnormal delay occurs in the issue of payment orders, the Commission has powers to take the place of the local authorities in the authorization of payment of the sums due under the contract (Article 31 of Commission Regulation No. 62/65).

In order to avoid delays occurring mainly in the payment of the first two instalments, the Commission will, in future, authorize and make

direct payment of the first two instalments. These payments must in fact be made outside the beneficiary associated country and there is no need to verify them within that country.

The first payment for service contracts is likewise authorized and made by the Commission.

The tender dossiers make appropriate provision for the use of *mortgaging or assignment of credits*.

All the measures applicable to payment of both public works and supplies contracts have enabled the EDF to acquire the reputation of being a "good payer".

This is another important incentive to firms to tender for EDF contracts.

14. SETTLEMENT OF DISPUTES

In the event of disputes arising between the administration of an Associated State and the contractor or supplier during the execution of an EDF financed contract, a solution must be sought by the parties to that contract. In theory, neither the Commission nor the Deputy Supervisor should intervene.

However the Commission, in its capacity as money-lender, is inevitably concerned with the outcome of such disputes.

The Deputy Supervisor keeps the Commission informed on these disputes and the development of the procedures initiated. In so far as he is asked to do so, and taking care not to involve the Commission, he tries to encourage the achievement of an amicable solution.

Where it proves impossible to reach an amicable solution, a procedure is provided¹⁵ for the settlement of disputes by arbitration pursuant to the Rules on Conciliation and Arbitration of the International Chamber of Commerce.

This clause is only provisional since a special regulation on arbitration¹⁶ in contracts financed by the EDF is being drafted. This regulation will have to be adopted by the Council of Association before it can be applied.

¹⁵ Article 64 of the EDF Financial Regulation of 26.1.71. Article 16 of Yaoundé Convention II.

¹⁶ Provided for in Article 55 of the Set of General Specifications.

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