COUNCIL OF MINISTERS OF THE
EUROPEAN COMMUNITIES

1980

EXPLANATORY MEMORANDUM

concerning
the Agreement on the Measures and Procedures required for Implementation of the new Convention
and
the Internal Agreement on the financing and administration of Community aid

Following the precedent set up in the two Yaoundé Conventions and the first Lomé Convention, the Member States of the Community adopted and signed on 20 November 1979 two Internal Agreements: one on the measures and procedures required for implementation of the new Convention and the other on the financing and administration of Community aid.

I.

The Internal Agreement on procedures lays down, in particular, the conditions for determining, in the fields for which they are competent, the positions to be adopted by the representatives of the Community within the ACP-EEC Council of Ministers and the steps to be taken in the event of disputes between the Community and the ACP States or between the Member States themselves. Furthermore, this same Internal Agreement requires Member States to inform one another whenever one of them concludes an agreement or treaty with one or more ACP States on a matter covered by the Convention.

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II.

The Internal Agreement on the financing and administration of Community aid, signed by the Member States on 20 November 1979, is intended to ensure the implementation of the 2nd ACP-EEC Convention of Lomé of 31 October 1979 and the Decision on the association of the overseas countries and territories with the Community, which will follow on the Decision of 29 June 1976.

The particular purpose of this Agreement here called the "Internal Financing Agreement", is to establish a 5th European Development Fund and to lay down a procedure for providing it with funds and for contributions from Member States. It also determines the rules for the management of financial and technical co-operation and defines the procedures for programming, examining and approving aid and the detailed rules for supervising the use of the aid.

I. Procedure for providing the 5th European Development Fund with funds and for the allocation of contributions by Member States; procedures for intervention by the European Investment Bank

1. The Member States have agreed to a substantial financial outlay for the purposes of implementing financial and technical co-operation. The aid allocated to the ACP States by the second Lomé Convention totals 5,227 MEUA, of which ammount 4,652 MEUA is for the 5th EDF.

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Of this amount, 4,542 MEUA is intended for the ACP States which are signatories to the 2nd Lomé Convention and 94 MEUA for the associated countries and territories (OCT) referred to in Part Four of the Treaty of Rome.

The Internal Financing Agreement (Article 1) divides the contributions of the Member States to the 5th European Development Fund as follows:

Belgium	273.524	million	EUA	=	5.9%
Denmark	115.900	"	"	=	2.5%
Germany	1,311.988	"	"	=	28.3%
France	1,186.816	"	"	=	25.6%
Ireland	27.816	"	"	=	0.6%
Italy	533.140	"	"	=	11.5%
Luxembourg	9.272	"	"	=	0.2%
Netherlands	343.064	"	"	=	7.4%
United Kingdom	834,480	"	"	=	18.0%

This allocation of contributions, the outcome of long and delicate negotiations between the Member States, uses none of the scales given in the Treaty of Rome (Article 1).

2. It should be recalled that up to 700 MEUA (685 MEUA for the ACP States and 15 MEUA for the OCT) in the form of loans granted by the European Investment Bank from its own resources will be added to the funds allocated to the 5th EDF (4,652 MEUA) (Article 2).

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These loans may be accompanied by interest rate subsidies. For this purpose, an amount of up to 175 MEUA has been set aside from the sums allocated for aid in the form of grants (Article 4).

In addition, subject to a 200-MEUA ceiling, the European Investment Bank has been empowered to provide additional aid from its own resources in order to finance certain mining and energy investments as referred to in Article 59 of the Lomé Convention.

The Member States have undertaken to act as guarantor for these loans. This guarantee is restricted to 75% of the total amount of the credits opened by the Bank under the loan contracts and will be the subject of contracts between each Member State and the EIB (Article 8).

For the purpose of financing mining and energy investment projects, the Member States may act as guarantor for the Bank, in specific cases and at the latter's request, in respect of a percentage greater than 75% and up to 100% of the credits opened by the Bank (Article 8).

3. All financial operations undertaken as part of financial and technical co-operation for the benefit of the ACP States and the OCT will, with the exeption of loans granted by the EIB from its own resources (Article 6), be charged to the European Development Fund and will therefore exclude any charging to the budget of the Communities (Article 5).

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However, it should be noted that expenditure on the Commission's delegations, hitherto charged to the EDF, will henceforward be paid for from the Community budget.

4. The detailed rules for calling and paying the contributions are identical to those laid down in the Internal Financing Agreement of 1975.

Each year the Council, acting by a qualified majority as prescribed in Article 17(4) of the Agreement, will decide on the calls for the Member States' contributions on the basis of schedules submitted by the Commission.

If, in the course of the year, the contributions prove insufficient to meet the requirements of the Fund, the Commission will submit supplementary proposals to the Council (Article 6).

5. The unit of account used for implementing the Internal Financing Agreement, as regards both the amounts made available to the EDF and those supplied by the European Investment Bank, is that defined in Council Decision 75/250/EEC of 21 April 1975 ([1]). This unit of account may be replaced by the ECU (Article 3).

([1]) OJ No L 104, 24.4.1975, p. 35.

6. The Agreement lays down that, as for the previous Funds, any remaining balance of the EDF will continue to be used in accordance with the same rules of administration and management as those laid down in the Agreement (Article 8). After the date of expiry of the Agreement, Member States will still be obliged to pay that portion of their contributions not yet called for (Article 7).

II. Principles and rules for the management of financial and technical co-operation

The Internal Agreement defines the allocation of powers between the Commission and the European Investment Bank in the appraisal and financial execution of projects (Articles 10 to 14) and governs the role of the Member States, especially in the various stages of programming aid and approving financing proposals (Articles 15 to 24).

1. The provisions on aid programming closely resemble those of the Internal Financing Agreement of 1975. However, they have been altered to take account of the new procedural rules on the subject provided for in Article 109 of the second Lomé Convention. The main purpose of the planned exchanges of views between representatives of the Member States, the Commission and the Bank is to enable the most comprehensive and regular exchange of information possible to take place on aid granted or envisaged for the benefit of the ACP States and the OCT and thus to ensure as far as possible, consistency between Community aid and aid from the Member States to the ACP States and the OCT (Articles 15 and 16).

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2. The Internal Financing Agreement provides for the setting up, under the auspices of the Commission, of a Committee - the EDF Committee - consisting of representatives of the Governments of the Member States, which must give its opinion on the financing proposals submitted to it by the Commission (Article 17). It also provides for the Committee set up under the auspices of the EIB to continue operating (Article 22).

The operating rules of the EDF Committee and the EIB Committee are similar to those in the previous internal Agreements. They uphold the provisions on consultation with the ACP States (Articles 17, 18, 22 and 23), while adapting them to the new procedures laid down in Article 113 of the 2nd Lomé Convention.

Within these two Committees, the Member States' votes are weighted as follows:

Belgium	6	Italy	12
Denmark	3	Luxembourg	1
Germany	27	Netherlands	8
France	24	United Kingdom	17
Ireland	2		

3. The traditional procedure for the adoption of financing decisions is retained. The financing proposals, together with the opinion of the EDF Committee, are submitted to the Commission for its decision. However, if the latter intends to differ from the opinion expressed by the Committee, or if the Committee has not delivered a favourable opinion, it shall either withdraw the financing proposal or refer it to the Council, which will then decide by a qualified majority in accordance with the voting rules of the EDF Committee (Article 19).

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Accordingly, the management body may not take any action in the absence of a favourable opinion of the Committee. The same principles and rules apply to the EIB Committee, subject to certain differences due mainly to the Statutory rules peculiar to the EIB (Article 24).

4. As in the past, an annual report will be submitted by the Commission and the Bank to the Council of the Communities on how and to what extent the aid financed by the Community is used.

The Council, acting by a qualified majority of 69 votes, may take the necessary measures (Article 25).

As regards the stabilization of export earnings, the Agreement provides for the drawing up by the Commission of an annual comprehensive report on the operation of the system and on the use of transferred funds by the ACP States and the OCT (Article 26).

III. Final provisions

1. The Council will, upon the entry into force of the Convention, adopt the Financial Regulation containing the provisions for implementing the Agreement (Article 28).

2. Article 29 of the Agreement lays down the organizational arrangements for the auditing and discharge in respect of operations carried out by the Commission and the EIB.

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The Court of Auditors of the Communities will exercise its powers with regard to EDF operations managed by the Commission. The discharge in respect of financial management will be given by the European Parliament on the recommendation of the Council.

Operations financed from the resources of the EDF and managed by the EIB are subject to the auditing and discharge procedures laid down by the Statute of the Bank for all its operations.

3. As in the past, the balances remaining from the previous EDFs will continue to be administered according to the rules applicable to each of these Funds (Article 30).

4. Article 31 lays down the rules for approval of the Agreement by each Member State. It also stipulates that the Agreement, concluded for the same duration as the Convention of Lomé, will remain in force after the date of expiry of the Convention until all operations financed under the Convention have been fully executed.