

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(82) 438 final
Brussels, 20 July 1982

Recommendation for a
COUNCIL REGULATION

concerning the conclusion of a Financial Protocol between the European
Economic Community and the PEOPLE'S DEMOCRATIC REPUBLIC OF ALGERIA

Recommendation for a
COUNCIL REGULATION

concerning the conclusion of a Financial Protocol between the European
Economic Community and the REPUBLIC OF TUNISIA

(submitted to the Council by the Commission)

COM(82) 438 final



EXPLANATORY MEMORANDUM

1. By its decision of 27 July 1981, the Council authorised the Commission to negotiate new financial protocols with the Maghreb countries (Algeria, Morocco, Tunisia), the Mashreq countries (Egypt, Jordan, Lebanon, Syria) and Israel. At the same time the Council adopted directives, which were supplemented at its meeting of 29/30 September 1981. On the basis of these directives, the Commission succeeded in concluding negotiations with all those countries, with the exception of Algeria and Tunisia. On 23 March it put before the Council recommendations for regulations on the conclusion of the new financial protocols on which negotiations had been completed (COM(82)119 final).

The negotiations with Algeria and Tunisia have now been concluded. The texts of the new financial protocols have been initialled by the heads of the respective delegations.

It was also agreed to include certain statements in the minutes of the negotiations. (The text of the minutes is attached to this Communication.) The Tunisian Delegation made a statement in which it expressed the particular importance it attached to the granting in future of a preferential margin to Tunisian undertakings in connection with invitations to tender for public works and supply contracts, as is done for ACP undertakings.

2. The Commission recommends that the Council approve the outcome of the negotiations with Algeria and Tunisia and initiate the procedure for the signing and conclusion of the new financial protocols. It consequently presents recommendations for Council regulations on the conclusion of these protocols (the texts of the initialled protocols are attached to the recommendations).

RECOMMENDATION
FOR A COUNCIL REGULATION
concerning the conclusion of a Financial Protocol
between the European Economic Community and the
PEOPLE'S DEMOCRATIC REPUBLIC OF ALGERIA

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,
and in particular Article 238 thereof,

Having regard to the Recommendation from the Commission,

Having regard to the opinion of the European Parliament,

Whereas the Financial Protocol between the European Economic Community
and the People's Democratic Republic of Algeria signed on
, should be concluded,

HAS ADOPTED THIS REGULATION :

Article 1

The Financial Protocol between the European Economic Community and
the People's Democratic Republic of Algeria is hereby approved on behalf
of the Community.

The text of this Protocol is annexed to this Regulation.

Article 2

The President of the Council shall, as regards the Community, give the
notification provided for in Article 21 (1) of the Protocol. (1)

Article 3

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

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

Done at

For the Council
The President

(1) The date of the entry into force of the Financial Protocol will be published
in the Official Journal of the European Communities by the General Secretariat
of the Council.

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PROTOCOL ON FINANCIAL AND TECHNICAL COOPERATION
BETWEEN THE EUROPEAN ECONOMIC COMMUNITY AND THE
PEOPLE'S DEMOCRATIC REPUBLIC OF ALGERIA

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THE COUNCIL OF THE EUROPEAN COMMUNITIES,
of the one part, and

THE PRESIDENT OF THE PEOPLE'S DEMOCRATIC REPUBLIC OF ALGERIA
of the other part,

REAFFIRMING their resolve to implement cooperation which will contribute to the economic and social development of Algeria and promote the strengthening of relations between the Community and Algeria,

ANXIOUS to pursue to this end the financial and technical cooperation provided for in the Cooperation Agreement,

HAVE DECIDED to conclude this Protocol and to this end have designated as their Plenipotentiaries :

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ARTICLE 1

Within the framework of the financial and technical cooperation provided for in the Cooperation Agreement concluded between the European Economic Community and the People's Democratic Republic of Algeria, the Community shall participate, on the terms set out in this Protocol, in the financing of measures intended to contribute to the economic and social development of Algeria.

ARTICLE 2

1. For the purposes specified in Article 1 and for a period expiring on 31 October 1986, an aggregate amount of 151 million ECU may be committed as follows :

- a) 107 million ECU in the form of loans from the European Investment Bank, hereinafter referred to as the "Bank", made from its own resources ;
- b) . 44 million ECU from the Community's budgetary resources, composed of :
 - 16 million ECU in the form of loans on special terms ;
 - 28 million ECU in the form of grants.

Provision may be made for contributions to risk capital formation, to be charged against the amount shown in the first indent of b) ; these may take the form inter alia of subordinated loans, conditional loans or acquisitions of holdings.

2. The loans referred to in paragraph 1 (a) - with the exception of those intended for financing the oil sector - carry a 2% interest rate subsidy financed by means of the funds shown in the second indent of paragraph 1 (b).

ARTICLE 3

1. The total amount fixed in Article 2 shall be used for the financing or part-financing of :

- capital projects in the fields of production and economic infrastructure, aimed in particular at diversifying the economic structure of Algeria and especially at promoting its industrialization and modernizing its agriculture ;
- technical cooperation schemes that are a preliminary or a complement to capital projects drawn up by Algeria;
- technical cooperation in the field of training.

2. The Community's financial contributions shall be used to cover internal and external costs necessarily incurred in carrying out approved projects or schemes (including costs in respect of studies, consulting engineers and technical assistance). They may not be used to cover current administrative, maintenance or operational expenditure.

ARTICLE 4

1. Capital projects shall be eligible for financing either by loans from the Bank, combined with interest rate subsidies on the terms set out in Article 2, or by loans on special terms, or by grants, or by a combination of these three means.

2. Technical and economic cooperation shall normally be financed by grants.

ARTICLE 5

1. The amounts to be committed each year shall be distributed as evenly as possible throughout the period of application of this Protocol.

2. Any funds not committed at the end of the period referred to in Article 2.1. shall be used, until exhausted, In that case, the funds shall be used in accordance with the same arrangements as those laid down in this Protocol.

ARTICLE 6

1. Loans granted by the Bank from its own resources shall be made in accordance with the arrangements, conditions and procedures laid down in its Statute. They shall, as regards their duration, be subject to terms established on the basis of the economic and financial characteristics of the projects for which these loans are intended, also taking into account the conditions obtaining on the capital markets on which the Bank procures its resources. The interest rate shall be determined in accordance with the Bank's practice at the time of signature of each loan contract, subject to the interest rate subsidy referred to in Article 2 (2).

2. Loans on special terms shall be granted for 40 years with 10 years' postponement of amortization and at an interest rate of 1 % per annum. The terms and arrangements for contributions to risk capital formation shall be determined on a case-by-case basis.

3. The loans may be granted through the intermediary of the State or appropriate Algerian bodies, on condition that they onlend the amounts to the recipients on terms decided, by agreement with the Community, on the basis of the economic and financial characteristics of the projects for which they are intended.

ARTICLE 7

Aid contributed by the Community for the execution of certain projects may, with the agreement of Algeria take the form of co-financing in which, in particular, credit and development bodies and institutions of Algeria of Member States or of third States or international finance organizations would take part.

ARTICLE 8

The following shall be eligible for financial and technical cooperation :

a) in general :

- the Algerian State ;

b) with the agreement of the Algerian Government, for projects or measures approved by it :

- Algerian official development agencies,
- private agencies working in Algeria for economic and social development,
- undertakings carrying on their activities in accordance with industrial and business management methods and set up as legal persons within the meaning of Article 12,
- groups of producers who are nationals of Algeria , and, exceptionally, where no such groups exist, the producers themselves,
- scholarship holders and trainees sent by Algeria under the training schemes referred to in Article 3.

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ARTICLE 9

1. Upon the entry into force of the Agreement the Community and Algeria shall establish by mutual agreement the specific objectives of financial and technical cooperation, by reference to the priorities set by Algeria's development plan.

These objectives may be reviewed by mutual agreement to take account of changes in Algeria's economic situation or in the objectives and priorities set by its development plan.

2. Within the framework established pursuant to paragraph 1, financial and technical cooperation shall apply to projects and schemes drawn up by Algeria or by other beneficiaries approved by that country.

ARTICLE 10

1. The Algerian State or, with the agreement of its Government, the other possible beneficiaries referred to in Article 8 shall present their requests for financial aid to the Community.

2. The Community shall appraise the requests for financing in collaboration with the competent Algerian authorities and the other beneficiaries, in accordance with the objectives referred to in Article 9 (1), and shall inform them of the decisions taken on such requests.

ARTICLE 11

1. The execution, management and maintenance of schemes that are the subject of financing under this Protocol shall be the responsibility of Algeria or the other beneficiaries referred to in Article 8 of this Protocol.

The Community shall make sure that this financial aid is expended in accordance with the agreed allocations and to the best economic advantage.

2. Certain rules for administering the financial aid granted by the Community will be the subject of an exchange of letters between the Commission and Algeria at the conclusion of this protocol.

ARTICLE 12

All natural and legal persons which come within the scope of the Treaty establishing the EEC and all natural and legal persons of Algeria may participate on equal terms in tendering procedures and other procedures for the award of contracts likely to be financed. Such legal persons formed in accordance with the law of a Member State of the EEC or of Algeria must have their registered offices, their administrative head offices or their principal establishments in the territories in which the Treaty establishing the European Economic Community is applied or in Algeria ; however, where only their registered offices are in those territories or in Algeria , the activities of such legal persons must be effectively and continuously linked with the economy of those territories or of Algeria.

ARTICLE 13

To promote participation by Algerian undertakings in the performance of works contracts, an accelerated procedure for issuing invitations to tender involving shorter time limits for the submission of tenders may be used where the works in question, because of their scale, are mainly of interest to Algerian undertakings.

This accelerated procedure may be used for invitations to tender the value of which is estimated at less than two million ECU.

ARTICLE 14

1. Algeria shall apply to contracts awarded for the execution of projects or schemes financed by the Community fiscal and customs arrangements no less favourable than those applied vis-à-vis the most favoured international development organization.

2. The fiscal and customs arrangements shall be established by means of an exchange of letters between the Parties.

ARTICLE 15

Algeria shall take the necessary measures to ensure that interest and all other payments due to the Community in respect of loans granted under this Protocol are exempted from any national or local tax or levy.

ARTICLE 16

Where a loan is accorded to a beneficiary other than the Algerian State, the provision of a guarantee by the latter or of other adequate guarantees may be required by the Community as a condition of the grant of the loan.

ARTICLE 17

Throughout the duration of the loans accorded pursuant to this Protocol, Algeria shall undertake to make available to debtors enjoying such loans or to the guarantors thereof the foreign currency necessary for the payment of interest, commission and other charges and the repayment of principal.

ARTICLE 18

The results of financial and technical cooperation may be examined within the Cooperation Council. The latter shall establish, where appropriate, the general guidelines of such cooperation.

ARTICLE 19

One year before the expiry of this Protocol, the Contracting Parties shall examine what arrangements could be made for financial and technical cooperation during a possible further period.

ARTICLE 20

This Protocol shall be annexed to the Cooperation Agreement concluded between the European Economic Community and Tunisia.

ARTICLE 21

1. This Protocol shall be subject to approval in accordance with the Contracting Parties' own procedures ; the Contracting Parties shall notify each other that the procedures necessary to this end have been completed.

2. This Protocol shall enter into force on the first day of the second month following the date on which the notifications provided for in paragraph 1 have been given.

ARTICLE 22

This Protocol is drawn up in two original copies in the Danish, Dutch, English, French, German, Greek, Italian and Arabic languages, each of these texts being equally authentic.

A N N E X

Minutes of the negotiation of a protocol on financial
and technical cooperation between the European Economic
Community and the People's Democratic Republic of Algeria

Joint declaration concerning Article 2 paragraph 1

It is understood that the definition of possible forms of risk capital as given in article 2.1. is not exhaustive neither does it commit Algeria nor the Community, to one or more of those definitions. The Community clarifies the expression "acquisition of holdings" as referring to temporary, minority holdings.

Joint declaration concerning Article 2 paragraph 2

It is understood that by the words "oil sector" shall be meant "the prospection, extraction, transmission (excluding distribution within Algeria) and refining (excluding petrochemical conversion) of hydrocarbons".

Joint declaration concerning Article 3 paragraph 1

The provisions of article 3.1. do not exclude from eligibility for financing by the Community projects having as their objective the social development referred to in the preamble and in Article 1.

Joint declaration concerning Article 5 paragraph 2

It is understood that the application of article 5.2. is dependent upon the submission by the Government of Algeria of mutually acceptable projects.

Declaration of the Delegation of the Community concerning Article 12

The provisions of the Financial Protocol are without prejudice to the general question of the origin of aid eligible for financing by the Bank from its own resources and do not, in this connection, affect the exercise by the Bank's bodies of their powers under the Statute of the Bank.

The special loans and the grants for the financing of technical co-operation may be used to finance aid originating outside the Community and Algeria, in the event of Community participation in joint co-financing according to articles 7 and 10 of the Protocol.

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RECOMMENDATION
FOR A COUNCIL REGULATION
concerning the conclusion of a Financial Protocol
between the European Economic Community and the
REPUBLIC OF TUNISIA

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,
and in particular Article 238 thereof,

Having regard to the Recommendation from the Commission,

Having regard to the opinion of the European Parliament,

Whereas the Financial Protocol between the European Economic Community
and the REPUBLIC OF TUNISIA, signed on
, should be concluded,

HAS ADOPTED THIS REGULATION :

Article 1

The Financial Protocol between the European Economic Community and
the REPUBLIC OF TUNISIA is hereby approved on behalf
of the Community.

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notification provided for in Article 21 (1) of the Protocol. (1)

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

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

Done at

For the Council
The President

(1) The date of the entry into force of the Financial Protocol will be published
in the Official Journal of the European Communities by the General Secretariat
of the Council.

PROTOCOL ON FINANCIAL AND TECHNICAL COOPERATION
BETWEEN THE EUROPEAN ECONOMIC COMMUNITY AND THE
REPUBLIC OF TUNISIA

THE COUNCIL OF THE EUROPEAN COMMUNITIES,
of the one part, and
the PRESIDENT OF THE REPUBLIC OF TUNISIA,
of the other part,

REAFFIRMING their resolve to implement cooperation which will contribute to the economic and social development of Tunisia and promote the strengthening of relations between the Community and Tunisia,

ANXIOUS to pursue to this end the financial and technical cooperation provided for in the Cooperation Agreement ,

HAVE DECIDED to conclude this Protocol and to this end have designated as their Plenipotentiaries :

ARTICLE 1

Within the framework of the financial and technical cooperation provided for in the Cooperation Agreement concluded between the European Economic Community and the Republic of Tunisia , the Community shall participate, on the terms set out in this Protocol, in the financing of measures intended to contribute to the economic and social development of Tunisia.

ARTICLE 2

1. For the purposes specified in Article 1 and for a period expiring on 31 October 1986, an aggregate amount of 139 million ECU may be committed as follows :

- a) 78 million ECU in the form of loans from the European Investment Bank, hereinafter referred to as the "Bank", made from its own resources ;
- b) . 61 million ECU from the Community's budgetary resources, composed of :
 - 24 million ECU in the form of loans on special terms ;
 - 37 million ECU in the form of grants.

Provision may be made for contributions to risk capital formation, to be charged against the amount shown in the first indent of b) ; these may take the form inter alia of subordinated loans, conditional loans or acquisitions of holdings.

2. The loans referred to in paragraph 1 (a) - with the exception of those intended for financing the oil sector - carry a 3% interest rate subsidy financed by means of the funds shown in the second indent of paragraph 1 (b).

ARTICLE 3

1. The total amount fixed in Article 2 shall be used for the financing or part -financing of :

- capital projects in the fields of production and economic infrastructure, aimed in particular at diversifying the economic structure of Tunisia and especially at promoting its industrialization and modernizing its agriculture ;
- technical cooperation schemes that are a preliminary or a complement to capital projects drawn up by Tunisia;
- technical cooperation in the field of training.

2. The Community's financial contributions shall be used to cover internal and external costs necessarily incurred in carrying out approved projects or schemes (including costs in respect of studies, consulting engineers and technical assistance). They may not be used to cover current administrative, maintenance or operational expenditure.

ARTICLE 4

1. Capital projects shall be eligible for financing either by loans from the Bank, combined with interest rate subsidies on the terms set out in Article 2, or by loans on special terms, or by grants, or by a combination of these three means.

2. Technical and economic cooperation shall normally be financed by grants.

ARTICLE 5

1. The amounts to be committed each year shall be distributed as evenly as possible throughout the period of application of this Protocol.

2. Any funds not committed at the end of the period referred to in Article 2.1. shall be used, until exhausted, In that case, the funds shall be used in accordance with the same arrangements as those laid down in this Protocol.

ARTICLE 6

1. Loans granted by the Bank from its own resources shall be made in accordance with the arrangements, conditions and procedures laid down in its Statute. They shall, as regards their duration, be subject to terms established on the basis of the economic and financial characteristics of the projects for which these loans are intended, also taking into account the conditions obtaining on the capital markets on which the Bank procures its resources. The interest rate shall be determined in accordance with the Bank's practice at the time of signature of each loan contract, subject to the interest rate subsidy referred to in Article 2 (2).

2. Loans on special terms shall be granted for 40 years with 10 years' postponement of amortization and at an interest rate of 1 % per annum. The terms and arrangements for contributions to risk capital formation shall be determined on a case-by-case basis.

3. The loans may be granted through the intermediary of the State or appropriate Tunisian bodies, on condition that they onlend the amounts to the recipients on terms decided, by agreement with the Community, on the basis of the economic and financial characteristics of the projects for which they are intended.

ARTICLE 7

Aid contributed by the Community for the execution of certain projects may, with the agreement of Tunisia, take the form of co-financing in which, in particular, credit and development bodies and institutions of Tunisia of Member States or of third States or international finance organizations would take part.

ARTICLE 8

The following shall be eligible for financial and technical cooperation :

a) in general :

- the Tunisian State ;

b) with the agreement of the Tunisian Government, for projects or measures approved by it :

- Tunisian official development agencies,
- private agencies working in Tunisia for economic and social development,
- undertakings carrying on their activities in accordance with industrial and business management methods and set up as legal persons within the meaning of Article 12,
- groups of producers who are nationals of Tunisia , and, exceptionally, where no such groups exist, the producers themselves,
- scholarship holders and trainees sent by Tunisia under the training schemes referred to in Article 3.

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ARTICLE 9

1. Upon the entry into force of the Agreement the Community and Tunisia shall establish by mutual agreement the specific objectives of financial and technical cooperation, by reference to the priorities set by Tunisia's development plan.

These objectives may be reviewed by mutual agreement to take account of changes in Tunisia's economic situation or in the objectives and priorities set by its development plan.

2. Within the framework established pursuant to paragraph 1, financial and technical cooperation shall apply to projects and schemes drawn up by Tunisia or by other beneficiaries approved by that country.

ARTICLE 10

1. The Tunisian State or, with the agreement of its Government, the other possible beneficiaries referred to in Article 8 shall present their requests for financial aid to the Community.

2. The Community shall appraise the requests for financing in collaboration with the competent Tunisian authorities and the other beneficiaries, in accordance with the objectives referred to in Article 9 (1), and shall inform them of the decisions taken on such requests.

ARTICLE 11

1. The execution, management and maintenance of schemes that are the subject of financing under this Protocol shall be the responsibility of Tunisia or the other beneficiaries referred to in Article 8 of this Protocol.

The Community shall make sure that this financial aid is expended in accordance with the agreed allocations and to the best economic advantage.

2. Certain rules for administering the financial aid granted by the Community will be the subject of an exchange of letters between the Commission and Tunisia at the conclusion of this protocol.

ARTICLE 12

All natural and legal persons which come within the scope of the Treaty establishing the EEC and all natural and legal persons of Tunisia may participate on equal terms in tendering procedures and other procedures for the award of contracts likely to be financed. Such legal persons formed in accordance with the law of a Member State of the EEC or of Tunisia must have their registered offices, their administrative head offices or their principal establishments in the territories in which the Treaty establishing the European Economic Community is applied or in Tunisia ; however, where only their registered offices are in those territories or in Tunisia , the activities of such legal persons must be effectively and continuously linked with the economy of those territories or of Tunisia.

ARTICLE 13

To promote participation by Tunisian undertakings in the performance of works contracts, an accelerated procedure for issuing invitations to tender involving shorter time limits for the submission of tenders may be used where the works in question, because of their scale, are mainly of interest to Tunisian undertakings.

This accelerated procedure may be used for invitations to tender the value of which is estimated at less than two million ECU.

ARTICLE 14

1. Tunisia shall apply to contracts awarded for the execution of projects or schemes financed by the Community fiscal and customs arrangements no less favourable than those applied vis-à-vis the most favoured international development organization.

2. The content of the arrangements mentioned in the above paragraph shall be established by means of an exchange of letters between the Parties.

ARTICLE 15

Tunisia shall take the necessary measures to ensure that interest and all other payments due to the Community in respect of loans granted under this Protocol are exempted from any national or local tax of levy.

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ARTICLE 16

Where a loan is accorded to a beneficiary other than the Tunisian State, the provision of a guarantee by the latter or of other adequate guarantees may be required by the Community as a condition of the grant of the loan.

ARTICLE 17

Throughout the duration of the loans accorded pursuant to this Protocol, Tunisia shall undertake to make available to debtors enjoying such loans or to the guarantors thereof the foreign currency necessary for the payment of interest, commission and other charges and the repayment of principal.

ARTICLE 18

The results of financial and technical cooperation may be examined within the Cooperation Council. The latter shall establish, where appropriate, the general guidelines of such cooperation.

ARTICLE 19

One year before the expiry of this Protocol, the Contracting Parties shall examine what arrangements could be made for financial and technical cooperation during a possible further period.

ARTICLE 20

This Protocol shall be annexed to the Cooperation Agreement concluded between the European Economic Community and Algeria.

ARTICLE 21

1. This Protocol shall be subject to approval in accordance with the Contracting Parties' own procedures ; the Contracting Parties shall notify each other that the procedures necessary to this end have been completed.

2. This Protocol shall enter into force on the first day of the second month following the date on which the notifications provided for in paragraph 1 have been given.

ARTICLE 22

This Protocol is drawn up in two original copies in the Danish, Dutch, English, French, German, Greek, Italian and Arabic languages, each of these texts being equally authentic.

A N N E X

Minutes of the negotiation of a protocol on financial
and technical cooperation between the European Economic
Community and the Republic of Tunisia.

Joint declaration concerning Article 2 paragraph 1

It is understood that the definition of possible forms of risk capital as given in article 2.1. is not exhaustive neither does it commit Tunisia nor the Community to one or more of those definitions. The Community clarifies the expression "acquisition of holdings" as referring to temporary, minority holdings.

Joint declaration concerning Article 2 paragraph 2

It is understood that by the words "oil sector" shall be meant "the prospection, extraction, transmission (excluding distribution within Tunisia) and refining (excluding petrochemical conversion) of hydrocarbons".

Joint declaration concerning Article 3 paragraph 1

The provisions of article 3.1. do not exclude from eligibility for financing by the Community projects having as their objective the social development referred to in the preamble and in Article 1.

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Joint declaration concerning Article 5 paragraph 2

It is understood that the application of article 5.2. is dependent upon the submission by the Government of Tunisia of mutually acceptable projects.

Declaration of the Delegation of the Community concerning Article 12

The provisions of the Financial Protocol are without prejudice to the general question of the origin of aid eligible for financing by the Bank from its own resources and do not, in this connection, affect the exercise by the Bank's bodies of their powers under the Statute of the Bank.

The special loans and the grants for the financing of technical co-operation may be used to finance aid originating outside the Community and Tunisia, in the event of joint co-financing and where the wisdom of using that type of co-financing has been shown.

Statement by the Tunisian Delegation concerning Article 13

The Tunisian Delegation considers that the preferential margin - the accelerated procedure with a ceiling of 2 million ECU - granted to Tunisian undertakings in connection with invitations to tender does not take sufficient account of the respective levels of competitiveness of European and Tunisian undertakings. It therefore wishes to reaffirm the particular importance it attaches to this matter so that in future a solution based on non-discrimination between Tunisia and other non-member countries - and one which is in any event compatible with the spirit and letter of the third and fourth paragraphs of the Preamble to the EEC-Tunisia Cooperation Agreement - can be found to this problem.