



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19.10.1995
COM(95) 488 final

95/0256 (CNS)

Proposal for a

COUNCIL DECISION

concerning the conclusion of the Co-operation Agreement between the European
Community and the Kingdom of Nepal

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. By its decision of 24 October 1994, the Council authorised the Commission to open negotiations with the Kingdom of Nepal with a view of concluding a Co-operation Agreement and adopted directives to this end.
2. The negotiations took place, on 25-26 January 1995 and on 13 July 1995, ending with the initialing of the Agreement between the European Community and the Kingdom of Nepal.
3. The Commission considers that the initialed text is in line with the negotiation directives adopted by the Council on 24 October 1994.
4. The European Parliament must be consulted because the legal basis of the Agreement includes Articles 113, 130Y in conjunction with the first sentence of Article 228(2) and the first sub paragraph 3 of Article 228(3) thereof, of the Treaty establishing the European Community.
5. With a view to the signature and conclusion of this Co-operation Agreement between the European Community and the Kingdom of Nepal, the Commission is proposing to the Council that it approves the Agreement and adopts the attached proposal for a decision.

PROPOSAL FOR A COUNCIL DECISION N°

concerning the conclusion of the Co-operation Agreement between the European Community and the Kingdom of Nepal.

THE COUNCIL OF THE EUROPEAN UNION

Having regard to the Treaty establishing the European Community, and in particular Articles 113, 130Y, in conjunction with the first sentence of Article 228(2) and the first subparagraph of Article 228(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas, under Article 130 U of the Treaty, Community policy in the sphere of development co-operation shall foster the sustainable economic and social development of the developing countries, their smooth and gradual integration into the world economy and the campaign against poverty in those countries;

Whereas the Community should approve, for the attainment of its aims in the sphere of external relations, the Co-operation Agreement between the European Community and the Kingdom of Nepal.

HAS DECIDED AS FOLLOWS:

Article 1

The Co-operation Agreement between the European Community and the Kingdom of Nepal is hereby approved on behalf of the Community.

The text of this Agreement is attached to this Decision.

Article 2

The President of the Council shall, on behalf of the Community, give the notification provided for in Article 22 of the Agreement (1).

Article 3

The Commission, assisted by representatives of the Member States, shall represent the Community in the Joint Commission provided for Article 15 of the Agreement.

Article 4

The Decision shall be published in the Official Journal of the European Communities.

Done at Brussels,

For the Council

The President

(1) The date of entry into force of the Co-operation Agreement will be published in the Official Journal of the European Community by the General Secretariat of the Council.

CO-OPERATION AGREEMENT BETWEEN
THE EUROPEAN COMMUNITY AND THE KINGDOM OF NEPAL

THE COUNCIL OF THE EUROPEAN UNION,

on the one part,

HIS MAJESTY'S GOVERNMENT OF NEPAL

on the other part,

CONSIDERING the excellent relations and traditional links of friendship between the European Community and its Member States, hereinafter referred to as "the Community", and the Kingdom of Nepal, hereinafter referred to as "Nepal",

RECOGNISING the importance of strengthening the links and enhancing the relations between the Community and Nepal,

RE-AFFIRMING the importance they attach to the principles of the United Nations Charter and the respect of democratic principles and human rights;

INSPIRED by their common will to consolidate, deepen and diversify their relations in areas of mutual interest on the basis of equality, non-discrimination and mutual benefit and reciprocity;

DESIROUS of creating favourable conditions for a substantial development and diversification of trade between the Community and Nepal;

HAVING REGARD to the need to create favourable conditions for direct investment;

RECOGNISING the need to support Nepalese efforts for economic and social development especially improving the living standards of the poor and disadvantaged sections of the population;

CONSIDERING the importance attached by the Community and Nepal to the protection of the environment on a global and on a local level and to the sustainable use of natural resources recognising the linkage between the environment and development;

NOTING their common interest in fostering and strengthening regional co-operation and the North South dialogue;

TAKING INTO ACCOUNT the need to uphold and reinforce the rules which promote free and unhindered trade in a stable, transparent and non-discriminatory manner;

HAVE DECIDED, as Contracting Parties, herein after referred to as "the Parties" to conclude this Agreement and to this end have designated as their plenipotentiaries:

THE COUNCIL OF THE EUROPEAN UNION;

HIS MAJESTY'S GOVERNMENT OF NEPAL;

WHO, having exchanged their full powers, found in good and due form;

HAVE AGREED AS FOLLOWS:

ARTICLE 1

Basis

Respect for human rights and democratic principles is the basis for the co-operation between the Parties and for the provisions of this Agreement, and it constitutes an essential element of the Agreement.

ARTICLE 2

Objectives

The principal objectives of this Agreement are to enhance and develop the various aspects of co-operation between the Parties, in particular:

- a) To secure the conditions and to promote the increase and development of two-way trade and investment between the two Parties;
- b) To support the sustainable economic development of Nepal, taking into account its current least developed status;
- c) To promote economic, technical and cultural links in their mutual interest;
- d) To support environmental protection and the sustainable management of natural resources;
- e) To assist Nepal in developing its trading capacity, taking into account its land-locked nature.

ARTICLE 3

Trade and Commercial Co-operation

1. The Community in conformity with the provisions of Article 1 of the General Agreement on Trade and Tariffs (GATT 1994) and Nepal shall grant each other most-favoured-nation treatment with respect to tariffs.

These provisions shall not apply to preferences accorded by either Party under any arrangement establishing a customs union, a free trade area or a preferential treatment area.

2. The Parties undertake to develop and diversify their commercial exchanges and to improve market access, to the highest possible degree in a manner compatible with their economic situations.
3. The Parties are committed to improving the terms of access for their products to each other's markets. In this context, they shall grant each other the most favourable conditions for imports and exports and they agree to examine ways and means of eliminating barriers to trade between them, notably non-tariff barriers, taking account of the work already done in this connection by international fora.
4. The Parties agree to promote the exchange of information concerning mutually beneficial market opportunities.

5. The Parties agree to improve co-operation in customs matters between the respective authorities, especially with regard to the possibility of professional training, the simplification and harmonisation of customs procedures, and the prevention, investigation and repression of customs offences.
6. The Parties also undertake to give consideration, each in accordance with its laws, to exempting from duty, tax and other charges, goods admitted temporarily to their territories for subsequent re-export unaltered or for goods which re-enter their territories after processing in the other Party which is not sufficient for the goods to be treated as originating from the territory of that Party.
7. In so far as their competences, regulations and policies permit, the Parties agree to inform and consult each other in connection with trade or trade related matters, including property rights and public procurement, on any dispute which may arise. They will also hold consultations in a constructive spirit on the issues of tariff, non-tariff, services, health, safety or environmental measures and technical requirements.

ARTICLE 4 **Intellectual Property**

1. In so far as their competences, regulations and policies permit, the Parties will:
 - a) aim to improve the conditions for adequate and effective protection and reinforcement of intellectual, industrial and commercial property rights in conformity with the highest international standards;
 - b) co-operate to secure these objectives.
2. The Parties agree that they shall avoid discriminatory treatment in relation to intellectual property rights and to engage, if necessary, in consultations if intellectual property problems affecting trading relations arise.

ARTICLE 5 **Development Co-operation**

1. The Community recognises Nepal's need for development assistance, taking into account its current least developed status and its land-locked situation. The Community is prepared to enhance its co-operation in order to contribute to Nepal's own efforts in achieving sustainable economic development and social progress of its people through specific projects and programmes. Support will be in accordance with Community policies, regulations and the limits of the financial means available for co-operation.
2. Projects and programmes will particularly aim to improve the quality and standard of living of the poorest sections of the population. Co-operation will give priority to balanced agricultural development, including the creation of non-agricultural and off-farm employment in rural areas.

Co-operation will also support policies on primary health care, population and the role of women. It will, as far as possible, be established with the participation of the targeted groups and, where appropriate, will involve qualified mutually acceptable non-governmental organisations.

3. Community development co-operation activities and priorities will be mutually agreed on the basis of Nepal's development objectives and will pursue efficiency and sustainability.

ARTICLE 6

Economic Co-operation

1. The Parties undertake, in accordance with their respective policies and objectives and within their available resources, to foster economic co-operation for mutual benefit.
2. The Parties agree that economic co-operation will involve the following broad fields of action:
 - a) improving the economic environment and the business climate in Nepal by facilitating access to Community know-how and technology, including, *inter alia*, telecommunications, transport and energy;
 - b) facilitating contacts and promoting viable and efficient business links between economic operators and other measures designed to promote commercial exchanges and investments, including tourism;
 - c) facilitating exchange of information on enterprise and small and medium enterprises (SME) policies, particularly in respect of improving the business environment and encouraging closer contacts between SMEs, with a view to promoting trade and industrial co-operation opportunities.
 - d) reinforcing mutual understanding of their respective economic, social and cultural environment as a basis for effective co-operation.
3. In particular, the Parties will:
 - a) establish co-operation in information and communication;
 - b) promote, in the framework of their respective strategies, science, technology and energy, as defined in art. 7 and 8;
 - c) promote practical areas, such as standards and quality control.
4. The Parties, within the limits of their resources and in accordance with their respective procedures, will determine together and to their mutual advantage, the areas and priorities for economic co-operation programmes and activities.

ARTICLE 7
Science and Technology

The Parties will promote scientific and technological cooperation and undertake to encourage inter-institutional relationships in fields of mutual interest.

ARTICLE 8
Energy

The Parties recognise the importance of the energy sector to economic and social development and undertake to encourage cooperation relating to generation, saving and efficient use of energy.

ARTICLE 9
Agriculture

The Parties agree to promote cooperation in agriculture, including livestock, horticulture and food processing. To this end in a spirit of cooperation and goodwill and taking into account the laws of both Parties on such issues, they undertake to examine in particular:

- a) the opportunities for increasing trade in agricultural products;
- b) health, plant and animal health and environmental measures to prevent them hindering trade;
- c) the linkage between agriculture and the rural environment;
- d) agricultural research.

ARTICLE 10
Investments

The Parties will undertake to encourage an increase in mutually beneficial investment by establishing a more favourable climate for private investment through better conditions for the transfer of capital and by supporting agreements on the promotion and protection of investments between the Member States of the European Union and Nepal on the basis of the principles of non-discrimination and reciprocity.

ARTICLE 11
Human Resource Development

The Parties recognise the importance of human resource development, both primary education and skills development as well as improving the living conditions of the disadvantaged sections of the population. They agree human resource development should constitute an integral part of both economic and development cooperation.

Specific projects may be funded by the Community with the objective of improving human resources development, including training to ameliorate workers' conditions.

ARTICLE 12
Environmental Co-operation

1. The Parties recognise the need to take full account of environmental protection as an integral part of economic and development co-operation. Moreover, they underline the importance of environmental issues and sustainable development and assert their will to establish co-operation in protection and improving the environment with particular emphasis on water, soil and air pollution, erosion, deforestation and sustainable management of natural resources, taking into account the work done in international fora.
2. Particular attention will be paid to:
 - a) The protection and conservation of natural forests and their sustainable management development and measures against soil erosion;
 - b) The importance of the energy/environment linkage;
 - c) The finding of practical and efficient solutions to rural energy problems;
 - d) The protection of the urban environment;
 - e) The prevention and mitigation of industrial pollution;
 - f) The impact of tourism on the environment.

ARTICLE 13
Drugs and AIDS

The Parties affirm their resolve to co-operate in the field of prevention and reduction of drug abuse and AIDS, in particular through the strengthening of health services capabilities and support to key health education activities.

ARTICLE 14
Regional Co-operation

The co-operation between the Parties may extend to actions undertaken within the context of co-operation or integration agreements with other countries in the same region, provided that such action is compatible with those agreements.

Without excluding any area, the following may be given particular consideration:

- a) technical assistance (services of outside experts, training of technical staff in certain practical aspects of integration);
- b) promotion of intra-regional trade;
- c) support for regional institutions and for joint projects and initiatives established under regional organisations such as the South Asian Agreement on Regional Co-operation (SAARC);
- d) studies concerning regional links and communications.

ARTICLE 15
Joint Commission

1. The Parties agree to set up a Joint Commission whose tasks shall be to:
 - a) ensure the proper functioning and implementation of the Agreement;
 - b) establish priorities in relation to the possible actions including projects and programmes necessary to achieve the aims of the Agreement.
 - c) make suitable recommendations for promoting the objectives of the Agreement;
2. The Joint commission shall be composed of representatives of both sides, at the senior official level. The Joint commission shall normally meet every other year, alternately in Brussels and in Kathmandu, on a date fixed by mutual agreement. Extraordinary meetings may also be convened by agreement between the Parties.
3. The Joint Commission may set up specialised sub-groups to assist in the performance of its tasks and to co-ordinate the formulation and implementation of projects and programmes within the framework of the Agreement
4. The agenda for meetings of the Joint Commission shall be determined by agreement between the Parties.
5. The Parties agree that it shall also be the task of the Joint Commission to ensure the proper functioning of any sectoral agreements which may be concluded between the Community and Nepal.

ARTICLE 16
Future Developments

1. The Parties may, by mutual consent, enlarge the scope of this Agreement in order to enhance the level of co-operation and add to it by means of agreements on specific sectors or activities.
2. Within the framework of this Agreement, either of the Parties may put forward suggestions for expanding the scope of the co-operation, taking into account the experience gained in its application.

ARTICLE 17
Other Agreements

1. Without prejudice to the relevant provisions of the Treaties establishing the European Communities, neither this Agreement nor action taken thereunder shall in any way affect the powers of the Member States of the European Union to undertake bilateral activities with Nepal in the framework of economic co-operation or to conclude, where appropriate, new economic co-operation agreements with Nepal.
2. Subject to the provisions of the paragraph 1, the provisions of this Agreement shall replace provisions of Agreements concluded between Member States of the European Union and Nepal where such provisions are either incompatible with or identical to the provisions of this Agreement.

ARTICLE 18
Non-execution of the Agreement

If either Party considers that the other Party has failed to fulfil any of its obligations under the Agreement, it may take appropriate measures.

Before doing so, except in cases of special urgency, it shall supply the other Party with all relevant information required for a thorough examination of the situation with a view to seeking a solution acceptable to the Parties.

In the selection of measures, priority must be given to those which least disturb the functioning of this Agreement. The measures shall be notified immediately to the other Party and consultations shall be held on them if the other Party so requests.

ARTICLE 19
Facilities

To facilitate co-operation within the framework of this Agreement, the Nepalese authorities will grant to EC officials and experts involved in implementing co-operation the guarantees and facilities necessary for the performance of their functions. The detailed provisions will be set out by way of a separate Exchange of Letters.

ARTICLE 20
Territorial Application

This Agreement shall apply, on the one hand, to the territories in which the Treaty establishing the European Community is applied and under the conditions laid down in the Treaty and, on the other, to the territory of Nepal.

ARTICLE 21
Annex

The Annex attached to this Agreement shall form an integral part of the Agreement.

ARTICLE 22
Entry into force and renewal

1. This Agreement shall enter into force on the first day of the month following the date on which the Parties have notified each other of the completion of the procedures necessary for this purpose.
2. This Agreement is concluded for a period of five years. It shall be automatically renewed on a yearly basis unless one of the Parties denounces it six months before its expiry date.

ARTICLE 23
Authentic Texts

This Agreement is drawn up in duplicate in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish, Swedish and Nepali languages, each text being equally authentic.

In Witness whereof the undersigned Plenipotentiaries have signed this Agreement.

For the Council of the European Union For His Majesty's Government of Nepal

ANNEX

Joint Declarations of the European Community and His Majesty's Government of Nepal

1. The Parties agree that for the purpose of this Agreement "intellectual, industrial and commercial property" includes inter-alia copyright (including computer software) and related rights; trade and service marks; geographical indications, including indications of origin; industrial designs; layout designs of integrated circuits; undisclosed information and protection against unfair competition.

2. a) For the purposes of the interpretation and practical application of this Agreement, the Parties agree that the cases of special urgency referred to in Article 18 of the Agreement mean cases of material breach of the Agreement by one of the two Parties. A material breach of the Agreement consists in:
 - repudiation of the Agreement not sanctioned by the general rules of international law;
 - violation of the essential elements of the Agreement set out in Article 1.

- b) The Parties agree that 'appropriate measures' referred to in Article 18 are measures taken in accordance with international law. If a Party takes a measure in a case of special urgency pursuant to Article 18, the other Party may request consultations on that measure.

Declaration by the European Community on Generalized Preferences

The European Community is prepared to assist Nepal to enable them to make the best use of the advantages afforded by the Generalised Scheme of Preferences (GSP), put into force on 1 January 1995.

The Community is willing to organise workshops in Nepal for public and private users of the system with a view to ensuring maximum use of it.

FINANCIAL STATEMENT

PART 1 : FINANCIAL IMPLICATIONS

1. Title of Operation

Co-operation Agreement between the European Community and the Kingdom of Nepal.

2. Budget Headings Involved

See annex.

3. Legal Basis

EC Treaty Articles 113, 130Y in conjunction with the first sentence of Article 228 and the first subparagraph of Article 228(3).

4. Description of the Operation

4.1 Aim

Framework Co-operation Agreement for economic, commercial and development co-operation

4.2 Duration

Initially 5 years, renewable each year thereafter

4.3 Parties Involved

EC and Nepal (officials)

5. Classification of Expenditure or Revenue

5.1 Non compulsory expenditure

5.2 Differentiated appropriations

5.3 The projects launched under the Agreement will not engender any specific revenue.

6. Type of expenditure

6.1 Grant up to 100% : 100% grant

6.2 Community financial contribution as a proportion (%) of the total cost of the operation

To be decided on a case by case basis

7. Financial impact on appropriations for operations

7.1 Method of financing the action during the current year

On the basis of the existing budgetary credits

7.2 Schedule of commitment and payment appropriations

On request, following approval of the project by the Commission departments and up to an amount not exceeding the appropriations to be entered under the relevant budget headings.

8. What Anti-fraud Measures are Planned in the Proposal for the Operation?

The Nepalese authorities and the European Commission will apply the normal control measures in the implementation of the Co-operation Agreement.

9. Observations

Expenditure derived from the Agreement will be determined, for future budgets, by the usual procedure.

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Part 2 : ADMINISTRATIVE EXPENDITURE

The proposed action will not require an increase of staff in the Commission.

FINANCIAL STATEMENT

1. Title of operation

Co-operation Agreement between the European Community and the Kingdom of Nepal.

2. Budget headings involved

- B6-7211 Research and technological co-operation with third countries and international organisations
- B7-20 Food aid and support operations
- B7-210 Aid to help the populations of developing countries and others hit by disasters or serious crises
- B7-211 Emergency food aid for developing countries and others hit by disasters or serious crises
- B7-216 Humanitarian action in third countries
- B7-217 Emergency aid for refugees and displaced persons in developing countries and other third countries
- B7-219 Operations support, disaster preparedness and humanitarian intervention
- B7-3000 Financial and technical co-operation with Asian developing countries
- B7-3001 Economic co-operation with Asian developing countries
- B7-302 Aid towards self-sufficiency for refugees and displaced persons
- B7-500 Promotion of Community investment in Asian developing countries linked to the Community by economic co-operation and trade agreements
- B7-5010 Community contribution towards schemes concerning developing countries carried out by non-governmental organisations
- B7-5020 Commercial and economic co-operation agreements with third countries
- B7-5021 Relations with the GATT signatory and applicant countries

- B7-5031 Training and promotion of awareness of development issues
- B7-5033 Training periods at the Commission for third country nationals
- B7-5040 Environment in the developing countries
- B7-5041 Tropical forests
- B7-5046 Health programmes and the fight against HIV/AIDS in developing countries
- B7-5047 Maternal and child health care
- B7-5050 Aid for population policies and programmes in developing countries
- B7-5051 Women in development
- B7-5055 Migration observatory and positive measures for immigration
- B7-5076 Rehabilitation and reconstruction measures for the developing countries
- B7-5077 Decentralised co-operation in the developing countries
- B7-5080 North-South co-operation schemes in the context of the campaigns against drug abuse
- B7-522 Human rights and democracy in the developing countries

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