



**TREATY SERIES 2007
N° 129**

Internal Agreement between Representatives of the Governments of the Member States, meeting within the Council, on the financing and administration of Community Aid under the Financial Protocol to the Partnership Agreement between the African, Caribbean and Pacific States and the European Community and its Member States signed in Cotonou (Benin) on 23 June 2000 and the allocation of financial assistance for the Overseas Countries and Territories to which Part Four of the EC Treaty applies

Done at Brussels on 18 September 2000

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Presented to Dáil Éireann by the Minister for Foreign Affairs

**INTERNAL AGREEMENT BETWEEN REPRESENTATIVES OF THE
GOVERNMENTS OF THE MEMBER STATES, MEETING WITHIN THE
COUNCIL, ON THE FINANCING AND ADMINISTRATION OF
COMMUNITY AID UNDER THE FINANCIAL PROTOCOL TO THE
PARTNERSHIP AGREEMENT BETWEEN THE AFRICAN, CARIBBEAN
AND PACIFIC STATES AND THE EUROPEAN COMMUNITY AND ITS
MEMBER STATES SIGNED IN COTONOU (BENIN) ON 23 JUNE 2000 AND
THE ALLOCATION OF FINANCIAL ASSISTANCE FOR THE OVERSEAS
COUNTRIES AND TERRITORIES TO WHICH PART FOUR OF THE EC
TREATY APPLIES**

THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES OF THE EUROPEAN COMMUNITY, MEETING WITHIN THE COUNCIL,

Having regard to the Treaty establishing the European Community,

Whereas:

(1) The Partnership Agreement between the African, Caribbean and Pacific States and the European Community and its Member States signed in Cotonou, Benin on 23 June 2000 (hereinafter referred to as 'the ACP-EC Agreement') sets the aggregate amount of Community aid to the ACP States for the five-year period 2000-2005 at EUR 15 200 million. This amount is comprised of, on the one hand, EUR 13 500 million from the 9th European Development Fund (9th EDF) contributed by Member States and, on the other hand, EUR 1700 million from the European Investment Bank (hereinafter referred to as 'the Bank').

(2) In addition, any balances from previous European Development Funds as of the day of entry into force of the Financial Protocol to the ACP-EC Agreement will be transferred to the 9th EDF and used in accordance with the conditions laid down in the ACP-EC Agreement. The total amount foreseen will cover the period 2000-2007. This period comprises the period of approximately two years required for ratification of the 9th EDF and the two years following the expiry of the 9th EDF.

(3) Council Decision 91/482/EEC of 25 July 1991 on the association of the overseas countries and territories with the European Economic Community, has been extended until 28 February 2001 by Decision 2000(169/EC (1). A new decision on the basis of Article 187 of the Treaty will be adopted before that date. This decision will set at EUR 175 million the amount of the 9th EDF for financial assistance to the Overseas Countries and Territories (hereafter referred to as 'the OCT) to which Part Four of the Treaty applies. Provision is also made for the allotment of an amount of up to EUR 20 million to be undertaken by the Bank from its own resources in the OCT. In addition any balances from previous EDFs allocated to the OCT as of the day of entry into force of this Agreement will be transferred to the 9th EDF and used in accordance with the conditions laid down in the said Decision.

(4) The representatives of the governments of the Member States, meeting within the Council, have agreed to set aside EIJR 125 million to finance costs incurred by the Commission in the implementation of the 9th EDF.

(5) In order to implement the ACP-EC Agreement and the future Decision concerning the association of the OCT (hereinafter referred to as 'the Decision'), a 9th EDF should be established and a procedure laid down for the allocation of funds and for contributions from Member States to those funds.

(6) The rules for the administration of financial cooperation should be determined, the procedure for programming, examining and approving aid should be decided and the detailed rules for supervising the use of aid should be laid down.

(7) The Conclusions on the financial allocation for the 9th EDF, drawn up in the Ministerial Coordination on behalf of the European Community with regard to the 3rd ACP-EC Ministerial Negotiating Conference of 6 and 7 December 1999, note the Commission's intention to decentralise its administrative decision-making and emphasise the need for reforms aiming at a redefinition of the respective roles of the Commission and the Council in the decision-making process of the European Development Fund.

(8) The declaration by the Council and the Commission on the programming process noted in the minutes of the ACP-EC Ministerial Negotiating Conference of 2 and 3 February 2000 states that the procedures and reporting requirements surrounding the programming process must be managed in a disciplined manner and that the respective roles of the Member States and the Commission in the decision making process must be reviewed and adapted.

(9) The Council Conclusions of 21 *May* 1999 on the evaluation of European Community development instruments and programmes set out various ways in which the Council calls on the Commission and Member States to improve the efficiency of European Community development aid, including deconcentration to delegations, increased coordination and complementarity among donors, a reduced number of instruments, increased use of performance criteria and a reorientation of the work of development management committees.

(10) The Council of 21 May 1999 adopted a Resolution on complementarity between Community and Member States' development cooperation. The Council of 18 May 2000 adopted conclusions on operational coordination. These documents reiterated the need for closer coordination and complementarity and also the need for the partner country to have a leading role in this process.

(11) A Committee of Representatives of the Governments of Member States should be set up at the Commission and a similar Committee should be set up at the Bank. The work of the Commission and the Bank to apply the ACPEC Agreement and the corresponding provisions of the Decision should be harmonised,

After consulting the Commission and the Bank,

HAVE AGREED as follows:

CHAPTER 1 FINANCIAL RESOURCES

Article 1 *Resources of the 9th EDF*

1. The Member States hereby set up a ninth European Development Fund (2000), hereinafter referred to as 'the 9th EDF'.

2. The 9th EDF shall consist of

(a) An amount of up to EUR 13 800 million contributed by the Member States a follows:

Member State	Contribution in million EUR
Belgium	540,96
Denmark	295,32
Germany	3 223,68
Greece	172,50
Spain	805,92
France	3 353,40
Ireland	85,56
Italy	730,52
Luxembourg	40,02
Netherlands	720,36
Austria	365,70
Portugal	133,86
Finland	204,24
Sweden	376,74
United Kingdom	1 751,22
	13 800,00

Within this total amount,

(i) EUR 13500 million shall be allocated for the ACP States;

(ii) E1JR 175 million shall be allocated to the OCT;

(iii) EUR 125 million shall be allocated to the Commission for costs linked to implementation of the 9th EDF.

(b) Any balances remaining from previous EDFs on the date of entry into force of the Financial Protocol to the ACPEC Agreement, as well as any amounts that will be de-committed at a later date from ongoing projects under these EDF, shall be transferred to the 9th EDF. Any resources thus transferred to the 9th EDF that previously had been allocated to the indicative programme of an ACP State. ACP region or an OCT will remain allocated to that State, region or OCT.

(c) The overall amount foreseen for assistance to the ACP shall be supplemented by the remaining balances from previous EDFs. The total amount of resources shall cover the period 2000-2007.

3. The revenue accruing from interest on the appropriations / referred to in paragraph 2 of this Article deposited with the paying agents in Europe referred to in Article 3 7(1) of Annex IV to the ACP-EC Agreement shall be credited to one or more bank accounts opened in the name of the Commission, and shall be used in accordance with the terms of Article 10.

4. The allocation of contributions referred to in paragraph 2(a) shall be amended by a decision of the Council acting unanimously, on the basis of a proposal from the Commission, should a new State accede to the Community.

5. Financial resources may also be adjusted, by a decision of the Council acting unanimously, in accordance with Article 62(2) of the ACP-EC Partnership Agreement.

Article 2

Resources reserved for the ACP States

1. Out of the total amount stated in Article I (2)(a), an amount of up to EUR 13 500 million shall be reserved for the ACP States and allocated as follows:

(a) up to EUR 10 000 million in the form of grants comprising up to:

(i) EUR 9 836 million reserved for support for long- term development to be programmed in accordance with Articles 1 to 5 of Annex IV to the ACP-EC Agreement. These resources may be used to finance short-term emergency actions in accordance with Article 72(3) of the ACP-EC Agreement;

(ii) EUR 90 million reserved for the financing of the budget of the Centre for Development of Enterprise (CDE) in accordance with the provisions of Annex 111 to the ACP-EC Agreement;

(iii) EUR 70 million reserved for the financing of the budget of the Technical Centre for Agriculture and Rural Cooperation (CTA) in accordance with the provisions of Annex III to the ACP-EC Agreement; and

(iv) EUR 4 million for the expenditure relating to the ACP-EC Joint Assembly, constituted by Article 17 of the ACP-EC Agreement.

(b) up to EUR 1 300 million reserved for the financing of support for regional cooperation and integration of the ACP States in accordance with Articles 6 to 14 of Annex IV to the ACP-EC Agreement.

(c) up to EUR 2 200 million shall be allocated to finance the Investment Facility in accordance with the terms and conditions set out in Annex U (Terms and conditions of financing') to the ACP-EC Agreement, without prejudice to the financing of the

interest rate subsidies provided for in Articles 2 and 4 of Annex 11 to the Agreement funded from the resources mentioned in Article 3(a) of Annex I thereto.

2. Out of the EUR 13 500 million referred to in paragraph 1, an amount of EUR 1 000 million may be released only following a performance review undertaken by the Council in 2004, on the basis of a proposal from the Commission. These resources shall, if released, be distributed as appropriate to the envelopes referred to in paragraphs I (a), (b) and (c).

3. Before the expiry of the 9th EDF, the Member States shall, in accordance with paragraph 7 of the Financial Protocol of the ACP-EC Agreement, together with the ACP States assess the degree of realisation of commitments and disbursements. The need for new resources to support financial cooperation shall be established in the light of this assessment and shall take full account of the uncommitted and non-disbursed resources under the 9th EDF.

4. Before the expiry of the 9th EDF, the Member States shall set a date beyond which the funds of the 9th EDF may no longer be committed.

Article 3

Resources reserved for the OCT

1. The overall amount of financial assistance to the OCT allocated by the Community in the form of grants out of the overall amount stated in Article 1 (2)(a) shall be EUR 175 million of which EUR 155 million in the form of grants and EUR 20 million under the Investment Facility. The rules governing the implementation of this assistance shall be laid down in the Council Decision on the association of the OCT with the Community, adopted pursuant to Article 187 of the Treaty.

2. Where an OCT becomes independent and accedes to the ACP-EC Agreement, the amounts indicated in paragraph I of this Article shall be reduced and those indicated in Article 2(a)(i) correspondingly increased by a decision of the Council acting unanimously on a proposal from the Commission.

Article 4

Resources reserved for costs linked to implementation

An amount of EUR 125 million shall be reserved for the financing of costs linked to implementation incurred by the Commission in the framework of the ACP-EC Agreement. It shall be utilised in accordance with the principles set out in Article 10 of this Agreement together with the resources referred to in Article 1(3) of this Agreement.

Article 5

Loans from Bank own resources

1. To the amount laid down in Article 1(2) shall be added up to EUR 1 720 million in the form of loans granted by the Bank from its own resources. These resources shall be granted for the purposes set out in Annex II to the ACP-EC Agreement and the Council Decision in force adopted pursuant to Article 187 of the Treaty with regard to

the OCT (hereafter referred to as 'Decision'), in accordance with the conditions provided for by its statutes and the relevant provisions of the terms and conditions for investment financing s laid down in the aforementioned Annex and Decision.

2. These loans shall be allocated as follows:

(a) an amount of up to EUR 1 700 million for financing operations to be carried out in the ACP States;

(b) an amount of up to EUR 20 million for financing operations to be carried Out in the OCT.

Article 6

Guarantee for the Bank

1. The Member States undertake to act as guarantor for the Bank, waiving any right to object and in proportion to their contributions to its capital, in respect of all financial commitments arising for its borrowers out of the loan contracts concluded by the Bank with its own resources pursuant to Article I of Annex 11 to the ACP-EC Agreement and the corresponding provisions of the Decision.

2. The guarantee referred to in paragraph 1 shall be restricted to 75 % of the total amount of the credits opened by the Bank under all the loan contracts; it shall be applied to cover all risks.

3. The undertakings arising from paragraph I shall be the subject of guarantee contracts between each Member State and the Bank.

Article 7

Operations managed by the Bank under previous EDFs

1. Payments made to the Bank in respect of special loans granted to the ACP States, the OCT and the French overseas departments, together with the proceeds and income from risk capital operations, undertaken under the previous EDFs, shall be credited to the Member States in proportion to their contributions to the 9th EDF from which the sums are derived, unless the Council decides unanimously, on a proposal from the Commission, to place them in reserve or allocate them to other purposes.

2. Any commission due to the Bank for managing the loans and operations referred to in paragraph shall be deducted in advance from these sums.

Article 8

Operations managed by the Bank under the 9th EDF

1. Proceeds and income received by the Bank from operations under the Investment Facility shall be used for further operations under the Facility, in accordance with Article 3 of Annex 11 to the Agreement and after deduction of exceptional expenses and liabilities arising in connection with the Facility.

2. The Bank shall be remunerated on a full indemnity basis for the management of the Investment Facility operations. The Council shall decide, by the qualified majority laid down in Article 21 of this Agreement and on a proposal from the Commission drawn up in agreement with the Bank, on the resources and mechanisms for remuneration of the Bank. The terms of this decision shall be incorporated in the agreement by which the Bank undertakes to conduct these operations.

Article 9

Costs linked to implementation of the resources of the 9th EDF

1. The resources referred to in Article 4 of this Agreement shall, together with the resources referred to in Article 1(3), be used to cover administrative and financial costs arising from the implementation of the resources of the 9th EDF. The Commission shall make use of these resources for the following purposes:

(a) administrative and financial costs arising from the cash management of the 9th EDF;

(b) reinforcing the administrative capacities of the Commission and its Delegations in order to ensure a smooth preparation and implementation of operations financed from the 9th EDF;

(c) the financing of studies, assessments, audits or consultancy services, including in the area of the analysis, diagnosis and formulation of structural adjustment and other policies; and

(d) monitoring and evaluation.

Such assistance shall not be assigned to core tasks of the European public service, i.e. the Commission's permanent staff.

2. The Commission shall make annual global financial proposals to the EDF Committee referred to in Article 21, hereinafter referred to as the EDF Committee', on the use of these resources which will include a report on the activities in the preceding year. The EDF Committee shall deliver its opinion on such financing proposals in accordance with the procedure laid down in Article 27.

3. However, acting on a Commission proposal, the Council may decide by the qualified majority laid down in Article 21 to use the resources referred to in this Article for purposes other than those provided for in paragraph 1.

Article 10

Contributions to the 9th EDF

1. Each year, the Commission, taking into account the Bank's forecast requirements concerning the management and the operations of the Investment Facility, shall establish and communicate to the Council before 15 October a statement of the payments to be made in the following budget year and a schedule of the calls for contribution. The amount requested shall be justified by the Commission on the basis

of the Commission's capacity to deliver the proposed level of resources effectively. The Council shall decide thereon by the qualified majority laid down in Article 21 as well as on each scheduled call for contribution.

2. As regards funds transferred from previous EDFs to the 9th EDF in accordance with Article 1(2)(b), the contributions of each Member State shall be calculated in proportion to the contribution of each Member State to the EDF in question.

3. Together with its annual estimates of contributions, the Commission shall send to the Council its estimates of commitments and disbursements, for each of the four years following the year relating to the call for contributions. The schedule shall be approved and reviewed annually by the Council.

4. Should the contributions prove insufficient to meet the 9th EDF's actual needs in the financial year in question, the Commission shall submit proposals for supplementary payments to the Council, which shall take a decision, as soon as possible, by the qualified majority laid down in Article 21.

5. The detailed rules for payments of contributions by the Member States shall be determined by the Financial Regulation referred to in Article 31.

CHAPTER II

RESPONSIBILITIES OF THE COMMISSION AND THE EUROPEAN INVESTMENT BANK

Article 11

Financial execution of projects and programmes

1. The Commission shall undertake the financial execution of operations carried out with the resources in the form of grants other than interest subsidies. The Commission shall make payments in accordance with the Financial Regulation referred to in Article 31.

2. The Bank shall on behalf of the Community manage the Investment Facility and shall conduct operations thereunder, in accordance with the rules set out in the Financial Regulation referred to in Article 31. In this context, the Bank shall act on behalf of and at the risk of the Community. Any rights resulting from such operations, and particularly rights as creditor or owner, shall be vested in the Member States.

3. The Bank shall undertake the financial execution of operations carried out by means of loans from its own resources, where applicable combined with interest rate subsidies drawn from the Fund's grant resources.

4. Both the Commission and the Bank may, in the case of programmes or projects co-financed by Member States or their executing agencies and consistent with the priorities set out in the Country Cooperation Strategies referred to in Chapter III, entrust Member States or their executing agencies with the responsibility for the administration of European Union funds. Visibility of the European Union's contribution shall however be fully assured. The Commission shall provide financial compensation for the administrative burden assumed.

Article 12
*Monitoring and reporting requirements regarding the
progress in implementation of 9th EDF assistance*

1. The Commission and the Bank shall monitor, each to the extent to which it is concerned, the use of 9th EDF assistance by the ACP States, the OCT or any other recipients, and the implementation of projects financed by 9th EDF assistance, having particular regard to the relevant objectives referred to in Articles 55 and 56 of the ACP-EC Agreement and in the corresponding provisions of the Decision.
2. The Bank shall periodically inform the Commission regarding the implementation of projects financed from the 9th EDF resources it administers, following the procedures set out in the operational guidelines of the Investment Facility. The Commission and the Bank will ensure close coordination and cooperation in supporting private sector development in the ACP States.
3. The Commission and the Bank shall, pursuant to Articles 17, 18 and 19, provide Member States, meeting within the EDF Committee, with information on the operational national and regional implementation of resources from the 9th EDF. Such information shall also cover operations financed from the Investment Facility.
4. As referred to in Article 2(2) and 2(3) of this Agreement, the Commission shall provide the Council with a proposal for the global performance review to be undertaken by the Council in 2004. This review will, in particular assess the degree of realisation of commitments and disbursements.

Article 13
Evaluations

1. The Commission and the Bank shall, each to the extent to which it is concerned, ensure that the quality and impact of financial assistance financed from the 9th EDF are thoroughly evaluated by independent evaluators as regards main sectors, themes and instruments.
2. Without prejudice to the evaluations of main sectors, themes and instruments referred to in paragraphs 1, individual projects may be evaluated by independent evaluators on a case-by-case basis. Project evaluations may be undertaken on the initiative of the Commission and indicated in the financing proposal. Member States may also request a project evaluation when the financing proposal is discussed in the EDF Committee.
3. All evaluations shall be carried out in accordance with best evaluation practices including the evaluation criteria and 'Principles for the evaluation of development assistance' established by the Development Assistance Committee of the OECD.
4. The EDF Committee shall be notified of the finalisation of the evaluation, which subsequently may, pursuant to Article 28(c), be discussed by the EDF Committee.

The results of evaluations shall be taken into account in the process of midterm and end-of-term reviews of the cooperation strategies provided for in Article 18.

CHAPTER III PROGRAMMING

Article 14

Programming of assistance

1. The process of programming for assistance to individual ACP State shall be undertaken in accordance with Articles 1 to 5 of Annex IV to the ACP-EC Agreement.

2. The process of programming of support for regional cooperation and integration of the ACP States shall be undertaken in accordance with Articles 6 to 14 of Annex IV to the ACP-EC Agreement.

3. Programming for this purpose shall notably mean:

(a) the preparation and development of a Country Cooperation Strategy (CS)/Regional Cooperation Strategy (RCS) based on the country's or region's own medium-term development objectives and strategies:

(b) a clear indication from the Community of the indicative programmable financial allocation as referred to in Article 3 of Annex IV, from which the country or region may benefit during the five-year period;

(c) the preparation and adoption of an indicative programme for implementing the CS or RCS;

(d) a review process covering the CS or RCS, the indicative programme and the volume of resources allocated to it.

Article 15

CSs and indicative programmes

1. At the outset of the programming process, the Commission, together with the ACP State concerned, and after consultation with the Bank, shall prepare the Country Cooperation Strategy (CS) and its accompanying indicative programme at field level.

2. The preparation of the CS shall take place in coordination with representations of Member States in the ACP State concerned. Such coordination shall:

(a) as far as possible take place through existing mechanisms for donor coordination in the ACP State concerned;

(b) be open to participation by Member States that are not permanently represented in the ACP State concerned and by other donors which are active in that ACP State. Member States that are not in a position to participate in the coordination exercise shall have access to information on the results;

(c) involve the Bank on the matters relative to its operations and those of the Investment Facility.

3. Coordination on field level shall give emphasis to shared assessments of needs and performance and sector analysis as well as priorities. The coordination exercise shall ensure that the CS and indicative programme are coherent with country-led initiatives, such as the Poverty Reduction Strategy Papers and the Comprehensive Development Framework, where such dialogue exists.

4. Community support in the form of grants shall be concentrated in a limited number of focal sectors and shall ensure complementarity with operations financed by the ACP State itself, by Member State and by other donors.

5. Each CS, including its draft indicative programme, shall be set out in a single document. This document shall be the subject of an exchange of views between the Member States and the Commission in the framework of the EDF Committee. In accordance with Articles 4(3) and 5(4) of Annex IV to the ACP-EC Agreement, the indicative programme shall include specific and clearly identified operations for attaining the objectives and targets, especially those that can be committed before the next review. The indicative programme shall also include impact indicators and sectoral policy commitments and a timetable for implementation and review of the indicative programme including commitments and disbursement of resources. The Bank shall take part in this exchange of views. The EDF Committee shall deliver its opinion on the content of the document in accordance with the procedure set out in Article 27.

6. The indicative programme shall subsequently be adopted by common agreement between the Commission and the ACP State concerned and shall, when adopted, be binding on both the Community and that State. The finalised CS and its indicative programme shall subsequently be transmitted to the EDF Committee for information.

If the CS and indicative programme on which the EDF Committee has delivered its opinion is substantially modified before it is signed with the ACP State concerned, the revised CS and indicative programme shall be submitted to the said EDF Committee for a new opinion.

7. The Commission, the Bank and the Member States shall take all necessary measures, in particular in relation to the process of exchange of views referred to in paragraph 5 of this Article, to ensure that the establishment of the CS and the corresponding indicative programme is completed within the shortest possible time. Save in exceptional circumstances, the process shall be finalised within twelve months of the signing of the Partnership Agreement.

Article 16 *Resource allocation*

At the beginning of the programming processes referred to in Articles 1 and S of Annex IV to the ACP-EC Agreement the Commission shall, on the basis of the

criteria identified in Articles 3 and 9 of Annex IV to the ACP-EC Agreement, establish the indicative grant allocation within the resources detailed in Article 2(1)(a)i) and (b) for each ACP country and region on which the programming process is based. The two elements of the allocation to each country referred to in Article 3(2) of Annex IV to the ACP-EC Partnership Agreement shall be identified in this context. The Commission shall inform the EDF Committee of these allocations as well as of any provision made in accordance with Article 3(4) of Annex IV.

The EDF Committee shall give its opinion, in accordance with the procedure defined in Article 27, on the method used in the application of the general criteria for resource allocation, as presented by the Commission.

Article 17

Annual review of the Indicative Programmes

1. In accordance with Article 5(4) of Annex IV to the ACPEC Agreement, the annual operational review of each indicative programme shall be carried out by the Commission together with each ACP State and in close coordination with the Member States. The Bank shall be consulted on matters relating to its operations and those of the Investment Facility.
2. This annual review of each programme shall be completed within a period of 60 days. The Commission, the Bank and the Member States shall take all necessary measures, in particular in relation to the process of exchange of views referred to in paragraph 3 of this Article, to ensure that this time frame is respected.
3. Within the 60-day period, the EDF Committee shall discuss the annual review on the basis of a document to be submitted by the Commission.
4. The annual review shall be finalised by the Commission and the ACP State concerned. The final results of the annual review shall be communicated to the EDF Committee for information.

Article 18

Mid-term and end-of-term reviews of the CS

1. At the middle and at the end of the period of application of the Financial Protocol, the review process shall, in accordance with the process referred to in Articles 5(6) and 11 of Annex IV to the ACP-EC Agreement, be expanded to include a review and adaptation of the CS and the indicative programme for the next five-year period. These reviews shall constitute an integral part of the programming process and include, as an essential part an assessment of the impact of the Community's development cooperation in the relation to the objectives and indicators set in the CS.

Mid-term and end-of-term reviews for each ACP State shall be carried out by the Commission and the ACP State concerned in close coordination with the Member States represented in that ACP State. The Bank shall be consulted on matters relating to its operations and those of the Investment Facility.

2. The mid-term and end-of-term reviews may lead the Commission to propose a revision of the resource allocation for the next five-year period in the light of the current needs and performance of the ACP State concerned.

3. The reviews at mid-term and at the end of the period of application of the Financial Protocol, including the possible revision of the allocated resources, shall be finalised within a total period of 90 days. The Commission, the Bank and the Member States shall take all necessary measures, in particular in relation to the process of the EDF Committee opinion referred to in paragraph 4, to ensure that the time frames for these reviews are respected.

4. Within the period specified for the mid-term and end-of-term reviews, the EDF Committee shall deliver its opinion in accordance with Article 27 on the basis of a document to be provided by the Commission, on:

(a) the conclusions of the mid-term or end-of-term review;

(b) the CS and its indicative programme:

(c) a proposal by the Commission for the resource allocation.

Article 19 *Regional programmes*

1. The preparation of the Regional Cooperation Strategy (RCS) and its accompanying indicative programme shall be undertaken by the Commission and the duly mandated regional organisation(s) or, in the absence of such a mandate, the National Authorising Officers of the ACP States in the region concerned. Where a Regional Authorising Officer has been appointed, the preparation of the RCS and its indicative programme shall be undertaken in coordination with Member States.

2. Such coordination shall involve the Bank on matters relative to its operations and those of the Investment Facility.

3. The RCS and its draft indicative programme shall be set out in a single document. This document shall be the subject of an exchange of views between the Member States and the Commission in the framework of the EDF Committee. The EDF Committee shall deliver its opinion on the draft RCS and its indicative programme in accordance with the procedure set out in Article 27, taking into account the provision in Article 23(1) of this Agreement.

4. The indicative programme shall subsequently be adopted by common agreement between the Commission and the duly mandated regional organisation(s) or, in the absence of a duly mandated regional organisation, the National Authorising Officers of the ACP States in the region concerned. The indicative programme shall, when adopted, be binding on both the Community and these States.

5. A mid-term and end-of-term review of the RCS and the indicative programme shall be undertaken in accordance with Article 11 of Annex IV to the ACP-EC Agreement. During the review process, the EDF Committee shall deliver its opinion in accordance

with the provisions of Article 27 on the basis of a summary document to be submitted by the Commission. Following the deliberations in the said Committee, the review process shall be finalised between the Commission and the duly mandated regional organisation(s) or, in the absence of such a mandate, the National Authorising Officers of the ACP States in the region concerned. The final results on the review shall be set out in summary form and shall be transmitted to the EDF Committee for information.

6. The mid-term and end-of-term reviews may include a revision of the resource allocation in the light of the current needs and performance of the ACP region concerned.

Article 20

Reviews in exceptional circumstances

In exceptional circumstances referred to in Articles 72 and 73 of the ACP-EC Agreement, the review of the CS can be carried out at the request of either the ACP State concerned or the Commission. In such cases, the review procedure provided for in Article IS of this Agreement shall apply, taking into consideration, where appropriate, the provisions of Article 3(4) of Annex IV to the ACP-EC Agreement.

CHAPTER IV DECISION-MAKING PROCEDURES

Article 21

The European Development Fund Committee

1. A Committee (hereinafter called 'the EDF Committee) consisting of representatives of the governments of the Member States shall be set up at the Commission for the European Development Fund resources which the Commission administers. The EDF Committee shall be chaired by a Commission representative, and its secretariat shall be provided by the Commission. A representative of the Bank shall take part in its work.

2. The Council, acting unanimously, shall adopt the rules of procedure of the EDF Committee.

3. Within the EDF Committee, the votes of the Member States shall be weighted as follows:

Member State	Votes
Belgium	9
Denmark	5
Germany	50
Greece	4
Spain	13
France	52
Ireland	2
Italy	27
Luxembourg	1
Netherlands	12
Austria	6
Portugal	3
Finland	4
Sweden	6
United Kingdom	27

4. The EDF Committee shall act by a qualified majority of 145 votes, expressing a vote in favour by at least eight Member States.

5. The weightings laid down in paragraph 3 and the qualified majority referred to in paragraph 4 shall be amended by a decision of the Council, acting unanimously, in the case referred to in Article 1(4).

Article 22

Responsibilities of the EDF Committee

1. The EDF Committee shall focus its work on the substantive issues of development cooperation at country and regional level. In the interests of coherence, coordination and complementarity, it shall monitor the implementation of development strategies adopted by the Community and its Member States.

2. The Committee's tasks shall cover three levels:

(a) programming of Community aid and programming reviews in particular focusing on country and regional strategies, including identification of projects and programmes;

(b) participation in the decision-making process relating to financing from the European Development Fund: and

(c) monitoring the implementation of Community aid, including sectoral aspects, cross-cutting issues, and the functioning of field-level coordination.

Article 23
Programming, identification, complementarity and consistency

With regard to programming, the Committee shall

(a) give its opinion on the examination referred to in Article 15(5), in the second subparagraph of Article 15(6), in the second paragraph of Article 16, in Article 18(4) and in Article 9(3) and (5) in accordance with the procedure set out in Article 27; and

(b) examine the conclusions of the annual reviews referred to in Article 7(3).

2. The Committee shall also examine the consistency and complementarity between Community aid and aid from the Member States. In order to ensure transparency and consistency between cooperation operations and improve complementarity between Community actions and bilateral aid, the Commission shall communicate to the Member States and their representatives on the spot the notes identifying projects within one month of taking the decision to appraise them. These notes will be regularly updated and sent to the EDF Committee, Member States and their representatives on the spot.

3. In the interests of complementarity each Member State shall systematically inform the Commission of the cooperation activities that **it** is undertaking, or intends to undertake, in each particular country. Information on bilateral aid shall be provided at the establishment of the first CS and shall be updated at least at the occasion of the annual review.

Article 24
*Financing proposals on which the EDF Committee gives
its opinion*

1. The EDF Committee shall give its opinion following the procedure laid down in Article 27 on:

(a) financing proposals for projects or programmes with a value greater than EUR 8 million or representing more than 25 % of the indicative programme:

(b) financing proposals drawn up under Article 9.

2. Financing proposals of a value:

(a) greater than EUR 15 million or representing more than 25 % of the indicative programme shall be approved by oral procedure:

(b) between EUR 8 million and EUR 15 million shall be approved by written procedure.

3. Without first seeking the opinion of the EDF Committee, the Commission is authorised to approve operations with a value less than or equal to EUR 8 million and representing less than 25 % of the indicative programme. Each Member State may

demand that operations approved directly by the Commission shall be discussed at a future meeting of the EDF Committee. For operations with a value:

(a) between EUR 2 million and ELJR 8 million, the Commission will provide the EDF Committee with ex ante information according to the criteria specified in paragraph 5 at least two weeks before the decision is taken;

(b) between EUR 500 000 and EUR 2 million, the Commission will provide the EDF Committee with a succinct ex ante information at least two weeks before the decision is taken;

(c) less than EUR 500 000, the Commission will inform the EDF Committee after it has taken its decision.

4. The Commission is also authorised to approve, without *seeking* the EDF Committee's opinion, the additional commitments required to cover expected or actual overspending under a project or programme referred to in paragraphs 1(a) and (b), where the overspending or additional amount required does not exceed 20 % of the initial commitment fixed in the financing decision and/or EUR 5 million, and does not entail any substantial modification to the project.

5. The financing proposals referred to in paragraphs 1 and 3(a) shall indicate in particular:

(a) the relevance of the projects or programmes to the development of the country or countries concerned and to the achievement of the objectives spelt out in the CS or RCS:

(b) the expected impact of these projects and programmes as well as their feasibility and measures to ensure their sustainability after Community funding has come to an end.

The financing proposals shall also specify procedures and the timetable for implementation, as well as key indicators for assessing achievement of expected objectives and results. They shall also indicate how lessons learned from previous experiences and programmes have contributed to and been taken into account in the development of the programme and how coordination is undertaken among donors in the country or countries concerned.

Article 25

Financing of emergency assistance from the European Development Fund

1. Humanitarian and emergency assistance shall be granted in accordance with Articles 72 and 73 of the ACP-EC Agreement and the corresponding Article of the Decision. Where budget funding is not available, such assistance may be financed from the grant envelope of the 9th EDF referred to in Article 2(1)(a)(i).

2. The occurrence of sudden and unforeseeable serious humanitarian, economic and social difficulties of an exceptional nature resulting from natural disasters, man-made

crises such as wars and other conflicts or extraordinary circumstances having comparable effects may be considered as cases of special urgency. In such cases, the Commission is authorised to take decisions directly for a value up to EUR 10 million. Such assistance shall be limited to implementation over a period of maximum six months.

3. For operations of special urgency, the Commission shall

— take its decision

— inform Member States in writing within forty-eight hour

— report on its decision at the following meeting of the Committee. On this occasion, the Commission shall in particular justify the reasons for recourse to the procedure for special urgency.

Article 26

Global authorisations

1. Following the procedures laid down for financing proposals in Article 24(1) and (3). and in order to speed up those procedures, the Commission may approve, after a qualitative and quantitative assessment, global authorisations covering overall amounts for the activities referred to in Article 16(7) of Annex IV.

2. Global authorisations may also be used for interest rate subsidies subject to the provisions of Article 30.

3. Such financing proposals should specify objectives and, where appropriate, the intended impact of the Community contribution, sustainability of the activities, previous experience and earlier evaluations as well as coordination with other donors.

Article 27

Decision-making procedure

1. Where the EDF Committee is called upon to give its opinion, the Commission shall submit to the committee a draft of measures to be taken.

2. The EDF Committee shall deliver its opinion in accordance with the provisions of Article 21 and in accordance with its Rules of Procedure referred to in Article 21(2).

3. When the EDF Committee has adopted its opinion, the Commission shall take measures, which shall apply immediately. If the Commission decides to depart from the opinion expressed by the EDF Committee, or if the committee has not delivered a favourable opinion, the Commission shall either withdraw the proposal or, at the earliest opportunity, refer the proposal to the Council. The Council shall decide on it according to the same voting procedure as the EDF Committee within a period which, as a general rule, may not exceed two months.

4. Should the measure that is referred by the Commission to the Council consist of a financing proposal referred to in Article 24(1) or a global authorisation referred to in

Article 26. the ACP State or States concerned shall be notified in accordance with Article 16 of Annex IV to the ACP-EC Partnership Agreement. The Community shall in such cases not take a final decision before the expiry of the period of 60 days mentioned in Article 16(5) of Annex IV to the ACPEC Partnership Agreement.

Article 28

Monitoring implementation

With regard to the monitoring of the implementation of cooperation, the EDF Committee shall discuss:

- (a) general development issues, where these are related to the implementation of the European Development Fund;
- (b) sectoral strategies developed by the Commission, in association with experts from Member States, where this is deemed necessary for the coherence of Community development policy;
- (c) results of evaluations of country or sectoral strategies, programs, projects, or any other evaluations that are considered to be of interest to the Committee;
- (d) mid-term appraisal of projects and programmes where requested by the EDF Committee when approving the financing proposals, or where this appraisal gives rise to substantial modifications to the project or programme concerned.

CHAPTER V

INVESTMENT FACILITY COMMITTEE

Article 29

The Investment Facility Committee

1. A committee (hereinafter called 'the IF Committee') consisting of representatives of the Governments of the Member States and of a representative of the Commission shall be set up under the auspices of the Bank. Each Government shall nominate one representative and one designated alternate. The Commission shall act in the same way for its representative. With a view to maintaining continuity, the Chairman of the IF Committee shall be elected by and from within the members of the IF Committee for a period of two years. The Bank shall provide the Committee's secretariat and support services. Only the members of the IF Committee designated by the Member States, or their alternates, shall vote.
2. The Council, acting unanimously, shall adopt the rules of procedure of the IF Committee on the basis of a proposal drawn up by the Bank after consultation of the Commission.
3. The IF Committee shall act by a qualified majority. The weighting of the votes shall be as laid down in Article 21.
4. The IF Committee shall meet at least four times a year. Additional meetings may be convened at the request of the Bank or of the members of the Committee as set out in

the rules of procedure. In addition, the IF Committee may deliver an opinion by written procedure on matters referred to in Article 30(2).

Article 30
Responsibilities of the IF Committee, the Bank and the Commission

1. The IF Committee shall approve:

- 1) the operational guidelines of the Facility and proposals for their revision;
- 2) the investment strategies and business plans of the Facility, including performance indicators, on the basis of the objectives of the ACP-EC Agreement and of the broad principles of Community development policy;
- 3) the annual reports of the Investment Facility;
- 4) any general policy document, including evaluation reports, concerning the Investment Facility.

2. Furthermore, the IF Committee shall deliver an opinion on:

- 1) proposals to grant an interest subsidy under Article 2(7), and Article 4(2), of Annex II to the Agreement. In such cases, the Committee shall also deliver an opinion on the use of such an interest subsidy;
- 2) proposals for an IF investment for any project for which the Commission has rendered a negative opinion;
- 3) other proposals relating to the Investment Facility based on the general principles defined in the operational guidelines.

3. It shall be the Bank's responsibility to submit to the IF Committee in a timely manner any matters that require an approval or opinion of the IF Committee, as provided in paragraphs 1 and 2 of this Article. Any proposal submitted to the Committee for an opinion shall be made in accordance with the relevant criteria and principles set out in the operational guidelines.

4. The Bank and the Commission shall cooperate closely and, where relevant, shall coordinate their respective operations. In particular:

- 1) the Bank shall prepare the draft operational guidelines of the Facility jointly with the Commission;
- 2) the Bank shall request the opinion of the Commission beforehand:
 - (a) on investment strategies, business plans and general policy documents

(b) on the conformity of public sector or financial sector projects with the relevant country cooperation strategy or regional cooperation strategy or, as the case may be, with the general objectives of the Investment Facility:

3) the Bank shall also request the agreement of the Commission on any proposal made to the IF Committee for an interest subsidy, as to its compliance with Article 2(7) and Article 4(2) of Annex 11 to the ACP-EC Agreement and with the criteria defined in the operational guidelines of the Investment Facility.

The Commission shall be deemed to have rendered a favourable opinion on or to have agreed to a proposal unless it notifies a negative opinion on such proposal within two weeks following the submission of the proposal. Where the Commission's opinion is required for a proposal under point (2)(b), the Bank shall present its request in the form of a short memorandum outlining the objectives and rationale of the proposed operation as well as its relevance to the country strategy.

5. The Bank shall not proceed with any action mentioned in paragraph 2 unless the IF Committee has given a favourable opinion.

Following a favourable opinion of the IF Committee, the Bank shall decide on the proposal in accordance with its own procedures. In particular, it may decide, on account of new circumstances, not to proceed with the proposal. The Bank shall periodically inform the IF Committee and the Commission of cases where it decides not to proceed.

For loans from its own resources and for IF investments for which no opinion of the IF Committee is required, the Bank shall decide in accordance with its own procedures and, in the case of the Facility, in accordance with the guidelines and the investment strategies approved by the IF Committee.

Notwithstanding a negative opinion of the IF Committee on a proposal to grant an interest subsidy, the Bank may proceed with the loan in question without the benefit of the interest subsidy. The Bank shall periodically inform the IF Committee and the Commission of each occasion on which it so decides to proceed.

The Bank may, subject to conditions laid down in the operational guidelines, and the condition that the essential objective of the loan or Investment Facility Investment in question be unchanged, decide to modify the terms of an Investment Facility loan or investment on which the IF Committee has given a favourable opinion under paragraph 2 or of any loan on which the Committee has given a favourable opinion on interest subsidies. In particular, the Bank may decide to increase the amount of the loan or Investment Facility investment by up to 20 %.

Such an increase may, for projects with interest subsidies referred to in Article 2(7)(a) of Annex II to the Agreement, result in a proportionate increase in the value of the interest subsidy. The Bank shall periodically inform the IF Committee and the Commission of each occasion on which it so decides to proceed. For projects falling under Article 2(7)(b) of Annex II to the Agreement, if an increase in the value of the subsidy is requested, the IF Committee will be required to deliver an opinion before the Bank proceeds.

6. The Bank shall manage Investment Facility Investments and all funds held on account of the said Investment Facility in accordance with the objectives of the Agreement. It may, in particular, take part in the management and supervisory organs of legal persons in which the Investment Facility is invested and may compromise, discharge and modify the rights held on account of the Investment Facility.

CHAPTER VI FINAL PROVISIONS

Article 31 Financial Regulation

The provisions for implementing this Agreement shall be the subject of a Financial Regulation adopted, before the entry into force of the ACP-EC Agreement, by the Council, acting by the qualified majority laid down in Article 21, on the basis of a proposal from the Commission, after an opinion has been delivered by the Bank on the provisions of concern to it and by the Court of Auditors established under Article 247 of the Treaty establishing the European Community (hereafter referred to as the 'Court of Auditors').

Article 32 Financial arrangements

1. At the end of each financial year, the Commission shall adopt the revenue and expenditure account and the balance sheet of the 9th EDF.
2. Without prejudice to paragraph 4, the Court of Auditors shall also exercise its powers in respect of the 9th EDFs operations. The conditions under which the Court exercises its powers shall be laid down in the Financial Regulation referred to in Article 31.
3. The discharge for the financial management of the 9th EDF, excluding operations managed by the Bank, shall be given to the Commission by the European Parliament on the recommendation of the Council which shall act by the qualified majority laid down in Article 21 of this Agreement.
4. The Commission shall make the information referred to in Article 12 available to the Court of Auditors so that the latter may, on the basis of the documentary evidence, carry out checks on the aid provided from the 9th EDFs resources.
5. The operations financed from the 9th EDFs resources managed by the Bank shall be subject to the control and discharge procedure laid down by the Statute of the Bank for all its operations. Each year the Bank shall send the Commission and the Council its Annual Report on the execution of operations financed from the 9th EDF's resources it manages.

Article 33
Previous EDFs

1. Any balances remaining from previous EDFs shall, as referred to in Article 1(2)(b), be transferred to the 9th EDF and shall, without prejudice to the provisions of paragraph 2 below be administered in accordance with the conditions laid down, either by this Agreement or by the Decision.
2. If the amount of resources thus transferred from previous EDFs to particular national and regional indicative programmes, referred to in Article I 4(3)(c) and Article 19 respectively under the 9th EDF exceeds EUR 10 million per country or region, those resources shall be subject to the rules of the EDF of origin as regards eligibility for participation in tenders and award of contracts. If the resources transferred are equal to or less than EUR 10 million, the eligibility rules applicable to tenders under the 9th EDF shall apply.

Article 34
Revision clause

The Articles contained in Chapters II to V, with the exception of Article 21, may be amended by the Council, acting unanimously and on a proposal from the Commission. The Bank shall be associated with the Commission's proposal on matters relating to its activities and those of the Investment Facility. Such amendments may be envisaged in order to:

- (a) ensure consistency with the ACP-EC Agreement and in particular the Annexes thereto covering rules for implementation and management procedures: and
- (b) enhance the efficiency of implementation of resources of the European Development Fund. In this context, the thresholds for referral of financing proposals to the EDF Committee in Article 24 and the decision-making procedure set out in Article 27 may be reviewed in the year 2003.

Article 35
Ratification, entry into force and duration

1. Each Member State shall approve this Agreement in accordance with its own constitutional requirements. The Government of each Member State shall notify the General Secretariat of the Council of the European Union when the procedures required for the entry into force of this Agreement have been completed.
2. This Agreement shall enter into force on the first day of the second month following the notification of the approval of this Agreement by the last Member State.
3. This Agreement is concluded for the same duration as the Financial Protocol annexed to the ACP-EC Agreement. However, notwithstanding Article 2(4), this Agreement shall remain in force for as long as is necessary for all the operations financed under the ACP-EC Agreement and the said Financial Protocol to be fully executed.

Article 36
Authentic languages

This Agreement, drawn up in a single original in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish and Swedish languages, each of these eleven texts being equally authentic, shall be deposited in the archives of the General Secretariat of the Council of the European Union, which shall transmit a certified copy to each of the governments of the signatory States. In witness whereof, the representatives of the Governments of the Member States meeting within the Council, have hereunto set their hands.

In witness whereof, the undersigned Representatives of the Governments of the Member States, meeting within the Council, have hereunto set their hands.

DONE at Brussels on the eighteenth day of September in the year two thousand.