II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 16 December 1980

on the association of the overseas countries and territories with the European Economic Community

(80/1186/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 136 thereof,

Having regard to the Internal Agreement on the financing and administration of Community aid signed in Brussels on 20 November 1979, hereinafter called 'the Internal Agreement',

Having regard to the recommendation from the Commission,

Having regard to the opinion of the European Parliament [1],

Whereas the provisions applicable to the association of the overseas countries and territories (hereinafter called 'the countries and territories') with the European Economic Community must be laid down for a further period;

Whereas these provisions form part of the European Economic Community's efforts to establish, in particular by means of the Second ACP-EEC Convention, signed at Lomé on 31 October 1979 (hereinafter called 'the Convention'), a new model for relations between developed and developing regions, compatible with the aspirations of the international community towards a more just and more balanced economic order;

Whereas the development needs of the countries and territories and the needs related to the promotion of their industrial development justify the maintenance of the possibility of levying customs duties and imposing quantitative restrictions;

Whereas special provisions should be laid down in respect of rum, arrack and tafia falling within subheading 22.09 C I of the Common Customs Tariff;

Whereas Article 185 of the Convention provides for the possibility of accession to the Convention by a country or territory to which Part Four of the Treaty applies and which becomes independent; whereas it is therefore necessary to make provision for possible adaptation of this Decision;

Whereas Article 1 of the Internal Agreement provides that, where a country or territory which has become independent accedes to the Convention, the financial aid allocated to the countries and territories from European Development Fund resources shall, by decision of the Council, be reduced and the amounts allocated to the ACP States correspondingly increased;

Whereas it is necessary, both to facilitate future application of this provision and to ensure that financial aid is distributed as fairly as possible, to lay down the

[1] OJ No C 327, 15. 12. 1980, p. 69.

allocation of aid among the countries and territories for which the French Republic has responsibility, the countries and territories for which the United Kingdom has responsibility, and the Netherlands Antilles,

HAS DECIDED AS FOLLOWS:

Article 1

The aim of this Decision is to facilitate the economic and social development and to strengthen the economic structures of the countries and territories listed in Annex I, in particular by developing trade, economic relations, agricultural cooperation and industrial cooperation between the Community and those countries and territories, by helping to safeguard the interests of those among them whose economies depend to a considerable extent on the export of commodities, and by affording financial aid and technical cooperation.

TITLE I

TRADE COOPERATION

Chapter 1

Trade arrangements

Article 2

In the field of trade cooperation, the object of this Decision is to promote trade between the countries and territories and the Community, taking account of their respective levels of development, and also trade between the countries and territories themselves.

In the pursuit of this objective, particular regard will be had to the need to secure effective additional benefits for the trade of the countries and territories with the Community, in order to accelerate the growth of their trade and in particular of the flow of their exports to the Community and in order to improve the conditions of access for their products to the market of the Community, so as to ensure a better balance in the trade of the parties concerned.

To this end the parties concerned shall apply the provisions of this Title and the other appropriate measures under Titles III, IV and V.

Article 3

1. Products originating in the countries and territories shall be imported into the Community free of customs duties and charges having equivalent effect.

2. (a) Products originating in the countries and territories:

— listed in Annex II to the Treaty when they come under a common organization of the market within the meaning of Article 40 of the Treaty, or

— subject, on import into the Community, to specific rules introduced as a result of the implementation of the common agricultural policy

shall be imported into the Community notwithstanding the general arrangements applied in respect of third countries, in accordance with the following provisions:

(i) those products shall be imported free of customs duties for which Community provisions in force at the time of import do not provide, apart from customs duties, for the application of any other measure relating to their import;

(ii) for products other than those referred to under (i) the Community shall take the necessary measures to ensure more favourable treatment than that accorded to third countries to which the most-favoured-nation clause applies in respect of the same products.

(b) These arrangements shall enter into force at the same time as this Decision, and shall remain applicable for its duration.

If, however, during the period of application of this Decision, the Community,

— subjects one or more products to common organization of the market or to specific rules introduced as a result of the implementation of the common agricultural policy, it reserves the right to adapt the import treatment for these products originating in the countries and territories. In such cases subparagraph (a) shall be applicable;

— modifies the common organization of the market in a particular product or the specific rules introduced as a result of the implementation of the common agricultural policy, it reserves the right to modify the arrangements laid down for products originating in the countries and territories. In such cases, the Community shall ensure that products originating in the countries

and territories continue to enjoy an advantage comparable to that previously enjoyed in relation to products originating in third countries benefiting from the most-favoured-nation clause.

(c) If, during the period of application of this Decision, the competent authorities of the countries and territories consider that the application of such arrangements to agricultural products referred to in subparagraph (a), other than those covered by special rules, is warranted, the Commission shall, where appropriate, submit a proposal to the Council.

Article 4

1. The Community shall not apply to imports of products originating in the countries and territories any quantitative restrictions or measures having equivalent effect.

2. Paragraph 1, however, shall not prejudice the import treatment applied to the products referred to in the first indent of Article 3 (2) (a).

Article 5

This Decision shall not prejudice the treatment that the Community applies to certain products in implementation of International Commodity Agreements to which the Community is a signatory.

Article 6

The competent authorities of a country or territory may retain or introduce, in respect of imports of products originating in the Community or in other countries or territories, such customs duties or quantitative restrictions as they consider necessary in view of the present development needs of that country or territory.

Article 7

Articles 4 and 6 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals and plants; the protection of national treasures possessing artistic, historic or archaeological value, or the protection of industrial and commercial property.

Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade.

Article 8

1. The trade arrangements applied to the Community by the countries and territories may not give rise to any discrimination between Member States nor be less favourable than the most-favoured-nation treatment.

2. Paragraph 1 shall not preclude a country or territory from granting certain other countries or territories or other developing countries more favourable treatment than that accorded to the Community.

Article 9

1. France, the Netherlands and the United Kingdom shall communicate to the Commission, within a period of three months following the entry into force of this Decision, the customs tariffs of the countries and territories with which they have special relations.

Any customs duties and changes having equivalent effect which are still applicable to products originating in the Community and in the other countries and territories shall be specified in this communication.

The Member States concerned shall also communicate to the Commission any subsequent modifications of the customs tariffs of the countries and territories as and when they are made.

2. The Commission shall communicate to the Member States the customs tariffs of the countries and territories, and subsequent amendments thereto, and, where appropriate, shall inform the Council of its observations on them.

3. At the request of a Member State or of the Commission consultations shall be held within the Council on these tariffs or amendments thereto.

Article 10

1. France, the Netherlands and the United Kingdom shall communicate to the Commission, within a period of three months following the entry into force of this Decision, the lists of quantitative restrictions and measures having equivalent effect retained by the countries and territories with which they have special relations.

The Member States concerned shall also communicate to the Commission any subsequent modification of such measures.

2. The Commission shall communicate to the Member States the lists referred to in paragraph 1 and any subsequent amendments thereto and, where appropriate, shall inform the Council of its observations on them.

3. At the request of a Member State or of the Commission, consultations shall be held within the Council on the quantitative restrictions and measures having equivalent effect applied by the countries and territories.

Article 11

1. For the purposes of implementing this Chapter the concept of originating products and the methods of administrative cooperation relating thereto are laid down in Annex II.

2. The Council, acting unanimously on a recommendation from the Commission, may adopt any amendment to Annex II.

3. If, for any product, the concept of originating products has not been defined pursuant to one of the above paragraphs, the Community and the competent authorities of the countries and territories shall continue to apply their own rules.

Article 12

1. With regard to commercial policy, France, the Netherlands and the United Kingdom shall, each for its part, inform the Commission of any measures taken regarding trade between the countries and territories and third countries. The Commission shall inform the other Member States thereof.

2. At the request of a Member State or of the Commission, consultations shall be held within the Council if such measures might be prejudicial to the interests of one or more Member States or of the Community.

Article 13

1. If, as a result of the operation of this Decision, serious disturbances occur in a sector of the economy of the Community or of one or more of its Member States, or their external financial stability is jeopardized, or if difficulties arise which may result in a deterioration in a sector of the economy of a region of the Community, the Commission may, in accordance with the procedure specified in Annex III, take, or authorize the Member State concerned to take, necessary safeguard measures.

2. For the purpose of implementing paragraph 1, priority shall be given to such measures as would least disturb the functioning of the association and the Community. These measures shall not exceed the limits of what is strictly necessary to remedy the difficulties that have arisen.

Chapter 2

Special undertakings on rum and bananas

Article 14

Until the entry into force of a common organization of the market in spirits and notwithstanding the provisions of Article 3 (1), entry into the Community of products of subheading 22.09 C I — rum, arrack, tafia — originating in the countries and territories shall be governed by the provisions of Annex IX.

Article 15

In order to permit the improvement of the conditions under which bananas originating in the countries and territories are produced and marketed, the Community hereby agrees to the objectives set out in Annex VI.

Article 16

This chapter and Annexes VI and IX shall not apply to relations between the countries and territories and the French overseas departments.

Chapter 3

Trade promotion

Article 17

The Community shall implement trade promotion measures from the production stage to the final stage of distribution. The aim of such measures shall be to help the countries and territories to participate under the most favourable conditions in Community, domestic, regional and international markets by diversifying the range and increasing the value and volume of their exports.

Article 18

The trade promotion measures provided for in Article 17 shall include the provision of technical and financial assistance for achieving the following objectives:

(a) the establishment and/or improvement of the structure of organizations, centres or firms involved in the development of the trade or the countries and territories and the assessment of their staffing requirements, financial management and working methods;

(b) basic training, management training, and vocational training of technicians in fields related to the development and promotion of national and international trade;

(c) product policy inclusive of research, processing, quality guarantee and control, packaging and presentation;

(d) development of supportive infrastructure, including transport and storage facilities, in order to facilitate the flow of exports from the countries and territories;

(e) advertising;

(f) establishing, promoting and improving cooperation among economic operators in the countries and territories and between such operators and those in the Member States and in third countries and introducing appropriate measures to promote such cooperation;

(g) carrying out and making use of market research and marketing studies;

(h) selecting, analysing and disseminating quantitative and qualitative trade information and facilitating free access to existing or future information systems or bodies in the Community and in the countries and territories;

(i) participation by the countries and territories in fairs, exhibitions and, in particular, specialized international shows, the list of which shall be drawn up in consultation with the countries and territories and the organization of trade events.

The participation of the countries and territories listed in Article 133 (3) in the various trade promotion activities envisaged shall be encouraged by special measures, including the payment of travel expenses of personnel and costs of transporting articles and goods that are to be exhibited, on the occasion of their participation in fairs and exhibitions;

(j) special assistance to small- and medium-sized undertakings for product identification and development, market outlets and joint marketing ventures.

Article 19

The funds allocated by each country and territory to the financing of trade promotion operations shall reflect its development aims and priorities.

Article 20

Applications for the financing of trade promotion activities shall be presented to the Community under the conditions laid down in Title VI.

TITLE II

EXPORT EARNINGS FROM COMMODITIES

Chapter 1

Stabilization of export earnings

Article 21

1. With the aim of remedying the harmful effects of the instability of export earnings and to help the countries and territories overcome one of the main obstacles to the stability, profitability and sustained growth of their economies, to support their development efforts and to enable them in this way to ensure economic and social progress for their peoples by helping to safeguard their purchasing power, a system shall be operated to guarantee the stabilization of earnings derived from the exports of the countries and territories to the Community of products on which their economies are dependent and which are affected by fluctuations in price or quantity or both these factors.

2. In order to attain these objectives, transfers must be devoted to maintaining financial flows in the sector in question or, for the purpose of promoting diversification, directed towards other appropriate sectors and used for economic and social development.

Article 22

Export earnings to which the stabilization system applies shall be those accruing from the export by each country or territory to the Community of each of the products on the list in Article 23, in the drawing up of which account has been taken of factors such as employment, deterioration of the terms of trade between the Community and the country or territory concerned and the level of development of that country or territory.

Article 23

1. The following products shall be covered:

		NIMEXE code
1.	Groundnuts, shelled or not	12.01-31 to 12.01-35
2.	Groundnut oil	15.07-74 and 15.07-87
3.	Cocoa beans	18.01-00
4.	Cocoa paste	18.03-10 to 18.03-30
5.	Cocoa butter	18.04-00
6.	Raw or roasted coffee	09.01-11 to 09.01-17
7.	Extracts, essences or concentrates of coffee	21.02-11 to 21.02-15
8.	Cotton, not carded or combed	55.01-10 to 55.01-90
9.	Cotton linters	55.02-10 to 55.02-90
10.	Coconuts	08.01-71 to 08.01-75
11.	Copra	12.01-42
12.	Coconut oil	15.07-29, 15.07-77 and 15.07-92
13.	Palm oil	15.07-19, 15.07-61 and 15.07-63
14.	Palm nut and kernel oil	15.07-31, 15.07-78 and 15.07-93
15.	Palm nuts and kernels	12.01-44
16.	Raw hides and skins	41.01-11 to 41.01-95
17.	Bovine cattle leather	41.02-05 to 41.02-98
18.	Sheep and lamb skin leather	41.03-10 to 41.03-99
19.	Goat and kid skin leather	41.04-10 to 41.04-99
20.	Wood in the rough	44.03-20 to 44.03-99
21.	Wood roughly squared or half-squared, but not further manufactured	44.04-20 to 44.04-98
22.	Wood sawn lengthwise, but not further prepared	44.05-10 to 44.05-79
23.	Fresh bananas	08.01-31
24.	Tea	09.02-10 to 09.02-90
25.	Raw sisal	57.04-10
26.	Vanilla	09.05-00
27.	Cloves — whole fruit, cloves and stems	09.07-00
28.	Sheep's or lambs' wool, not carded or combed	58.01-10 to 53.01-40
29.	Fine animal hair of Angora goats — mohair	53.02-95
30.	Gum arabic	13.02-91
31.	Pyrethrum — flowers, leaves, stems, peel and roots; saps and extracts from pyrethrum	12.07-10 and 13.03-15

	NIMEXE code
32. Essential oils, not terpeneless, of cloves, of niaouli and of ylang-ylang	33.01-23
33. Sesame seed	12.01-68
34. Cashew nuts and kernels	08.01-77
35. Pepper	09.04-11 and 09.04-70
36. Shrimps and prawns	03.03-43
37. Squid	03.03-68
38. Cotton seeds	12.01-66
39. Oil-cake	23.04-01 to 23.04-99
40. Rubber	40.01-20 to 40.01-60
41. Peas	07.01-41 to 07.01-43, 07.05-21 and 07.05-61
42. Beans	07.01-45 to 07.01-47, 07.05-25 and 07.05-65
43. Lentils	07.05-30 and 07.05-70

2. Upon presentation of each transfer request, the country or territory shall choose between the following systems:

(a) each product listed in Article 23 (1) shall constitute a product within the meaning of Articles 26, 33, 34, 35, 36, 39, 40 and 41;

(b) product groups 1 and 2, 3 to 5, 6 and 7, 8 and 9, 10 to 12, 13 to 15, 16 to 19 and 20 to 22 shall each constitute a product within the meaning of Articles 26, 33, 34, 35, 36, 39, 40 and 41.

Article 24

If, 12 months after the entry into force of this Decision, one or more products not contained in the list in Article 23, but upon which the economies of one or more countries and territories depend to a considerable extent, are affected by sharp fluctuations, the Council shall decide, not later than six months after the presentation of a request by the competent authorities of the countries or territories concerned, whether or not to include the said product or products in the list.

Article 25

The competent authority of each country or territory concerned shall certify that the products to which the system applies have originated in its territory within the meaning of Article 2 of Annex II.

Article 26

The system shall apply to the earnings derived by a country or territory from exports of the products listed in Article 23 if, during the year preceding the year of application, earnings from the export of each product to all destinations, re-exports excluded, represented at least 6·5 % of its total export earnings from its goods. The figure shall be 5 % for sisal.

Article 27

1. The system shall be implemented in respect of the products listed in Article 23 where they are:

(a) released for consumption in the Community, or

(b) brought under the inward processing arrangements there in order to be processed.

2. The export earnings to be taken into account shall be those obtained by multiplying the unit values for the exports of the country or territory in question, as given in the statistics of that country or territory, by the quantities imported by the Community as shown in Community statistics.

Article 28

For the purposes specified in Article 21, the Community shall allocate to the system, for the duration of this Decision, and subject to the second paragraph of Article 30, an amount of nine million ECU, to cover all its commitments under the system. This amount shall be managed by the Commission.

Article 29

1. The overall amount referred to in Article 28 shall be divided into a number of equal annual instalments corresponding to the number of years of application.

2. Whatever balance remains at the end of each of the first four years of application of the Decision shall be carried forward automatically to the following year.

Article 30

The resources available for each year of application shall be made up of the sum of the following elements:

1. the annual instalment, reduced by any amounts used under Article 31 (1);

2. the sums carried forward under Article 29 (2);

3. the amounts replenished under Articles 39 and 40;

4. any amounts made available under Article 31 (1).

However, where the Council exercises the power conferred by Article 48 (3), the resources available for the year of application in progress and/or future years of application may be reduced in accordance with the arrangements adopted by the Council under the said paragraph.

Article 31

In the case of an insufficiency of funds for a year of application the Council, on the basis of the report submitted to it by the Commission, may:

1. authorize, for each year except the last, the use in advance of a maximum of 20 % of the following year's instalment;

2. reduce the amount of the transfers to be made.

Article 32

Before the expiry of the period referred to in Article 28, the Council shall decide on the use of any balance remaining from the overall amount established in Article 28, as well as on the conditions for further use of any amounts still to be replenished by the countries and territories under Articles 39 and 40 following the expiry of the period referred to in Article 28.

Article 33

1. In order to implement the system a reference level shall be calculated for each country and territory and for each product.

2. This reference level shall correspond to the average of export earnings in the four years preceding each year of application.

3. Where, however, a country or territory:

— starts processing a product traditionally exported in the raw state, or

— begins exporting a product which it did not traditionally produce,

the system may be put into operation on the basis of a reference level calculated on the three years preceding the year of application.

Article 34

The relevant authority of a country or territory shall be entitled to request a transfer if, on the basis of the results of a calendar year, its actual earnings, as defined in Article 27, from its exports of each product to the Community and, in the cases referred to in Article 44 (2), to all destinations, are at least 6·5 % below the reference level.

Article 35

Requests for transfers shall be inadmissible in the following cases:

(a) if the request is presented after 31 March of the year following the year of application;

(b) if it emerges from the examination of the request, to be undertaken by the Commission in conjunction with the competent authority of the country or territory concerned, that the fall in earnings from exports to the Community is the result of a trade policy of that authority adversely affecting exports to the Community in particular.

Requests for transfers may also be declared inadmissible if it emerges from the dossier, after consultations, that the country or territory in question has recorded earnings from its exports to all destinations during the year of application in excess of the average of its export earnings to all destinations in the four years preceding the year of application for each product for which a request has been made.

Article 36

1. The request for a transfer shall be addressed to the Commission, which shall examine it in conjunction with the competent authority of the country or territory concerned.

2. The difference between the reference level and actual earnings, plus 1 % for statistical errors and omissions, shall constitute the basis of the transfer.

3. Should examination of the trend of the exports of the requesting country or territory to all destinations and of its production of the product in question and of demand in the Community reveal significant changes, consultations shall take place between the Commission and the competent authority of the country or territory concerned to determine whether, and to what extent, those changes are such as to affect the amount of the transfer.

Article 37

1. The Commission shall adopt a transfer decision on completion of the examination carried out in conjunction with the competent authority of the requesting country or territory.

2. For each transfer a transfer agreement shall be concluded between the Commission and the competent authority of the country or territory concerned.

3. The Commission and the competent authority of the country or territory concerned shall take such steps as are required to ensure that transfers are made rapidly. To that end, provision shall be made for the payment of advances.

4. The amounts transferred shall not bear interest.

Article 38

1. The competent authority of the recipient country or territory shall decide how the resources will be used, subject to compliance with the objectives laid down in Article 21.

2. During the examination of the dossier, and in any case before the transfer agreement is signed, the competent authority of the requesting country or territory shall give the Commission some indication of the probable use to which the transfer will be put.

3. Within the 12 months following the signing of the transfer agreement the competent authority of the recipient country or territory shall inform the Commission of the use to which the funds transferred have been put.

Article 39

Subject to Article 43, the competent authorities of countries or territories which have received transfers shall contribute during the seven years following the year in which the transfer was paid, to the replenishment of the resources made available for the system by the Community.

Article 40

1. Where the trend of the export earnings is derived from the product which sustained the drop in export earnings that gave rise to the transfer, the competent authority of the country or territory concerned shall help replenish the resources of the system.

2. For the purposes of paragraph 1, the Commission shall determine:

— at the beginning of each year during the seven years following the year during which the transfer was paid,

— until such time as the whole amount of the transfer has been paid back into the system,

— in accordance with the conditions laid down in Article 27,

whether, for the preceding year:

(a) the unit value of the product under consideration exported to the Community was higher than the average unit value during the four years prior to the preceding year;

(b) the quantity of the same product actually exported to the Community was at least equal to the average of the quantities exported to the Community during the four years prior to the preceding year;

(c) the earnings for the year from the product in question amount to at least 106·5 % of the average of earnings from exports to the Community during the four years prior to the preceding year.

3. If the three conditions set out in paragraph 2 are fulfilled simultaneously, the competent authority of the country or territory shall contribute to the system an amount equal to the difference between the actual earnings derived in the preceding year from exports to the Community and the average of earnings from exports to the Community during the four years prior to the preceding year, but in no case shall the amount of the contribution towards the replenishment of the resources of the system exceed the transfer in question.

4. This amount shall be contributed to the system at the rate of one fifth per year after a period of deferment

of two years beginning in the year during which the obligation to contribute towards replenishment was established.

5. Should examination of the trend of exports to all destinations and of production of the product in question in the country or territory concerned as well as of demand in the Community reveal significant changes, consultations shall be held between the Commission and the competent authority of the country or territory concerned in order to establish whether these changes are such as to justify a contribution to the replenishment of the resources of the system and, if so, to what extent.

Where such justification exists, the competent authority of the country or territory concerned shall contribute to the system, under the conditions set out in paragraph 4, the amount determined in the consultations.

Article 41

If, on expiry of the seven-year period referred to in Article 39, the resources have not been fully replenished, the Council, taking into consideration in particular the situation of and prospects for the balance of payments, exchange reserves and foreign indebtedness of the country or territory concerned, may decide that:

— the sums outstanding are to be replenished, wholly or partially, in one or more instalments,

— rights to repayment are to be waived.

Article 42

1. In order to ensure that the stabilization system functions efficiently and rapidly, statistical and customs cooperation shall be instituted between the competent authorities of each country and territory and the Commission.

2. The competent authorities of the countries and territories and the Commission shall adopt by mutual agreement any measures facilitating *inter alia* the exchange of necessary information, the submission of requests for transfers, the provision of information concerning the use of transfers, and the implementation of the replenishment provisions and of any other aspect of the system by means of the widest possible use of standard forms.

Article 43

For the countries and territories listed in Article 133 (3) and for French Polynesia, no contribution shall be required towards the replenishment of the resources made available to the system.

Article 44

1. For the countries and territories mentioned in Annex I:

(a) the percentage fixed in Article 26 shall be 2 %;

(b) the percentage fixed in Article 34 shall be 2 %;

(c) their special difficulties shall be taken into account in applying Articles 22, 31 and 34.

2. In the case of certain of the countries and territories listed in Article 133 (3), which do not send the bulk of their exports to the Community, the Council may decide, by way of derogation from Articles 22 and 27, that the system shall apply to their exports of the products in question whatever their destination. The system shall then operate on the basis of the export statistics of the country or territory in question.

Chapter 2

Special undertakings concerning sugar

Article 45

1. The Community shall purchase and import, at guaranteed prices, specific quantities of cane sugar, raw or white, which originate in the countries and territories and which the said countries and territories deliver to it.

2. Annex IV determines the conditions of implementation of this Article.

3. This Article and Annex IV referred to in paragraph 2 shall not apply to relations between the countries and territories and the French overseas departments.

TITLE III

MINERAL PRODUCTS

Chapter 1

Project and programme aid

Article 46

With a view to contributing towards the creation of a more solid basis for the development of the countries

and territories whose economies are largely dependent on the mining sectors and in particular towards helping them cope with a decline in their capacity to export mining products to the Community and the drop in their export earnings corresponding to their decline, a system shall be established to assist these countries and territories in their efforts to remedy the harmful effects on their income of serious temporary disruptions affecting those mining sectors and beyond the control of the countries and territories concerned.

Article 47

The system laid down in Article 46 shall apply to the following products:

— copper, including associated production of cobalt,

— phosphates,

— manganese,

— bauxite and alumina,

— tin,

— roasted iron pyrites and iron ore, whether or not in agglomerate form (including pellets).

If, not sooner than 12 months following the entry into force of this Decision, one or more products not contained in the above list, but upon which the economies of one or more of the countries and territories depend to a considerable extent, are affected by serious disturbance, the Council shall decide, not later than six months after the presentation of a request by the competent authorities of the countries and territories concerned, whether or not to include the said product or products in the list.

Article 48

1. For the purpose specified in Article 46 and for the period of application of this Decision, a special financing facility shall be set up to cover all the Community's commitments under this system.

2. (a) This special financing facility shall be managed by the Commission.

(b) It shall be divided into a number of equal annual instalments corresponding to the number of years of application. Each year, except the last, the Council, acting on the basis of a report submitted to it by the Commission, may authorize, where required, a maximum of 50 % of the following year's instalment to be used in advance.

(c) Whatever balance remains at the end of each year of application of this Decision, except the last, shall be carried over automatically to the following year.

(d) If the resources available for any year of application are insufficient, the amounts due shall be reduced accordingly.

(e) The resources available for each year of application shall be made up of the following elements:

— the annual instalment, reduced by any amounts used under (b) above;

— the sums carried over under (c) above.

3. Where, pursuant to Article 50, the Community and the competent authority of a country or territory establish for the first time that the conditions for granting aid under the special financing facility are fulfilled, the Council shall determine the overall amount to cover the said special facility. This amount shall be financed in accordance with arrangements adopted by the Council, from the amount allocated to the system for the stabilization of export earnings under Article 28.

4. Before the expiry of the period referred to in Article 141, the Council shall decide on the allocation of any remaining balances.

Article 49

Possible recourse to the means of financing available under the special facility provided for in Article 48 shall be open to the countries and territories eligible under Article 50 when, for a product covered by Article 47 and exported to the Community, a substantial fall is recorded, or can be expected over the following months, in their capacity to produce or to export, or in their export earnings to such an extent as to seriously affect the development policy of the country or territory concerned by seriously compromising the profitability of an otherwise viable and economic line of production, thus preventing it from renewing at a normal rate or maintaining the production plant or export capacity.

The possible recourse referred to above shall also be available when a substantial fall in the production or export capacity is experienced, or is foreseen, owing to accidents and serious technical mishaps or grave political events, whether internal or external.

A substantial fall in production or export capacity shall be taken to mean 10 %.

Article 50

A country or territory which, during the preceding four years, has, as a general rule, derived at least 15 % of its export earnings from a product covered by Article 47 may apply for financial aid from the resources allocated to the special financing facility if the conditions laid down in Article 49 are fulfilled.

However, for the countries and territories listed in Article 133 (3), the figure stipulated in the first paragraph shall be 10 %.

The application for aid shall be made to the Commission, which shall examine it in conjunction with the competent authority of the country or territory concerned. The fact that the conditions have been fulfilled shall be established by common accord between the Community and the competent authority of the country or territory. Notification thereof by the Commission to the competent authority shall entitle the latter to Community aid from the special financing facility.

Article 51

The aid referred to in Article 50 shall be directed to the objectives defined in Article 46.

The amount of this aid to finance projects or programmes shall be determined by the Commission in the light of the funds available under the special financing facility, the nature of the projects or programmes proposed by the competent authorities of the countries and territories concerned and the possibilities for cofinancing. In determining the amount, account shall be taken of the scale of the reduction in production or export capacity and of the losses of earnings suffered by the countries and territories corresponding to those identified in Article 49.

Under no circumstances may a single country or territory be eligible for more than 50 % of the funds available under an annual instalment.

The procedures applicable to assistance in the above circumstances and the implementing arrangements shall be as provided for in Title VI. They shall take account of the need for rapid implementation of the aid.

Article 52

To permit the implementation of precautionary measures to halt deterioration of production plant during the appraisal or implementation of these projects or programmes, the Community may grant an advance to the competent authority of any country or territory which so requests. This possibility shall not exclude recourse by the country or territory concerned to the emergency aid provided for in Article 117.

Since an advance is granted as a means of prefinancing projects or programmes which it precedes or to which it is preparatory, account shall be taken of the importance and nature of these projects or programmes when the amount of advance is being fixed.

The advance shall take the form of supplies or of the provision of services, or of cash payments if this arrangement is considered more appropriate.

It shall be incorporated in the amount earmarked for Community operations in the form of projects or programmes at the time when the financing agreement relating to such operations is signed.

Article 53

Aid granted from the special financing facility shall be reimbursed on the same terms and conditions as special loans, account being taken of the provisions adopted in favour of the countries and territories listed in Article 133 (3).

Chapter 2

Development of the mining and energy potential of the overseas countries and territories

Article 54

The Community is prepared to give its technical and financial assistance to help with the exploitation of the mining and energy potential of the countries and territories in accordance with the procedures peculiar to each of the instruments at its disposal and according to the provisions of this Decision.

Article 55

At the request of one or more countries and territories the Community will implement technical assistance measures to strengthen their scientific and technical capacity in the fields of geology and mining in order that they may derive greater benefit from available

know-how and direct their research and exploration programmes accordingly.

Where appropriate, the Community will also give its technical and financial assistance to the establishment of exploration funds in the countries and territories.

In the sphere of research and investment preparatory to the launching of mining and energy projects, the Community may give assistance in the form of risk capital, possibly in conjunction with contributions of capital from the countries or territories concerned and other sources of financing in accordance with the procedures laid down in Article 88.

Article 56

The European Investment Bank, hereinafter called 'the Bank', may, in accordance with its Statute, commit its own resources on a case-by-case basis beyond the amount laid down in Article 83 in mining investment projects and energy investment projects recognized by the competent authority of the country or territory concerned and by the Community as being of mutual interest.

TITLE IV

INDUSTRIAL COOPERATION

Article 57

The Community, acknowledging the pressing need to promote the industrial development of the countries and territories, will take all measures necessary to bring about effective industrial cooperation.

Article 58

Industrial cooperation between the Community and the countries and territories shall have the following objectives:

(a) to promote new industrial and trade links between the industries of the Community and those of the countries and territories;

(b) to promote development and diversification of all types of industry in the countries and territories and to foster in this respect cooperation at both regional and inter-regional levels;

(c) to promote the establishment of integral industries capable of creating links between various industrial sectors in the countries and territories in order to provide them with the basis on which the build-up of their technology will principally rely;

(d) to encourage the complementarity between industry and other sectors of the economy, in particular agriculture, by developing agro-allied industries in order to slow down the rural exodus, stimulate food and other production activities as well as to promote the establishment of further natural resource-based industries;

(e) to facilitate the transfer of technology and to promote the adaptation of such technology to the specific conditions and needs of the countries and territories, and to help them to identify, evaluate and select technologies required for their development and to develop their efforts to increase their capacity in applied research for adaptation of technology, and for training in industrial skills at all levels;

(f) to foster the participation of nationals subject to the domestic law of a country or territory and established therein in all the types of industry that are being developed in their countries;

(g) to contribute as far as possible to the creation of jobs for nationals referred to in the preceding subparagraph, to the supply of local and external markets and to the procurement of foreign exchange earnings for those countries and territories;

(h) to facilitate the overall industrial development of the countries and territories, in particular their production of manufactured goods;

(i) to encourage the establishment in the countries and territories of joint industrial ventures with the EEC;

(j) to encourage and promote the establishment and reinforcement of industrial, business and trade associations in the countries and territories which would contribute to the full utilization of their internal resources with a view to developing their local industries;

(k) to assist in the establishment and operation of institutions in the countries and territories for the provision of regulatory and advisory services to industry;

(l) to strengthen the existing financial institutions and bring about conditions favourable to capital borrowing for the stimulation of the growth and development of industries in countries and territories, including the promotion of the basic rural small- and medium-scale and labour-intensive industries.

Article 59

In order to attain the objectives set out in Article 58 the Community shall help to carry out, by all the means provided for in this Decision, programmes, projects and schemes submitted to it in the fields of industrial training, small- and medium-sized industries, local processing of raw materials produced by the countries and territories, technology cooperation, industrial infrastructures, trade promotion, energy cooperation and industrial information and promotion.

Article 60

The Community shall provide by all the means available under financial and technical cooperation necessary assistance in the field of industrial training including that related to industrial investments, in particular of the Community and its Member States with a view to enabling countries and territories to acquire, develop and adapt technological skills that are essential to their industrial growth and to the improvement of the quality of life of their peoples.

Article 61

The Community shall contribute to the establishment and development of all types of small- and medium-sized industries identified by the countries and territories as important in terms of their development objectives through financial and technical cooperation schemes adapted to the specific needs of such industries in these countries and territories and through encouragement, by appropriate incentives, of the transfer of relevant resources from Community private undertakings *inter alia* through joint ventures between small- and medium-sized industries of the Community and of the countries and territories.

These schemes shall cover *inter alia:*

(1) the evaluation of the development potential of the small- and medium-sized industries sector;

(2) the setting-up and strengthening of information, promotion, advisory, supervisory and credit institutions as well as facilities for the promotion of external and internal marketing;

(3) the creation of appropriate infrastructure and industrial estates;

(4) the provision of basic and advanced training;

(5) the setting-up of adequate structures aimed at appropriate technological transfer, adaptation and innovation;

(6) the identification of possibilities for subcontracting and facilitating the implementation thereof;

(7) the financing of schemes for small- and medium-sized industries.

Article 62

In the framework of overall cooperation with respect to industrial development, special emphasis will be placed on the domestic processing of the raw materials of the countries and territories with a view to achieving a larger and equitable share of processed raw materials in both the production and the exports of those countries and territories. In this context, account will be taken, where appropriate, of specific sectoral requirements, with adequate attention being paid to the food processing sector. The Community will contribute through the various means of financial and technical cooperation to:

(1) the promotion, development and financing of processing industries in the countries and territories;

(2) feasibility studies;

(3) the evaluation of processing possibilities and the provision of information on processing technologies;

(4) the promotion within the Community and other markets of exports of processed products from the countries and territories.

Article 63

With a view to assisting the countries and territories to strengthen their indigenous capacity for scientific and technological development and to facilitating the acquisition, transfer and adaptation of technology on terms that will seek to bring about the greatest possible benefits and minimize costs, the Community, through the instruments of financial and technical cooperation is prepared to contribute *inter alia* to:

(a) the establishment and strengthening of industry-related scientific and technical infrastructures in the countries and territories;

(b) the definition and implementation of research and development programmes;

(c) the identification and creation of possibilities of collaboration among research institutes, institutions

of higher learning and undertakings of countries and territories, the Community, the Member States and other countries;

(d) the identification, evaluation and acquisition of technology including the negotiation on favourable terms and conditions of foreign technology, patents and other industrial property, in particular through financing and/or through other suitable arrangements with firms and institutions within the Community;

(e) the provision of advisory services to countries and territories for the preparation of regulations governing the transfer of technology and for the supply of available information, in particular on the terms and conditions of technology contracts, the types and sources of technology, and the experience of countries and territories and other countries with the use of certain technologies;

(f) the promotion of technology cooperation between countries and territories and between them and other developing countries in order to make best use of any particularly appropriate scientific and technical facilities those countries and territories may possess.

Article 64

The Community shall contribute by all the means available under financial and technical cooperation to the setting-up and the extension in the countries and territories of the infrastructure necessary for industrial development, particularly in the fields of transport and communications, energy, research and adaptation of technology, industrial training and the location of industries.

Article 65

1. The Community shall contribute to the setting-up and the extension in the countries and territories of undertakings in particular in the following fields:

(a) integral industries capable of creating linkages between the different sectors of the economy;

(b) industries processing natural resources of the countries and territories;

(c) industries linked to the development of agriculture and the promotion of agricultural produce;

(d) any other line of production which may increase value added locally, have a favourable effect on employment or the trade balance, facilitate the diversification or regional balance of industry or foster industrial or inter-regional cooperation.

2. Community financing shall take the form, as a matter of priority, of loans from the Bank and risk capital, which are the specific financing methods for industrial undertakings. The methods for employment of risk capital are defined in Title VI with the purpose of their adaptation to the particular difficulties inherent in the financing of industrial undertakings in the countries and territories.

Article 66

In order to enable the countries and territories to obtain full benefit from the trade arrangements and other provisions of this Decision, trade promotion schemes shall be carried out to encourage the marketing of industrial products of the countries and territories both in Community and in other external markets, and also in order to stimulate and develop trade in industrial products among the countries and territories, in accordance with the provisions of Article 81.

Article 67

Programmes, projects or schemes undertaken in the field of industrial cooperation and involving Community financing shall be implemented in accordance with Title VI, account being taken of the particular characteristics of operations in the industrial sector.

Article 68

1. With a view to developing the conventional and non-conventional energy potential and the self-sufficiency of the countries and territories, the Community will assist *inter alia* the following areas:

(a) preparation of inventories on energy resources and demand, adequate attention being paid to non-commercial energy demand;

(b) implementation of alternative energy strategies in programmes and projects that will take special account of the experience of the countries and territories and cover *inter alia* wind, solar, geothermal and hydro-energy sources;

(c) development of the investment potential for the exploration and development of national and regional energy sources as well as the development of sites of exceptional energy production permitting the establishment of energy-intensive industry;

(d) strengthening of the management and control of the countries and territories of their energy resources in terms of their development objectives by all the means provided for in this Decision;

(e) establishment of a rural energy programme with emphasis on rural energy technologies and energy planning that meet basic needs;

(f) promotion of research, adaptation and dissemination of appropriate technology as well as the training needed to meet energy-related manpower needs;

(g) production in the countries and territories of equipment for the production and distribution of energy as well as the application of energy-saving techniques;

(h) implementation of measures that will minimize the negative impact of energy production on the environment as well as promote environmentally positive projects;

(i) conservation of existing and future energy resources of the countries and territories, whether conventional or non-conventional.

2. Programmes, projects or schemes undertaken in the field of energy cooperation and involving Community financing shall be implemented in accordance with Title VI.

Article 69

Industrial information and promotion activities will be undertaken so as to ensure and intensify regular information exchanges and the organization of the necessary contacts in the industrial field between the Community and the countries and territories.

Article 70

At the request of the authorities of the countries and territories responsible for industrialization, the Community shall take measures to establish and strengthen industrial undertakings in these countries and territories, particularly by encouraging initiatives by economic operators of the Community and the countries and territories.

Article 71

Within the framework of the implementation of the provisions of this Title, the Community shall meet the special needs and problems of the least-developed countries and territories *inter alia* for the processing of their raw materials, the development, transfer and adaptation of technology, the development of small- and medium-sized industries, the development of their infrastructure and energy and mineral resources, and adequate training in the scientific, technological and technical fields.

TITLE V

AGRICULTURAL COOPERATION

Article 72

1. The basic objective of agricultural cooperation between the Community and the countries and territories must be to assist the latter in their efforts to resolve problems relating to rural development and the improvement and expansion of agricultural production for domestic consumption and export and problems they may encounter with regard to security of food supplies for their populations.

2. Accordingly, cooperation in rural development shall contribute in particular, within the general objectives of financial and technical cooperation:

(a) to a higher standard of living for the rural population, in particular by raising incomes and creating jobs, by means of increasing agricultural production generally;

(b) to reinforcing the security of the food supplies of the countries and territories and to satisfying their nutritional requirements, particularly by improving the quantity and quality of food production;

(c) to improving the productivity of and diversifying rural activities, in particular through the transfer of appropriate technology and rational use of crop and livestock resources while protecting the environment;

(d) to local exploitation of agricultural produce, in particular through the processing of crops and livestock products in the countries concerned;

(e) to the social and cultural development of the rural community, in particular through integrated health, education and training schemes;

(f) to increasing the populations' capacity for self-development, notably through greater control over their technical and economic environment.

Article 73

In order to help attain the objectives referred to in Article 72, cooperation schemes in the field of rural development shall take the form of *inter alia:*

(a) integrated rural development projects involving in particular peasant family holdings and cooperatives and also fostering craft and trading activities in rural areas;

(b) different kinds of hydro-agricultural improvement schemes using available water resources; village water-engineering microprojects, stabilization of water courses and land development involving partial or total water control;

(c) projects for crop protection, preservation and storage and for marketing agricultural products designed to bring about conditions giving farmers an incentive to produce;

(d) the establishment of agro-industrial units combining primary agricultural production, processing, and the preparation, packaging and marketing of the finished product;

(e) stock-farming projects; protection, exploitation and improvement of livestock and the development of livestock products;

(f) fishery and fish farming projects: exploitation of natural resources and development of new products; preservation and marketing of products;

(g) exploitation and development of forestry resources for production or environmental protection purposes;

(h) the implementation of measures to raise the standard of living in rural areas, for example by improving the social infrastructure, drinking water supply and communication networks;

(i) such applied agronomic and livestock research projects as prove necessary prior to or in the course of the implementation of agricultural cooperation schemes;

(j) training schemes at all levels for national supervisory staff who will have to take over responsibility for the planning, execution and management of rural development operations and applied agronomic and livestock research projects.

Article 74

Programmes, projects or schemes undertaken in the field of agricultural cooperation and involving Community financing shall be implemented in accordance with Title VI, account being taken of the particular characteristics of operations in the agricultural sector.

Article 75

For the purpose of implementing the cooperation schemes referred to in Article 73 and in order to improve the efficiency of the different departments of the countries and territories that deal with rural development, those departments may call on technical assistance in the form of individual experts or consultancy teams, in particular for the following tasks:

— the formulation of rural development policies,

— the identification and preparation of projects in that field,

— project execution, management and evaluation,

— applied research activities,

— the training of national personnel.

Technical assistance shall be provided within the framework of terms of reference specifying the tasks to be accomplished for a period determined in accordance with the provisions of Title VI.

Article 76

At the request of the countries' and territories' authorities responsible for agricultural development, the Community shall take measures to provide those countries and territories with better access to information, research results and the research itself, training and innovations in the agricultural and rural field.

Article 77

In order to enable the countries and territories to derive greater advantage from the opportunities for action in rural development, the Community is ready to contribute from regional cooperation appropriations to initiatives devised and put into effect by two or more countries or territories or by a country or territory and an ACP State, involving production, research or training projects.

Article 78

In the implementation of the provisions of this Title special priority shall be accorded to the specific problems and difficulties of the least-developed countries and territories, particularly in the areas of production, processing, training, research, transport, marketing, packaging and the establishment of storage infrastructure.

TITLE VI

FINANCIAL AND TECHNICAL COOPERATION

Chapter 1

General provisions

Article 79

1. The objective of financial and technical cooperation shall be to promote the economic and social development of the countries and territories.

2. This cooperation shall complement the efforts of the relevant authorities of the countries and territories and shall be in keeping with them. It shall relate to the preparation, financing and implementation of projects and programmes that contribute to the economic and social development of the countries and territories and whose nature is adapted to the needs and characteristics of each of them.

3. It should help the least-developed countries and territories to overcome the specific obstacles which hamper their development efforts.

4. It should encourage the regional cooperation of the countries and territories.

Article 80

1. Financial and technical cooperation shall take account of the need to comply with the conditions specific to each country or territory, especially as regards its development policy, the strategies to be followed, the priorities it has set itself, its potential and its own resources.

2. In this context, projects and programmes shall help achieve some or all of the following effects:

(a) to give the countries and territories the means of improving and gaining more control over the conditions of their economic and social development;

(b) to contribute to the sustained and harmonious growth of the economies of the countries and territories by raising the quantity and quality of their production and, hence, their national income, and by correcting structural imbalances, through the diversification and integration of their economies;

(c) to raise the standard of living of the populations of the countries and territories;

(d) to enable countries and territories faced with serious economic and social difficulties of an exceptional nature resulting from natural disasters or extraordinary circumstances having comparable effects to benefit from emergency aid.

Article 81

1. Projects and programmes may involve:

— capital projects, including the support costs and running costs defined in Articles 130 and 131,

— technical cooperation.

2. The projects and programmes may, within the framework of the priorities adopted at the programming level as well as within the framework of regional cooperation, apply *inter alia* to:

— rural development, industrialization, craft development, energy, mining, tourism and economic and social infrastructure,

— structural improvement of the productive sectors of the economy,

— protection of the environment,

— prospecting, exploration and exploitation of natural resources,

— training, applied scientific research and applied technology, technological adaptation or innovation and the transfer of technology,

— industrial promotion and information,

— marketing and sales promotion,

— promotion of small- and medium-sized national undertakings,

— microprojects for grassroots development.

3. The funds provided may be used to cover external costs and local expenditure required for the execution of projects and programmes.

4. Financial and technical cooperation may cover current administrative, maintenance and operating expenses which are the responsibility of the countries and territories or any other recipient only on the conditions laid down in Articles 130 and 131.

5. The Community, recognizing the special problems of island countries and territories, and in particular their transport and communication difficulties, within their territories, among themselves, and with the Community, shall give priority attention to appropriate measures aimed at:

(a) promoting, in the field of air and sea transport, the movement of goods and persons;

(b) developing sea fishing activities;

(c) contributing, if necessary, towards exploration for and development of energy resources.

Article 82

1. The following shall be eligible for financial and technical cooperation:

(a) the countries and territories;

(b) regional or inter-state bodies to which one or more countries and territories belong and which are authorized by the relevant authorities of the countries and territories in question.

2. The following shall also be eligible for financial and technical cooperation, subject to the agreement of the relevant authority of the country or territory or countries or territories concerned, in respect of projects or programmes approved by the latter:

(a) public or semi-public development agencies of the countries and territories, and in particular their development banks;

(b) local authorities and private bodies working in the countries and territories concerned for their economic and social development;

(c) undertakings carrying out their activities in accordance with industrial and business management methods and formed as companies or firms of a country or territory within the meaning of Article 138;

(d) groups of producers in the countries and territories or like bodies, and, where no such groups or bodies exist, the producers themselves;

(e) for training purposes, award holders and trainees.

Chapter 2

Financial resources and methods of financing

Article 83

For the period of application of this Decision, the overall amount of the Community's financial assistance shall be 109 million ECU.

This amount shall comprise:

1. 94 million EUA from the European Development Fund, hereinafter referred to as 'the Fund', allocated as follows:

   (a) 85 million EUA for the purposes set out in Articles 79 and 80, consisting of:

   — 51 million ECU in the form of grants,

   — 27 million ECU in the form of special loans,

   — 7 million ECU in the form of risk capital,

   — (for the record) in the form of the special financing facility set up under the provisions relating to mineral products;

   (b) for the purposes set out in Title II, up to nine million ECU in the form of transfers for the stabilization of export earnings.

2. For the purposes set out in Articles 79 and 80, up to 15 million ECU in the form of loans from the Bank, made from its own resources in accordance with the terms and conditions provided for in its Statute. These loans shall carry, under the conditions laid down in

Article 87, a 3 % interest rate subsidy, the cost of which shall be charged against the amounts of aid provided for in 1 (a).

3. The amounts provided for in the form of grants and special loans, i. e. 78 million ECU, less the allocations for regional cooperation projects and emergency aid, as provided for in Article 114 (2) and Article 117 respectively and the amount, if any, earmarked for interest subsidies for loans from the Bank, shall be allocated as follows:

— French overseas territories: 20 million ECU,

— Netherlands Antilles: 20 million ECU,

— United Kingdom overseas countries and territories: 20 million ECU.

Article 84

1. Projects or programmes may be financed by grant, or by special loan, or by risk capital, or by loans from the Bank from its own resources, or jointly by two or more of these means of financing.

2. The financing of productive investment projects in industry, agro-industry, tourism, mining and energy production linked with investment in those sectors shall be borne in the first place by loans from the Bank from its own resources and by risk capital.

3. For resources of the Fund which are managed by the Commission the means of financing shall be fixed jointly in accordance with the level of development and the geographical, economic and financial situation of the country or territory or countries or territories concerned, so as to ensure the best use of available resources. Account may also be taken of their economic and social impact.

4. For resources managed by the Bank, the means of financing shall be fixed in accordance with the nature of the project, the prospects for its economic and financial return and the stage of development and economic and financial situation of the country or territory or countries or territories concerned. Account shall be taken in addition of factors guaranteeing the servicing of repayable aid.

5. With the agreement of the competent authorities of the countries or territories concerned, financial aid from the Community may take the form of cofinancing with participation by, in particular, credit and development agencies and institutions, undertakings, Member States, countries and territories, third countries or international finance organizations.

Article 85

Special loans shall be made for a duration of 40 years, with a grace period of 10 years. They shall bear interest at the rate of 1 % per annum.

Article 86

1. Grants or special loans may be accorded to a country or territory or may be channelled by that country or territory to a final recipient.

2. In the latter case, the terms on which the money may be made available by the intermediate recipient to the final recipient shall be laid down in the financing agreement.

3. Any profit accruing to the intermediate recipient because it receives either a grant or a loan for which the interest rate or the repayment period is more favourable than that of the final loan shall be used by the country or territory in question for development purposes on the conditions laid down in the financing agreement.

4. Taking account of a request by the relevant authorities of the country or territory concerned, the Bank may, in accordance with Article 84 grant finance which it shall administer either directly to the final recipient or via a development bank in the country or territory concerned.

Article 87

1. Scrutiny by the Bank of the eligibility of projects and the provision of loans from its own resources shall be effected in conjunction with the relevant authorities of the country or territory or countries or territories concerned in accordance with the rules, conditions and procedures provided for in the Bank's Statute and in this Decision, consideration being given to the economic and financial situation of the country or territory or countries or territories concerned and to the factors which guarantee the servicing of repayable aid.

2. The duration of loans made by the Bank from its own resources shall be governed by terms stipulated on the basis of the economic and financial characteristics of the project, but may not exceed 25 years.

3. The rate of interest shall be the rate charged by the Bank at the time of signing of each loan contract. This rate shall be reduced by 3 % by means of an interest rate subsidy, except where loans are intended for investment in the oil sector.

This interest rate subsidy shall, however, be automatically adjusted so that the interest rate actually borne by the borrower will be neither less than 5 % nor more than 8 %.

4. The aggregate amount of interest rate subsidies, calculated in terms of its value at the time of the signature of the loan contract at a rate and according to detailed rules to be laid down by the Community, shall be charged against the amount of grant aid specified in Article 83 and shall be paid direct to the Bank.

Article 88

1. In order to enable projects to be carried out in industry, agro-industry, mining, tourism, and, in exceptional circumstances, transport and telecommunications, and in energy production linked with investment in those sectors, the Community may, where they are of general interest to the economy of the country or territory or countries or territories concerned, grant financial assistance in the form of risk capital.

2. Risk capital assistance may be used *inter alia* for:

— increasing directly or indirectly the own resources or resources assimilated thereto of public, semi-public or private undertakings and granting quasi-capital assistance to such undertakings,

— financing specific studies for the preparation and the drawing up of projects and providing assistance to undertakings during the start-up period,

— financing research and investment in preparation for the launching of projects in the mining and energy sectors.

3. To attain these objectives the Community may acquire temporary minority holdings in the capital of the undertakings concerned or in that of institutions for financing development in the countries or territories. Such holdings may be acquired in conjunction with a loan from the Bank or with another form of risk-capital assistance. As soon as the conditions are met they shall be transferred, preferably to nationals of the countries or territories.

4. Quasi-capital assistance may also take the form of:

(a) subordinated loans, which shall be redeemed and in respect of which interest, if any, shall be paid only after other bank claims have been settled;

(b) conditional loans, the repayment or duration of which shall be governed by terms laid down when the loan is made. Conditional loans may be made directly, with the agreement of the relevant authorities of the country or territory concerned, to a given firm. They may also be granted to a country or territory or to institutions in the countries or territories specializing in development financing to enable them to acquire a holding in the capital of undertakings operating in the sectors referred to in paragraph 1, where such an operation comes under the financing of preparatory or new productive investments and may be supplemented by other Community financing, possibly together with other sources of financing, as a cofinancing operation;

(c) loans made to development financing institutions in the countries or territories, where the characteristics of their activities and management so permit. Such loans may be used for onlending to other firms and acquiring holdings in other undertakings.

5. The terms of the quasi-capital assistance referred to in paragraph 4 shall be determined case by case by reference to the characteristics of the projects financed. However, the terms on which quasi-capital assistance is granted shall generally be more favourable than those for subsidized loans from the Bank. The interest rate shall not be greater than that on such subsidized loans.

6. Where the assistance referred to in this Article is granted to consultancy firms or is used to finance research or investment in preparation for the launching of a project, it may be incorporated in any capital assistance to which the promoting company may be entitled if the project is carried out.

Article 89

1. Special treatment shall be accorded to the least-developed countries and territories when determining the volume of the financial resources which such countries and territories may expect from the Community.

2. These financial resources shall be combined with particularly favourable terms of financing, having regard to the economic situation and the nature of the needs specific to each country or territory. They shall

consist essentially of grants and, in appropriate cases, of special loans or risk capital.

3. Special loans for the least-developed countries and territories shall be made for a duration of 40 years with a grace period of 10 years. They shall bear an interest rate of 0·75 % per annum.

4. The Community shall as a matter of priority facilitate access for the least-developed countries and territories to risk capital assistance administered by the Bank.

5. Loans from the Bank's own resources may also be granted in the least-developed countries and territories, having regard to the criteria laid down in Article 87.

Chapter 3

Responsibilities

Article 90

1. Operations financed by the Community shall be implemented by the competent authorities of the countries and territories and the Community in close cooperation.

2. The competent authorities of the countries and territories shall be responsible for:

(a) defining the objectives and priorities on which Community-financed projects shall be based;

(b) choosing the projects and programmes which they decide to put forward for Community financing;

(c) preparing and presenting to the Community the dossiers of projects and programmes;

(d) preparing, negotiating and concluding contracts;

(e) implementing projects and programmes financed by the Community;

(f) managing and maintaining operations carried out in the context of financial and technical cooperation.

3. If requested by the competent authorities of the countries and territories the Community may provide them with technical assistance in performing the tasks referred to in paragraph 2. It shall examine in particular specific measures for alleviating the particular difficulties encountered by the least-developed countries and territories in the implementation of their projects and programmes.

4. The competent authorities of the countries and territories and the Community shall bear joint responsibility for:

(a) appraising projects and programmes, and examining the extent to which they fit the objectives and priorities and comply with the provisions of this Decision;

(b) taking the necessary implementing measures to ensure equality of conditions for participation in invitations to tender and contracts;

(c) evaluating the effects and results of projects and programmes completed or under way;

(d) ensuring that the projects and programmes financed by the Community are executed in accordance with the arrangements decided upon and with the provisions of this Decision.

5. The Community shall be responsible for preparing and taking financing decisions on projects and programmes, and for defining the general policy and guidelines of financial and technical cooperation.

6. Where the financing of projects within the Bank's sphere of competence is concerned, the arrangements and procedures for implementing financial and technical cooperation, as set out in Chapters 4, 6, 7 and 8, may, in coordination with the countries and territories concerned, be adapted to take account of the nature of the projects financed by the Bank and to permit it, within the framework of the procedures laid down by its Statute, to act in accordance with the objectives of this Decision.

Chapter 4

Programming, appraisal, implementation and evaluation

Article 91

1. The schemes financed by the Community, which are complementary to the efforts of the countries and

territories themselves, shall be integrated into the economic and social development plans and programmes of the said countries and territories and shall tie in with the development objectives and priorities which they set both at national and regional level.

2. To this end, the competent authorities of the countries and territories shall inform the Commission, where possible as soon as this Decision enters into force, of their development plans and programmes and of the schemes for which they intend to request financial assistance.

They shall notify the Commission of any subsequent changes to their development plans and programmes.

3. In the light of these various aspects, an optimum pace for overall commitments year by year shall be determined for each country and territory in such a way that the overall amount of sums to be committed each year is distributed as evenly as possible throughout the period of application of this Decision.

4. Any balance remaining from the Fund that has not been committed by the end of the last year of application of this Decision will be utilized until it has been exhausted, in accordance with the same conditions as those laid down in this Decision.

Article 92

1. Preparation of the dossiers of projects or programmes shall be the responsibility of the countries or territories concerned or of other beneficiaries approved by them.

The dossiers must contain all the information necessary for the appraisal of the project.

Where so requested the Community may provide assistance for drawing up the dossiers.

2. Such dossiers shall be officially transmitted to the Community by the competent authorities of the countries or territories or the other beneficiaries specified in Article 82 (1). Where the beneficiaries specified in Article 82 (2) are concerned, the express agreement of the competent authorities of the country or territory or countries or territories concerned shall be required.

3. All projects or programmes transmitted officially in accordance with paragraph 2 shall be brought to the attention of the Community body responsible for taking financing decisions.

Article 93

1. (a) Project and programme appraisal shall be undertaken in close collaboration between the Community and the competent authorities of the countries and territories or any other beneficiaries.

(b) The various aspects of the projects and programmes shall be appraised, in particular economic, social, technical, financial and administrative aspects.

(c) Appraisal should ensure that the projects and programmes really meet the criteria as defined in paragraph 2.

2. The criteria used for appraising projects and programmes shall be as follows:

(a) projects and programmes must correspond to the objectives and priorities of the countries or territories. They must take account of national efforts and of other resources of external origin and dovetail with them and the provisions of this Decision;

(b) the effectiveness of projects and programmes shall be assessed by means of an analysis comparing the means to be employed with the effects expected from the technical, social, economic and financial aspects; possible variants shall be examined;

(c) projects and programmes shall be assessed for their viability from the viewpoint of the different economic agents involved, be they the country and territory, an undertaking or local communities. This part of the appraisal procedure is to ascertain that the project will produce the expected effects in a period considered normal for the type of scheme concerned.

It is also to make sure that any staff and other resources, in particular financial, necessary for operating and maintaining the capital projects and for covering any incidental project costs are actually available locally.

This shall be achieved by establishing forward budgets and assessing the opportunities for adapting the project to local constraints and resources;

(d) appraisal of the economic return shall be directed at the various effects expected of the project, notably the physical, economic, social and financial effects, if possible on the basis of a cost-benefit analysis;

(e) appraisal must take account of the non-quantifiable effects of projects, and particular attention shall be paid to the effects of the project on the environment.

3. The specific difficulties and constraints peculiar to the least-developed countries and territories which affect the effectiveness, viability and economic return of projects and programmes shall be taken into account when the said projects and programmes are appraised.

Article 94

1. The conclusions of the appraisal shall be summarized in a financing proposal, which shall serve as the basis for the Community's decision.

2. The financing proposals, drawn up by the relevant departments of the Community, shall be transmitted to the countries and territories concerned.

Article 95

1. With a view to accelerating the procedures, financing proposals may deal with multiannual programmes or overall amounts where the financing concerns:

(a) sets of training schemes,

(b) microproject programmes,

(c) sets of technical cooperation and trade promotion schemes.

Financing decisions on individual schemes and projects shall be taken within the framework of such programmes and overall amounts.

2. In the same spirit, decisions on projects and programmes involving a limited amount may be taken by accelerated procedure.

3. Any measures required to streamline and speed up procedures shall be taken in respect of all projects and programmes implemented under this Decision.

Article 96

1. In respect of the Fund's resources administered by the Commission, for any project or programme on which a financing decision has been taken a financing agreement shall be drawn up between the Commission, acting on behalf of the Community, and the competent authorities of the country or territory or countries or territories concerned. The agreement shall specify in particular the details of the Fund's financial commitment and the arrangements for and terms of the financing. A timetable for commitments and payments shall be annexed to the financing agreement.

2. In addition, for any project or programme financed by a special loan, a loan contract shall be drawn up between the Commission, acting on behalf of the Community, and the borrower.

Article 97

Any unexpended balance left upon closure of the accounts of projects or programmes financed from the Fund's resources administered by the Commission shall accrue to the country or territory concerned and shall be so specified in the Fund's books. It may be used in the manner laid down in this Decision for the financing of projects and programmes.

Article 98

1. Cost overruns incurred during the implementation of projects or programmes financed from the Fund's resources administered by the Commission shall be borne by the country or territory or countries or territories concerned, subject to the following provisions.

However, the financing agreements for all projects shall make provision for appropriations to cover cost increases and contingencies.

2. As soon as it appears that cost overruns are likely to be incurred, the Territorial Authorizing Officer shall so inform the Chief Authorizing Officer through the Commission Delegate, indicating the measures he intends to take in order to cover such cost overruns, whether by reducing the scale of the project or programme or by calling on local or other non-Community resources.

3. If it appears impossible to reduce the scale of the project or programme or to cover the cost of overruns by drawing on local or other non-Community resources, the Community body responsible for taking the financing decisions may, in each case, take a supplementary commitment decision and finance the relevant expenditure.

4. Without prejudice to the arrangements provided for in paragraphs 2 and 3, the Territorial Authorizing Officer shall, in coordination with the Chief Authorizing Officer, use the unexpended balances referred to in Article 97 for covering cost overruns on a project or programme, within the limits of a ceiling set at 15 % of the financial commitment for the project or programme concerned.

Article 99

1. Evaluation may be undertaken during the implementation of projects and programmes. The countries and territories concerned and the Community shall draw up a joint progress report, at agreed intervals, on the various aspects of the project and its results.

Such a report may serve to re-orient the project during implementation if a joint decision is taken to this effect.

2. The countries and territories concerned and the Community shall organize the joint evaluation of completed projects and programmes. Evaluation shall concern the results, by comparison with the objectives, and also the administration, operation and maintenance of the schemes. The two Parties shall study the results of such evaluations.

The competent authorities of the Community and of the countries and territories concerned shall each take the appropriate measures called for by the results of the evaluation work.

Chapter 5

Policy and guidelines

Article 100

1. The Council shall examine at least once a year whether the objectives of financial and technical cooperation are being attained and shall also examine the general problems resulting from implementation of that cooperation. This examination shall also cover regional cooperation and measures in favour of the least-developed countries and territories.

2. To this end the Commission shall submit to the Council an annual report on the management of Community financial and technical aid. This report shall be drawn up in collaboration with the Bank for the parts of the report which concern it. It shall in particular show the position as to the commitment, implementation and use of the aid, broken down by type of financing and by recipient country or territory, and the results of work done to evaluate projects and programmes.

3. On the basis of the information presented by the Commission, the Council shall define, where necessary, the general policy and guidelines of financial and technical cooperation and shall adopt resolutions on the measures to be taken by the Community and by the competent authorities of the countries and territories in order to ensure that the objectives of such cooperation are attained.

Chapter 6

Execution of financial and technical cooperation

Article 101

The countries and territories, and the other beneficiaries authorized by them in accordance with Article 82, shall implement the projects and programmes financed by the Community.

Accordingly, they shall be responsible in particular for preparing, negotiating and concluding the necessary contracts for the implementation of the operations.

Article 102

1. The Commission shall appoint the Chief Authorizing Officer of the Fund, who shall ensure that financing decisions are carried out and shall be responsible for managing the Fund's resources. To this end, he shall commit, clear and authorize expenditure, and keep the accounts of commitments and authorizations.

2. In close cooperation with the Territorial Authorizing Officer, the Chief Authorizing Officer shall ensure equality of conditions for participations in invitations to tender, and see to it that there is no discrimination and that the tender selected is economically the most advantageous. In this connection the Chief Authorizing Officer shall approve the dossiers before invitations to tender are issued, receive the result of the examination of the tenders and approve the proposal for the placing of the contract, subject to the powers exercised by the Commission Delegate under Article 104.

3. Subject to the powers exercised by the Territorial Authorizing Officer under Article 103, the Chief Authorizing Officer shall take any adaptation measures and commitment decisions necessary to ensure the proper execution of approved projects and programmes under the best economic and technical conditions.

Article 103

1. The competent authorities of each country or territory shall appoint a Territorial Authorizing Officer to represent them in all operations financed from the Fund's resources administered by the Commission.

The Territorial Authorizing Officer may delegate some of his functions and shall inform the Chief Authorizing Officer of any such delegation.

2. In addition to the functions of the Territorial Authorizing Officer in connection with the preparation, submission and appraisal of projects, that Officer shall:

(a) ensure, in close cooperation with the Chief Authorizing Officer, that there is equality of conditions for participation in invitations to tender, that there is no discrimination and that the tender which is economically the most advantageous is chosen;

(b) prepare invitation to tender dossiers and submit them to the Delegate for agreement before issuing invitations to tender;

(c) issue invitations to tender;

(d) receive tenders, preside over the examination of tenders, decide the outcome of the said examination and transmit it to the Delegate with a proposal for the placing of the contract;

(e) sign contracts and riders thereto and estimates, and notify the Commission Delegate thereof.

3. The Territorial Authorizing Officer shall clear and authorize expenditure within the limits of the funds assigned. The Officer shall remain responsible for the funds entrusted to him until the Commission authorizes the operations for the execution of which the funds were entrusted to him.

4. During the implementation of projects, and subject to the requirement to inform the Commission Delegate, the Territorial Authorizing Officer shall take any adaptation measures necessary to ensure the proper execution of approved projects or programmes under the best economic and technical conditions.

Accordingly, the Territorial Authorizing Officer shall decide on:

(a) technical adjustments and alterations on matters of detail, so long as they do not affect the technical solutions adopted and remain within the limits of the provision for minor adjustments;

(b) minor alterations to estimates during implementation;

(c) transfers from item to item within estimates;

(d) changes of site for multiple-unit projects where justified on technical or economic grounds;

(e) imposition or remission of penalties for delay;

(f) acts discharging guarantors;

(g) purchase of goods, irrespective of their origin, on the local market;

(h) use of construction equipment and machinery not originating in the Member States or in the countries or territories provided there is no production of comparable equipment and machinery in the Member States or the countries or territories;

(i) subcontracting;

(j) final acceptance; however, the Delegate must be present at provisional acceptances and endorse the corresponding minutes and, where appropriate, be present at the final acceptance, in particular where the extent of the reservations recorded at the provisional acceptance necessitates major additional work.

5. For contracts of less than 3·5 million ECU and in general for all contracts to which the accelerated procedure applies, decisions taken by the Territorial Authorizing Officer under the powers vested in that Officer shall be deemed approved by the Commission within 30 days of the notification to the Commission Delegate.

Article 104

1. To facilitate the implementation of this Decision, the Commission shall be represented by Delegates in the countries and territories.

2. The Commission shall give each Delegate the necessary instructions and delegated powers to facilitate and expedite the preparation, appraisal and implementation of projects financed from the Fund's resources administered by it. The Delegate shall work in close cooperation with the Territorial Authorizing Officer and deal with that Officer on behalf of the Commission. In this capacity the Delegate shall:

(a) approve the invitation to tender dossier wherever invitations to tender are to be issued by accelerated procedure, or in other cases transmit it to the Chief Authorizing Officer for that Officer's agreement;

(b) be present at the opening of tenders, and receive a copy of them and of the results of their examination;

(c) approve within one month the Territorial Authorizing Officer's proposal for the placing of the contract wherever the three following conditions are fulfilled: the tender selected is the lowest, it is economically the most advantageous and does not exceed the sum earmarked for the contract;

(d) approve within one month the proposal for the placing of the contract in all cases where invitations to tender are issued by the accelerated procedure;

(e) where the conditions set out in (c) are not fulfilled, forward the proposal for the placing of the contract to the Chief Authorizing Officer for agreement; the Chief Authorizing Officer shall decide thereon within two months of the receipt by the Commission Delegate of the final outcome of examination of the tenders and the proposal for the placing of the contract;

(f) participate in the preparation and negotiation of service contracts.

3. The Delegate shall make sure, on behalf of the Commission, that the projects and programmes financed from the Fund's resources administered by the Commission are properly implemented from the financial and technical angles.

Accordingly, the Delegate shall endorse contracts, riders thereto and estimates, as well as payment authorizations issued by the Territorial Authorizing Officer.

4. Each year the Delegate shall prepare a summary of the Fund's operations in the country or territory in which he or she is the Commission representative. The reports shall be communicated by the Commission to the competent authority of the country or territory concerned.

5. The Delegate shall cooperate with the local authorities in evaluating completed projects and programmes. Reports on the outcome of the evaluation shall be drawn up and communicated to the competent authorities of the countries and territories concerned and to the Commission.

6. The Delegate shall inform the local authorities of Community activities which may directly concern cooperation between the countries and territories and the Community.

7. The Delegate shall maintain continuous contact with the Territorial Authorizing Officer for the purpose of analysing and remedying specific problems encountered in the implementation of financial and technical cooperation.

8. The Delegate shall communicate to the competent authorities of the country or territory all information and relevant documents on the procedures for implementing financial and technical cooperation.

9. The Delegate shall prepare the financing proposals.

Article 105

1. Services provided in connection with projects financed by the Fund shall be paid for on instructions from the Commission by drawing on the Fund's accounts.

2. For this purpose, accounts shall be opened on behalf of the Commission with a financial institution, which shall exercise the functions of paying agent.

3. Within the limits of the funds available, the paying agent shall make the disbursements authorized after verifying that the supporting documents provided are substantively accurate and in order, and that the discharge is valid.

Chapter 7

Competition and preferences

Article 106

1. As regards operations financed by the Community, participation in invitations to tender and contracts shall be open on equal terms to all natural persons and companies or firms falling within the scope of the Treaty and to all natural persons and companies or firms of the countries and territories.

The companies or firms referred to in the preceding paragraph shall be those defined in Article 138.

2. Measures to encourage the participation of undertakings of the countries and territories in the execution of contracts shall be taken in order to permit optimum use of the natural and human resources of those countries and territories.

3. Paragraph 1 shall not imply that the funds provided by the Community must be used exclusively for purchases of goods or payment for services in the Member States and the countries and territories.

4. Any participation by third countries in contracts financed by the Community must be of an exceptional nature and be authorized case by case, at the reasoned request of the competent authority of the country or territory concerned, by the competent body of the Community. Unless other appropriate factors prevail, account shall be taken of a desire to avoid excessive increases in the cost of projects attributable either to the distances involved and transport difficulties or to the delivery date, notably in the case of the least-developed countries and territories.

5. The Commission and the competent authorities of the country or territory concerned shall take the appropriate measures to provide the Community body with the information needed for a decision on such derogations. This body shall examine the information with particular attention in the case of countries and territories whose geographical location greatly reduces the competitiveness of suppliers and contractors from the Community and the countries and territories.

6. Participation by third countries in contracts financed by the Community may be authorized where the Community participates in the financing of regional or inter-regional cooperation schemes involving third countries and in the joint financing of projects with other providers of funds.

Article 107

1. The competent authorities of the countries and territories and the Commission shall take the necessary measures to ensure the widest possible participation on equal terms in invitations to tender and works and supply contracts financed by the Fund's resources managed by the Commission.

2. The purpose of these measures shall be in particular:

(a) to ensure advance publication in reasonable time of invitations to tender in the *Official Journal of the European Communities*, the official journals of the countries and territories and any other suitable information media;

(b) to eliminate discriminatory practices or technical specifications which might stand in the way of widespread participation on equal terms;

(c) to encourage cooperation between the undertakings of the Member States and of the countries and territories, for example by means of preselection and the creation of groups.

Article 108

1. As a general rule, works and supply contracts financed by the Fund's resources managed by the Commission shall be concluded following an open invitation to tender.

2. However, for operations where the urgency of the situation is recognized or where the nature, minor importance or particular characteristics of the works or supplies so warrant, the competent authorities of the countries and territories may, in agreement with the Commission, exceptionally authorize:

— the placing of contracts after restricted invitations to tender,

— the conclusion of contracts by direct agreement,

— the performance of contracts through public works departments.

3. Furthermore, for operations costing under 3·5 million ECU recourse to public works departments may be authorized where the recipient country or territory has sufficient suitable equipment and qualified staff available in its local departments.

Article 109

To promote the widest possible participation by local undertakings in the performance of works and supply contracts financed from the Fund's resources managed by the Commission:

(a) an accelerated procedure for issuing invitations to tender shall be used for carrying out works estimated to cost less than 3·5 million ECU. Under this procedure, publication shall be confined to the country or territory concerned and the neighbouring countries and territories and the time limits for the submission of tenders shall be fixed in accordance

with the rules in force in the country or territory concerned.

The use of this accelerated procedure shall not exclude the possibility of the Commission's proposing an international invitation to tender to the competent authorities of the country or territory concerned where the nature of the works to be undertaken or the advantages of wider participation would appear to justify inviting international competition;

(b) for carrying out works whose value is less than 3·5 million ECU, local undertakings of the countries and territories shall be accorded a 10 % preference where tenders of equivalent economic and technical quality are compared.

This preference shall be confined to local undertakings of the countries and territories within the meaning of the laws in force in these countries and territories, provided that their residence for tax purposes and main business are established in a country or territory and that a significant share of the capital and management staff is supplied by one or more countries or territories.

(c) for the delivery of supplies, undertakings involved in industrial or craft production of the countries and territories shall be accorded a 15 % preference where tenders of equivalent technical and economic quality are compared.

This preference shall be confined to local undertakings of the countries and territories which provide a sufficient margin of added value.

Article 110

In order to ensure the rapid and effective implementation of projects and programmes financed by the Community in the least-developed countries and territories, the Community shall give special priority to the application of specific measures in the following areas:

— the award of contracts following accelerated invitations to tender on the terms specified in Article 109,

— the placing of contracts following restricted invitations to tender and the conclusion of contracts by direct agreement on the terms specified in Article 108,

— the performance of contracts through public works departments on the terms specified in Article 108,

— the placing of service contracts by the Commission, in agreement with the competent authorities of the country or territory concerned where the scheme is urgent, of minor importance or short duration, particularly in the case of appraisals concerned with the preparation of projects and programmes,

— the arrangement of payment procedures in such a way that the States concerned do not have to bear any prefinancing costs.

Article 111

For each operation the criteria for selecting the tender that is economically the most advantageous shall take into account *inter alia* the qualifications of and the guarantees offered by the tenderers, the nature and conditions of implementation of the works or supplies and the price, operating costs and technical value of those works or supplies.

Where two tenders are acknowledged to be equivalent on the basis of the criteria stated above, preference shall be given to the tender of the local undertaking of a country or territory or, if no such tender is forthcoming, to the one which permits the greatest possible use of the physical and human resources of the countries and territories.

The relevant authorities of the countries and territories and the Commission shall ensure that all the selection criteria are specified in the invitation to tender dossier.

Article 112

The general conditions applicable to the award and performance of works and supply contracts financed from the Fund's resources administered by the Commission are contained in the general conditions which, on a proposal from the Commission, shall be adopted by unanimous decision of the Council.

Article 113

Any dispute arising between the authorities of a country or territory and a contractor, supplier or provider of services on the occasion of the placing or performance of a contract financed by the Fund shall be settled by arbitration in accordance with rules of procedure which, on a proposal from the Commission, shall be adopted by unanimous decision of the Council.

Chapter 8

Regional cooperation

Article 114

1. In the implementation of financial and technical cooperation, the Community shall provide effective assistance for attaining the objectives which the countries and territories set themselves in the context of regional and inter-regional cooperation. This assistance shall aim to:

(a) accelerate economic cooperation and development both within and between the regions of the countries and territories;

(b) accelerate diversification of the economies of the countries and territories;

(c) reduce the economic dependence of the countries and territories on imports by maximizing output of those products for which the countries and territories in question have real potential;

(d) create sufficiently wide markets within the countries and territories and neighbouring countries by removing the obstacles which hinder the development and integration of those markets;

(e) promote and expand trade between the countries and territories and with neighbouring third countries;

(f) maximize the use of resources and services in the countries and territories;

(g) strengthen organizations set up by the countries and territories to promote regional cooperation and integration;

(h) implement specific measures in favour of the island countries, and territories notably in respect of transport and communications.

2. To this end, an amount of 11 million ECU from the financial resources provided for in Article 83 for the economic and social development of the countries and territories shall be reserved for financing their regional and inter-regional projects.

Article 115

1. Within the meaning of the Decision, regional cooperation shall apply to relations either between two or more countries or territories, or between one or more countries or territories on the one hand and one or more neighbour developing third countries on the other.

Inter-regional cooperation shall apply to relations between one or more countries or territories and a regional organization.

2. Within the meaning of the Decision, regional projects are those which help directly to solve a development problem common to two or more countries through joint schemes or coordinated local schemes.

Article 116

A country or territory or group of countries or territories participating with neighbour developing countries in a regional or inter-regional project may request the Community to finance that part of the project for which it is responsible.

Chapter 9

Emergency aid

Article 117

1. Emergency aid may be granted to countries and territories faced with serious economic and social difficulties of an exceptional nature resulting from natural disasters or extraordinary circumstances having comparable effects.

2. For the purpose of financing the emergency aid referred to in paragraph 1, a special appropriation shall be constituted within the Fund.

3. (a) The special appropriation shall initially be fixed at one million ECU. At the end of each year of application of this Decision this appropriation shall be restored to its initial level.

(b) The total amount of monies which may be transferred from the Fund to the special appropriation during the period of application of this Decision may not exceed 3·25 million ECU.

(c) Upon expiry of this Decision any monies transferred to the special appropriation which have not been committed for emergency aid shall be returned to the Fund proper for financing

other schemes falling within the scope of financial and technical cooperation, unless the Council decides otherwise.

(d) In the event of the special appropriation being exhausted before the expiry of this Decision, the countries and territories and the Community shall adopt appropriate measures to deal with the situations described in paragraph 1.

4. Emergency aid shall be non-reimbursable. It shall be allocated on a case by case basis.

5. (a) Emergency aid shall help finance the most suitable means of remedying as effectively and speedily as possible the serious difficulties referred to in paragraph 1.

(b) These means may consist of works, supplies or the provision of services and cash payments and, in exceptional cases, reimbursement in whole or in part of the sums already spent by the country or territory on implementing schemes included in the financing agreement relating to the emergency aid in question.

(c) The country or territory receiving emergency aid shall obtain its supplies from the markets of the Community, countries or territories or third countries under the conditions laid down in Article 106.

(d) Where appropriate, such aid may, with the agreement of the competent authorities of the country or territory concerned, be implemented via specialized agencies or directly by the Commission.

6. Emergency aid shall not be used for dealing with the harmful effects of the instability of export earnings, which are the subject of Title II.

7. The detailed rules for the allocation of such aid shall be the subject of an emergency procedure. The conditions governing the payment and implementation of such aid shall be determined on a case-by-case basis; advances may be granted by the Territorial Authorizing Officer where implementation is based on an estimate.

8. (a) Operations financed by emergency aid must be carried out as quickly as possible and, whatever the circumstances, the monies must be used within six months of the implementing arrangements being established, unless otherwise stipulated by those arrangements and provided that it is not agreed by common accord during the implementation period, to extend that time limit owing to extraordinary circumstances.

(b) Where the monies made available have not all been used up within the time limit set, the fund commitment may be reduced to an amount corresponding to the monies used within that time limit.

(c) The unexpended portion shall then be paid back into the special appropriation.

Chapter 10

Technical cooperation

Article 118

The technical cooperation referred to in Article 81 shall cover the following:

(a) general studies, notably in the technical, economic, organizational, training or management spheres;

(b) studies for a particular project or programme;

(c) supervisory, advisory or administrative services or provision of technical cooperation personnel at the implementation stage of a project or programme;

(d) technical cooperation services other than those linked to the implementation of a project or programme.

Article 119

1. Technical cooperation may be either linked with projects or programmes or of a general nature.

2. Technical cooperation linked with projects or programmes comprises *inter alia:*

(a) development studies;

(b) technical, economic, financial and commercial studies, and research and surveys required to prepare projects or programmes;

(c) help with the preparation of dossiers;

(d) help with the implementation and supervision of work;

(e) temporarily meeting the cost of technicians and providing the resources needed for them to accomplish their assignnment;

(f) technical cooperation measures which may be required temporarily to permit the establishment, launching, operation or maintenance of a specific project, including where necessary appropriate technical assistance and the training of nationals of the country or territory or countries or territories concerned.

3. General technical cooperation comprises *inter alia:*

(a) studies of the prospects and means for economic development and diversification in the countries and territories, and of problems of interest to groups of countries and territories or to the countries and territories as a whole;

(b) sectoral or product studies;

(c) the provision in the countries and territories of experts, advisers, technicians and instructors of the Member States or the countries and territories for specific assignments and for limited periods;

(d) the supply of instructional, experimentation and demonstration equipment;

(e) general information and documentation to promote the development of the countries and territories and the achievement of the aims of cooperation.

4. At the request of the competent authorities of the least-developed countries and territories the Community shall give special priority to technical cooperation schemes aimed at:

(a) identifying, preparing and carrying out projects and programmes;

(b) facilitating the implementation of the system for the stabilization of export earnings;

(c) promoting technical cooperation between countries and territories;

(d) carrying out studies and research work directed towards solving specific economic and social development problems, in particular as regards technological adjustment to the special conditions and features of the least-developed countries and territories.

Article 120

1. Technical cooperation shall be provided under service contracts concluded with consultancy firms or consulting engineers or experts recruited with reference to their professional qualifications and practical experience of problems of the type to be dealt with. Given equal competence, preference will be given to experts or consultancy firms of a country or territory. In exceptional cases technical cooperation may also be undertaken through public works departments.

2. In order to speed up the procedures, service contracts, including those covering the recruitment of consultants and other technical assistance specialists, may be negotiated, drawn up and concluded by the Commission in agreement with the competent authorities of the country or territory concerned, where the scheme is urgent, of minor importance or short duration, particularly in the case of appraisals concerned with the preparation of projects and programmes.

Article 121

1. Technical cooperation in training shall be based on multiannual training programmes and specific schemes.

2. The aim of the multiannual programmes shall be:

(a) to train nationals of the countries or territories in accordance with the educational and vocational training priorities expressed by the countries or territories;

(b) to train staff, notably middle management and technical staff, associated with the different development projects being financed by the Community in each country or territory so as to phase out technical assistance and to staff capital projects entirely with nationals of the countries and territories on a permanent basis.

3. The specific schemes shall deal with vocational training, technological research and innovation at country or territory or regional organization level. Their aim shall be to provide vocational or advanced training for the staff of public services and institutions and of agricultural, industrial and commercial undertakings and services as well as training for instructors in these different fields.

4. Technical cooperation in the field of training shall be achieved through:

(a) awards to nationals of the countries and territories for studies and training courses;

(b) the provision in the countries and territories of experts and instructors who are nationals of the Member States or the countries and territories, for specific assignments and for limited periods;

(c) the organization of seminars and training and advanced training courses for nationals of the countries and territories;

(d) the supply of teaching, instructional, experimentation, demonstration and research equipment.

The above activities shall as a matter of priority be undertaken in the recipient country or territory or at regional level. They may where necessary be undertaken in another country or territory or in a Member State. In the case of specialized training particularly suited to the requirements of the countries or territories, training may in exceptional cases be provided in another developing country.

5. At the request of the competent authorities of the least-developed countries and territories, the Community shall give special priority to schemes concerned with:

(a) training for management and other staff of public administrative departments and of the technical departments responsible for economic and social development, with the aim of increasing their efficiency and thus deriving maximum benefit from the possibilities offered by this Decision;

(b) basic and further training for management and other staff in the private sector.

Article 122

The rules governing the placing and award of service contracts shall be determined by a unanimous decision of the Council.

However, until the entry into force of that decision, Articles 2 to 24 of Annex V to Decision 76/568/EEC and the Joint Declaration on Article 23 of the said Annex shall apply to service contracts concluded after 1 March 1980.

Article 123

Where a country or territory has, within its administrative and technical staff, local personnel making up a substantial part of the workforce necessary for the execution by the public works department of a technical cooperation project, the Community may, in exceptional cases, contribute to the costs of the public works department by providing certain apparatus that it lacks, or supply the required additional staff in the form of experts from a Member State or another country or territory.

The participation of the Community shall cover only costs incurred by supplementary measures and temporary expenditure relating to execution strictly confined to the requirements of the project in question and shall exclude all current operational expenditure.

Chapter 11

Technical assistance and the financing of small- and medium-sized undertakings

Article 124

1. The Community shall finance schemes in favour of small- and medium-sized undertakings in the countries and territories. The methods of financing shall be determined by reference to the nature of the programmes presented.

2. Technical cooperation from the Community shall help to reinforce the activities of bodies in the countries or territories that are working for the development of small- and medium-sized undertakings and to provide the necessary vocational training for such undertakings.

3. Community financing, undertaken in the form of loans or possibly grants, shall as a general rule be through an intermediary. Such financing may also be direct. Financing through an intermediary shall be given priority wherever there exists in the country or territory concerned a bank or other local body contributing to the aim in question.

Finance through an intermediary may be accorded:

— by the Bank from the resources administered by it to banks or financial institutions for onlending to small- and medium-sized industrial, agro-industrial or tourist undertakings,

— by the Commission from the resources administered by it to public bodies, local authorities or cooperatives aimed at developing craft, commercial and agricultural sectors.

4. Where the financing is undertaken via an onlending body, it shall be that body's responsibility to present

individual projects within the programme already approved and to administer the monies placed at its disposal. The methods, terms and conditions for financing the final recipient shall be determined by mutual agreement between the competent authorities of the country or territory concerned, the competent Community authority and the onlending body.

5. The projects shall be appraised by the financial body. This body shall decide, on its own financial responsibility, on final loans to be granted on terms established by reference to those obtaining for this type of operation in the country or territory in question.

6. The financing terms accorded by the Community to the financing body shall take into consideration the latter's need to cover its administrative costs, exchange and financial risks and the cost of technical assistance given to the undertakings or final borrowers.

Chapter 12

Microprojects

Article 125

1. In order to respond concretely to the needs of local communities with regard to development, the Fund shall participate in the financing of microprojects at the request of the relevant authorities of the countries and territories.

2. To this end, the corresponding funds shall be deducted from the grants provided for in the first indent of Article 83 (1) (a) to cover commitments relating to this type of scheme.

3. Special priority shall be accorded to the preparation and implementation of microprojects in the least-developed countries and territories.

Article 126

1. In order to be eligible for Community financing microprojects must:

— meet a real priority need at local level,

— ensure the active participation of the local community.

The Fund's contribution to each microproject may not exceed 150 000 ECU.

2. Programmes for microprojects shall cover small projects making an economic and social impact on the life of the people and the local communities in the countries and territories. These projects shall normally be located in rural areas; however, the Community may also assist in the financing of microprojects in urban areas.

3. Microprojects shall include: dams, wells and water supply systems, silos and warehouses for storing provisions and crops, rural electrification, rural service tracks and bridges, rural landing strips, jetties, animal vaccination pens and corridors, primary schools, training colleges, craft industries such as centres and cooperatives, maternity homes, social assistance centres, community centres, market buildings, urban sanitation and land development, premises to encourage commercial activity and other projects which meet the criteria referred to in paragraph 1.

Article 127

1. Each project for which Community assistance is requested must stem from an initiative taken by the local community which will benefit therefrom. The financing of microprojects shall in principle have a tripartite structure and shall stem from:

— the community concerned, in the form of a contribution, in cash or in kind or through the provision of services adapted to its capacity to contribute,

— the country or territory, in the form of a financial contribution, the use of public equipment or the supply of services,

— the Fund.

2. The total of the shares contributed by the country or territory and the local community concerned must normally be at least equal to the grant requested from the Fund. The three participants' contributions shall be mobilized at the same time. For each project, the local community shall undertake to maintain and run the project, in conjunction with the local authorities as appropriate.

Article 128

1. The competent authority of the country or territory concerned shall prepare and submit to the Commission an annual programme setting forth the broad outlines of the projects planned.

After examination by the Commission's departments these programmes shall be submitted to the relevant

bodies of the Community for financing decisions in accordance with Article 94.

2. Within the framework of the annual programmes thus drawn up the financing decision relating to each microproject shall be taken by the competent authority of the country or territory concerned, with the agreement of the Commission Delegate; agreement shall be deemed to be given once a month has elapsed from notification of such decision.

3. Upon completion of each microproject programme the country or territory concerned, in consultation with the Commission Delegate, shall forward a report on its implementation to the Commission.

Chapter 13

Taxation, customs and other provisions

Article 129

The taxation and customs arrangements applicable in the countries and territories to contracts financed by the Community are covered by Annex VII.

Article 130

1. The financing of projects and programmes may cover expenditure incurred in and strictly limited to the start-up period, for example, for the maintenance and operation of plant that is not yet fully productive, provided that such expenditure, identified in the financing proposal, is considered necessary for setting up, launching and operating the capital projects in question.

2. Special priority shall be accorded to the financing of support costs in the least-developed countries and territories.

Article 131

1. Pursuant to Article 81 (4), running costs may be financed as specified in paragraphs 2, 3 or 4 of this Article.

2. The financing of running costs may serve to cover the costs of operating, maintaining or managing capital projects implemented previously, in order to ensure that full use is made of such projects, in particular by providing maintenance equipment and/or carrying out large-scale repair work.

3. Such aid shall be provided temporarily and on a diminishing scale.

4. It must be confined to exceptional cases, account being taken of the needs and resources of each country or territory concerned.

5. Special priority shall be accorded to the financing of running costs in the least-developed countries and territories.

Article 132

Upon expiry of this Decision:

— the appropriations provided for under Article 83 in the form of risk capital but not committed shall be added to those provided for in the form of special loans in the same Article,

— the appropriations provided for under Article 114 for financing regional projects but not committed shall be made available for financing other projects and programmes in the same sub-region.

TITLE VII

GENERAL PROVISIONS CONCERNING THE LEAST-DEVELOPED COUNTRIES AND TERRITORIES

Article 133

1. Under this Decision the least-developed countries and territories are accorded special treatment in order to enable them to overcome the specific difficulties and obstacles resulting from the nature of their needs and to take full advantage of the opportunities offered by this Decision.

2. The specific provisions laid down pursuant to this Title in respect of the least-developed countries and territories are contained in Articles 43, 44, 89, 90, 93, 106, 119, 121, 125, 130 and 131.

3. In accordance with their needs and individual characteristics, the countries and territories referred to below shall be eligible for the special treatment referred to in this Article:

Anguilla	St Helena
Antigua	St Kitts-Nevis
Belize	Turks and Caicos Islands
Mayotte	Wallis and Futuna Islands
Montserrat	

4. The list of countries and territories in paragraph 3 may be amended by decision of the Council where the economic situation of a country or territory undergoes a significant and lasting change either so as to necessitate its inclusion in the category of least-developed countries and territories or so that its inclusion in that category is no longer warranted.

TITLE VIII

PROVISIONS RELATING TO PAYMENTS AND CAPITAL MOVEMENTS, ESTABLISHMENT AND SERVICES

Chapter 1

Provisions relating to current payments and capital movements

Article 134

With regard to capital movements linked with investments and to current payments, the competent authorities of the countries and territories and the Member States shall refrain from taking action in the field of foreign exchange transactions which would be incompatible with their obligations under this Decision resulting from the provisions relating to trade in goods, services, establishment and industrial cooperation. These obligations shall not, however, prevent adoption of the necessary protective measures should this be justified by reasons relating to serious economic difficulties or severe balance of payments problems.

Article 135

In respect of foreign exchange transactions linked with investments and current payments, the competent authorities of the countries and territories on the one hand and the Member States on the other shall avoid, as far as possible, taking discriminatory measures *vis-à-vis* each other or according more favourable treatment to third States, taking full account of the evolving nature of the international monetary system, the existence of specific monetary arrangements and balance of payments problems.

To the extent that such measures or treatment are unavoidable, they will be maintained or introduced in accordance with international monetary rules and every effort will be made to minimize any adverse effects on the parties concerned.

Article 136

Throughout the duration of the loans and risk capital operations provided for in Article 83, the competent authorities of the countries and territories are required:

— to place at the disposal of the beneficiaries referred to in Article 82 the currency necessary for the payment of interest and commission on and amortization of loans and quasi-capital aid granted for the implementation of aid measures on their territory,

— to make available to the Bank the foreign currency necessary for the transfer of all sums received by it in national currency which represent the net revenue and proceeds from transactions involving the acquisition by the Community of holdings in the capital of firms.

Chapter 2

Provisions relating to establishment and services

Article 137

As regards the arrangements that may be applied in matters of establishment and provision of services, the competent authorities of the countries and territories shall treat nationals and companies or firms of Member States on a nondiscriminatory basis. However, if, for a given activity, a Member State is unable to provide similar treatment to nationals or companies or firms of the French Republic, the Kingdom of the Netherlands or the United Kingdom of Great Britain and Northern Ireland, established in a country or territory, or to companies or firms subject to the laws of the country or territory concerned and established therein, the relevant authorities of that country or territory shall not be bound to accord such treatment.

Article 138

For the purposes of this Decision 'companies or firms' means companies or firms constituted under civil or commercial law, including cooperative societies and

other legal persons governed by public or private law, save for those which are nonprofitmaking.

'Companies or firms of Member States' means companies or firms formed in accordance with the law of a Member State and whose registered office, central administration or principal place of business is in a Member State; however, a company or firm having only its registered office in a Member State must be engaged in an activity which has an effective and continuous link with the economy of that Member State.

'Companies or firms of the French Republic, the Kingdom of the Netherlands or the United Kingdom of Great Britain and Northern Ireland, established in a country or territory', means companies or firms formed in accordance with French, Dutch or United Kingdom law, as the case may be, and whose registered office, central administration or principal place of business is in that country or territory; however, a company or firm having only its registered office in a country or territory must be engaged in an activity which has an effective and continuous link with the economy of that country or territory.

'Companies or firms subject to the laws of the country or territory concerned and established therein' means companies or firms formed in accordance with the law applicable in a given country or territory and whose registered office, central administration or principal place of business is in that country or territory; however, a company or firm having only its registered office in that country or territory must be engaged in an activity which has an effective and continuous link with the economy of that country or territory.

TITLE IX

GENERAL AND FINAL PROVISIONS

Article 139

Subject to the special provisions regarding the relations between the countries and territories and the French Overseas Departments provided for herein, this Decision shall apply, on the one hand to the territories in which the Treaty establishing the European Economic Community is applied and under the conditions laid down in that Treaty and, on the other hand, to the territories of the countries and territories.

Article 140

This Decision shall enter into force at the same time as the Second ACP-EEC Convention, signed at Lomé on 31 October 1979.

Article 141

This Decision shall expire on 28 February 1985.

Article 142

1. The countries and territories to which this Decision applies are listed in Annex I.

2. The Council may, acting unanimously on a proposal from the Commission, amend or supplement this Annex.

The arrangements provided for in this Decision may continue to apply provisionally, under conditions laid down by the Council, to countries and territories which become independent.

Article 143

If a country or territory becomes independent, the Council, acting unanimously on a proposal from the Commission, shall decide on any necessary adjustments to this Decision, in particular to the amounts specified in Article 83.

Article 144

Before this Decision expires the Council, acting unanimously, shall define the provisions to be laid down for the application of the principles set out in Articles 131 to 135 of the Treaty.

Article 145

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

Done at Brussels, 16 December 1980.

For the Council

The President

Colette FLESCH