

5. Cooperation shall also support inter-regional, inter-OCT and inter-ACP cooperation schemes and initiatives.

Article 17

Cultural and social cooperation

Cooperation shall contribute to the self-reliant development of the OCTs, this being a process centred on people themselves and rooted in each people's culture. The human and cultural dimension shall embrace all areas and be reflected in all development projects and programmes. Cooperation shall back up the policies and measures adopted by the competent OCT authorities to enhance their human resources, increase their own creative capacities and promote their cultural identities. It shall foster participation by the population in the process of development. Cultural and social cooperation shall be expressed through:

- the taking into account of the cultural and social dimension;
- promotion of cultural identities and intercultural dialogue, with particular reference to preserving the cultural heritage, the production and dissemination of cultural products, cultural events and information and communication;
- operations to enhance human resources, notably covering education and training, scientific and technical cooperation, the role of women in development, health and combating drug abuse, population and demography.

PART THREE

INSTRUMENTS OF OCT-EC COOPERATION

TITLE I

DEVELOPMENT FINANCE COOPERATION

Chapter 1

General provisions

Article 18

Objectives

The objective of development finance cooperation shall be, through the provision of adequate financial resources and appropriate technical assistance, to:

- (a) support and promote the OCTs' own efforts to achieve sustainable social, cultural and economic development on the basis of mutual interest and in a spirit of interdependence;
- (b) help raise the standard of living of the peoples of the OCTs;
- (c) promote measures likely to mobilise the capacity for initiative of communities, groups, associations and individuals and their participation in the design and implementation of development programmes;
- (d) contribute to the fullest participation of the population in the benefits of development in the interests of alleviating poverty;
- (e) contribute to the development of the capacity of the OCTs to innovate, adapt and transform local technologies and to master appropriate new technologies;
- (f) support the efforts of the OCTs to achieve economic diversification, inter alia by contributing to sustainable exploration, conservation, processing and exploitation of their natural resources;
- (g) provide support for and promote the optimal development of human resources in the OCTs;
- (h) facilitate an increase in the financial flows to the OCTs that meet their evolving needs and support the efforts of the OCTs to harmonise international cooperation for their development through cofinancing of operations with other financing agencies or third parties;
- (i) promote direct private investment in the OCTs, support the development of a healthy, prosperous and dynamic OCT private sector and encourage local, national and foreign private investment flows into the productive sectors in the OCTs;

- (j) encourage inter-OCT and OCT-ACP regional cooperation, solidarity and integration;
- (k) permit the establishment of more balanced economic and social relations and better understanding between the OCTs, ACP States, Member States and the rest of the world, with a view to assisting the integration of the OCTs into the world economy;
- (l) enable OCTs 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 assistance;
- (m) help the least-developed OCTs to overcome the specific obstacles which hamper their development efforts.

Article 19

Principles

1. Development finance cooperation shall be based on partnership, complementarity and subsidiarity and shall:
 - (a) be implemented, in accordance with the association and development strategies adopted pursuant to Article 4, with due regard to the OCTs respective geographical, social and cultural characteristics, as well as their specific potential;
 - (b) ensure that resource flows are accorded on a predictable and regular basis;
 - (c) be flexible and tailored to the situation in each OCT.
2. Member States shall cooperate with the Commission to ensure sound financial management in the use of Community funds.
3. Following a partnership approach, Community activities shall be decided in close consultation between the Commission, the OCT authorities concerned and the Member State to which it is linked. Such partnership shall be conducted in full compliance with the respective institutional, legal and financial powers of each of the partners.
4. Without prejudice to the second subparagraph of Article 25(1), Community and Member States contributions shall be complementary.
5. In accordance with the principle of subsidiarity, the authorities of the OCT concerned shall be responsible for implementing operations without prejudice to the powers of the Commission designed to ensure sound financial management in the use of Community funds.

Article 20

Single Programming Documents

1. Pursuant to Article 4, the OCT authorities, the Commission and the Member State to which the OCT is linked, acting in partnership, shall lay down the strategy and the priority aims on which the SPD is to be based.
2. The OCT authorities shall be responsible for:
 - (a) establishing their priorities on which the cooperation strategy should be based;
 - (b) in the framework of sectoral planning, identifying projects and programmes and establishing back-up measures to ensure the sustainability and viability of the proposed schemes;
 - (c) preparing project and programme dossiers;
 - (d) preparing, negotiating and concluding contracts;
 - (e) implementing and managing projects and programmes;
 - (f) maintaining projects and programmes and ensuring their sustainability.
3. The relevant authorities of the OCTs and the Commission shall be jointly responsible for:
 - (a) adopting the SPD;
 - (b) ensuring equality of conditions for participation in invitations to tender and contracts;
 - (c) monitoring and evaluating the effects and results of projects and programmes;
 - (d) ensuring the proper, prompt and efficient execution of projects and programmes.

4. The Commission shall be responsible for taking the financing decision on the overall allocation corresponding to the SPD, in accordance with the procedure referred to in Article 24.

5. Unless otherwise provided in this Decision, all decisions requiring the approval of a party to the association shall be approved, or be deemed approved, within six months of notification by the other party.

Article 21

Scope of financing

Within the framework of the strategy and priorities established by the OCT concerned at local or regional level, financial support may be given to operations helping to achieve the objectives set out in this Decision.

The following activities shall fall within its scope:

- (a) sectoral policies and reforms as well as projects that are in coherence with them;
- (b) institutional development, capacity building and integration of environmental aspects;
- (c) technical cooperation programmes;
- (d) humanitarian aid and emergency relief operations;
- (e) additional support in the event of fluctuations in export earnings from exports of goods and services.

Article 22

Eligibility for financing

1. The following entities or bodies shall be eligible for financial support provided under this Decision:

- (a) OCTs;
- (b) regional or inter-State bodies to which one or more OCTs belong and which are authorised by their relevant authorities;
- (c) joint bodies set up by the Community and the OCTs to pursue certain specific objectives.

2. Subject to the agreement of the authorities of OCTs concerned, the following shall also be eligible for support:

- (a) local, national and/or regional public or semi-public agencies, departments or local authorities of the OCTs and in particular their financial institutions and development banks;
- (b) companies and firms of the OCTs and of regional groups;
- (c) enterprises of a Member State, so as to enable them, in addition to their own contribution, to undertake productive projects in the territory of an OCT;
- (d) OCT or Community financial intermediaries promoting and financing private investments in the OCTs;
- (e) actors of decentralised cooperation and other non-State actors from OCTs and from the Community, to enable them to undertake economic, cultural, social and educational projects and programmes in the OCTs in the framework of decentralised cooperation, as referred to in Article 29.

Article 23

Programming and implementation

The Commission shall adopt the implementing provisions for this Part of the Decision and for Annexes II A to D within 12 months of its entry into force, in accordance with the procedure laid down in Article 24 and in cooperation with the OCTs in accordance with Article 7.

It shall support the full utilisation by the OCTs of the instruments laid down in this Decision, in particular the trade and financial provisions, by providing the relevant guidelines and information within 12 months of its entry into force.

The provisions shall include in particular:

- (a) the procedure for preparing the SPD and its essential elements;

(b) the procedures and criteria for the follow-up, audit, ex-ante, mid-term and ex-post evaluation, review and implementation of the SPD, including those in relation to the Commission's participation in these activities;

(c) the preparation of periodical or other reports;

(d) detailed rules for the financial corrections referred to in Article 32.

The financial and accounting procedures shall be laid down in the 9th EDF Financial Regulation.

Article 24

The EDF-OCT Committee

1. The Commission shall, where appropriate, be assisted by the Committee created by the Internal Agreement, hereinafter referred to in this Article as "the Committee".

2. When exercising the powers conferred on it by this Decision, the Committee shall be known as the "EDF-OCT Committee". The internal rules of procedure of the Committee created by the Internal Agreement shall apply to the EDF-OCT Committee.

3. The Committee shall focus its work on the substantive issues of development cooperation at OCT and regional level. In the interests of coherence, coordination and complementarity, it shall monitor the implementation of the SPDs.

4. The Committee shall give its opinion on:

(a) draft SPDs and any amendments to them;

(b) the implementing provisions for this Part of the Decision and for Annexes II A to D.

5. The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit laid down by the chairman. The opinion shall be delivered by the majority laid down in Article 21(4) of the Internal Agreement. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in paragraph 3 of that Article. The chairman shall not vote.

6. The Commission shall adopt the measures, which shall apply immediately. However, if the measures are not in accordance with the opinion of the Committee they shall be communicated by the Commission to the Council forthwith. In that event, the Commission may defer application of the measures which it has decided on for a period of not more than three months from the date of such communication.

7. The Council, acting by the majority and in accordance with the weighting referred to in paragraph 5, may take a different decision within the period provided for in paragraph 6.

8. The Commission shall inform the Committee of the follow-up, evaluation and audit of SPDs.

Chapter 2

Resources made available to the OCTs

Article 25

Financial assistance

1. The overall amount of Community financial assistance for the purposes of Chapter 1, its allocation, financing terms and arrangements and of the use of the assistance for the period from 2000 to 2007 can be found in Annexes II A to D and in Chapter 3, without prejudice to the provisions to be adopted by the Commission as laid down in Article 24.

Financial assistance under this Decision may be used to cover the total cost of both the local and foreign expenditure of projects and programmes, including financing of recurrent costs.

2. OCTs are also eligible for financing under the legislation in force in favour of the developing countries listed in Annex II E and for the Community programmes listed in Annex II F.

Chapter 3

Private Sector Investment Support

Article 26

Investment promotion

The authorities of the OCT, Member States and the Community, recognising the importance of private investment in the promotion of their development cooperation and acknowledging the need to take steps to promote such investment, shall:

- (a) implement measures to encourage participation in their development efforts by private investors who comply with the objectives and priorities of OCT-EC development cooperation and with the appropriate laws and regulations;
- (b) accord fair and equitable treatment to such investors;
- (c) take measures and actions which help to create and maintain a predictable and secure investment climate as well as enter into negotiations on agreements which will improve such a climate;
- (d) promote effective cooperation among OCT economic operators and between them and those of the Community in order to increase the flow of capital, management skills, technology and other forms of know-how;
- (e) seek to promote a greater flow of private resources between the Community and the OCTs by contributing, inter alia, to the removal of obstacles which impede OCT operators' access to international capital markets, including those of the Community;
- (f) create an environment which encourages the development of financial institutions and the mobilisation of resources which are essential to capital formation and the growth of entrepreneurship;
- (g) promote the development of enterprises by taking such steps as are necessary to improve the business environment and, in particular, foster a legal, administrative and incentive framework which is conducive to the emergence and development of dynamic private sector enterprises including grassroots operations;
- (h) strengthen the capacity of local institutions in the OCTs to provide the range of services which can encourage greater local participation in industrial and business activity.

Article 27

Investment support and financing

Cooperation will provide long-term financing to help promote private sector growth and mobilise national and foreign capital to that effect. To this end, cooperation shall in particular provide:

- (a) grants to cover technical and financial assistance in support of human resource development, institutional capacity building, or other forms of institutional aid linked to a specific investment; measures designed to make enterprises more competitive and build the capacity of private financial and non-financial intermediaries; measures to facilitate and promote investment and activities to improve competitiveness;
- (b) advisory and consultancy services to help create an investment-friendly climate and a stock of information to help guide and encourage capital flows;
- (c) grants funded by the Investment Facility referred to in Annex II C;
- (d) loans from the EIB's own resources.

The conditions applicable to the Investment Facility and the abovementioned loans are laid down respectively in Annexes II B and C.

Chapter 4

Additional support in the event of fluctuations in export earnings

Article 28

Additional support

1. In order to mitigate the adverse effects of any short-term fluctuations in export earnings, in particular in the agricultural and mining sectors, which might jeopardise the attainment of the

development objectives of the OCT concerned, a system of additional support shall be instituted within the financial allocation referred to in Annex II A.

2. The purpose of support in the event of short-term fluctuations in export earnings is to safeguard macroeconomic and sectoral reforms and policies that are at risk as a result of a drop in revenue and remedy the adverse effects of instability of export earnings in particular from agricultural and mining products.

3. The dependence of the OCT economies on exports, in particular in the agricultural and mining sectors, shall be taken into account in the allocation of resources referred to in Annex II D. In this context, the least developed OCTs shall receive more favourable treatment.

4. The additional resources shall be provided in accordance with the specific modalities of the support mechanism as set out in Annex II D.

5. The Community shall also provide support for market-based insurance schemes designed for OCTs seeking to protect themselves against the risk of fluctuations in export earnings.

Chapter 5

Support for other actors of cooperation

Article 29

Objectives and financing

1. In order to respond to the development needs of local communities and encourage all actors of decentralised cooperation which are in a position to contribute to the autonomous development of the OCTs to put forward and implement initiatives, OCT-EC cooperation shall support such development operations within limits laid down by the OCTs concerned and by the Member States to which these OCTs are linked, and within the framework of the SPD provisions.

2. In this context, financial support shall be given to decentralised projects and microprojects as follows:

(a) The cooperation partners eligible for financial support under this Chapter shall be decentralised cooperation agents in the Community or the OCTs or other developing countries, namely: local authorities, non-governmental organisations, local traders' associations and local citizens' groups, cooperatives, trade unions, women's and youth organisations, teaching and research institutions, churches and any non-governmental associations likely to contribute to development.

This form of cooperation shall make available for the development of the OCTs the capabilities, innovative operating methods and resources of the actors of decentralised cooperation. Support will take account in particular joint actions between Community, OCT and other developing countries;

(b) Local microprojects shall have an economic and social impact on the life of the people, meet a demonstrated and observed priority need and be undertaken at the initiative and with the active participation of the local community which will benefit therefrom.

3. Projects or programmes under this form of cooperation may be a way of achieving the specific objectives of the SPD or the results of initiatives by local communities or decentralised actors.

4. The support provided for under this Chapter shall be additional or, if need be, complementary in respect of the provisions in Annex II E.

5. Contributions to the funding of microprojects and decentralised cooperation shall come from grants, in which case the contribution shall not normally exceed three-quarters of the total cost of each project. The balance shall be financed:

(a) for microprojects, by the local community concerned, in kind or in the form of services or cash and adapted to its capacity to contribute;

(b) for decentralised cooperation, by the actors of decentralised cooperation, provided that the financial, technical, material and other resources brought in by such actors is not, as a general rule, less than 25 % of the estimated cost of the project/programme;

(c) in exceptional cases where both microprojects and decentralised cooperation are concerned, by the authorities of the OCT concerned, either in the form of financial contribution or through the use of public equipment or the supply of services.

The procedures applicable to projects and programmes financed in the context of microprojects or decentralised cooperation shall be as set out in this Decision, notably with regard to the SPD implementing provisions.

Chapter 6

Support for humanitarian and emergency aid

Article 30

Objectives and means

1. Humanitarian and emergency aid shall be granted to OCTs faced with serious economic and social difficulties of an exceptional nature resulting from natural disasters or extraordinary circumstances having comparable effects. Humanitarian and emergency aid shall be maintained as long as necessary to deal with the urgent problems which arise in such situations.

Humanitarian and emergency aid shall be granted solely on the basis of the needs and interests of disaster victims.

2. The aim of humanitarian and emergency aid shall be to:

(a) save human lives in crisis and post-crisis situations caused by natural disasters or extraordinary circumstances having comparable effects;

(b) help finance the transport of aid and efforts to ensure that it is accessible to those for whom it is intended, by all logistical means available;

(c) implement short-term rehabilitation and reconstruction measures in order to establish conditions as soon as possible for the people concerned to be integrated or reintegrated;

(d) respond to needs arising as a result of people being displaced, such as refugees, displaced persons and returnees following natural or man-made disasters so as to meet all the requirements of refugees and displaced persons wherever they may be for as long as is necessary and facilitate their voluntary resettlement;

(e) help the OCTs to develop or perfect systems of disaster prevention and preparedness, including prediction and early-warning systems, with a view to reducing the consequences of disasters.

3. Similarly aid may be granted to OCTs taking in refugees or returnees to meet acute needs not covered by emergency assistance.

4. Aid provided for by this Article shall be financed from the Community budget. However, it may exceptionally be financed from the allocations laid down in Annex II A, in addition to the funding from the budget heading concerned.

5. Humanitarian and emergency aid operations shall be undertaken at the request of the OCT affected, the Commission, the Member State to which the OCT is linked, international organisations or local or international non-governmental organisations. Such aid shall be administered and implemented under procedures that facilitate rapid, flexible and effective operations.

Chapter 7

Implementation Procedures

Article 31

Technical assistance

1. On the initiative of or on behalf of the Commission, studies or technical assistance measures may be financed in order to ensure the preparation, monitoring, evaluation and supervision necessary for implementing this Decision.

Such studies or technical assistance measures shall be financed by the overall grant allocation.

2. On the initiative of the OCT, studies or technical assistance measures may be financed in relation to the implementation of the activities contained in the SPD, subject to the Commission's opinion.

Such studies or technical assistance measures shall be financed from the allocation of the OCT concerned.

Article 32

Financial control

1. The OCT concerned shall bear primary responsibility for the financial supervision of the operation. This shall be carried out, where appropriate, in coordination with the Member State to which the OCT is linked in accordance with the applicable national legislation.

2. The Commission shall be responsible for:

(a) ensuring that management and control systems exist and function properly in the OCT concerned so as to ensure that the Community funds are used correctly and effectively;

(b) in the event of irregularities, sending recommendations or requests for corrective measures to remedy those irregularities and rectify any management shortcomings found.

3. The Commission, OCT and, where appropriate, the Member State to which it is linked, shall cooperate on the basis of administrative arrangements at annual or biannual meeting to coordinate programmes, methodologies and the implementation of controls.

4. With regard to financial corrections:

(a) the OCT shall be responsible in the first instance for detecting and correcting financial irregularities;

(b) however, in the event of shortcomings by the OCT concerned, the Commission shall take action, if the OCT fails to remedy the situation and attempts at conciliation are unsuccessful, to reduce or withdraw the balance of the overall allocation corresponding to the SPD financing decision.

Chapter 8

Transition from previous European Development Funds (EDFs) to the 9th EDF

Article 33

Implementing the previous EDFs and the transitional phase

1. Commitments made in the framework of the 6th, 7th and 8th EDFs before the entry into force of this Decision shall continue to be executed following the rules applicable to those EDFs. Resources from the sixth, seventh and eighth EDFs which were allocated to OCTs before the entry into force of this Decision shall remain allocated to them. These resources shall continue to be used in accordance with the relevant provisions of Decision 91/482/EEC, which shall remain applicable for such purposes, until the entry into force of the Internal Agreement establishing the 9th EDF.

Until the Internal Agreement establishing the 9th EDF comes into force, the officials responsible for managing and implementing European Development Fund resources, namely the EDF Chief Authorising Officer, the OCT Local Authorising Officer and the Commission's Head of Delegation, shall remain responsible for the management and implementation tasks assigned to them by Council Decision 91/482/EC.

2. Any balances remaining from previous EDFs on the date of entry into force of the Internal Agreement establishing the 9th EDF, as well as any amounts that shall be decommitted at a

later date from ongoing projects under these Funds, shall be transferred to the 9th EDF and used in accordance with the conditions laid down in this Decision.

Any resources thus transferred to the 9th EDF that previously had been allocated to the indicative programme of an OCT or region shall remain allocated to that OCT or to regional cooperation.

Any other remaining balances not allocated to an indicative programme shall be transferred to the non-committed amount of the 9th EDF. The overall amount of this Decision, supplemented by the transferred balances from previous EDFs, shall cover the period 2000-2007. This paragraph shall apply in particular to any remaining balances of the overall amounts referred to in Articles 118 and 142 of Decision 91/482/EEC concerning, respectively, the stabilisation of export earnings from agricultural commodities (Stabex) and the special financing facility (Sysmin).

TITLE II

ECONOMIC AND TRADE COOPERATION

Article 34

Objective

1. The objective of economic and trade cooperation shall be to promote the economic and social development of the OCTs, in particular by establishing close economic relations between them and the Community as a whole.

The implementation of such cooperation must be consistent with the objectives of the other common policies.

2. Furthermore, the Community undertakes to support the effective integration of the OCTs in the global economy and the development of their trade in goods and services to regional and world markets.

Chapter 1

Arrangements for trade in goods

Article 35

Free access for originating products

1. Products originating in the OCTs shall be imported into the Community free of import duty.

2. The concept of originating products and the methods of administrative cooperation relating thereto are laid down in Annex III.

Article 36

Transshipment of non-originating products in free circulation in the OCTs

1. Products not originating in the OCTs but which are in free circulation in an OCT and are re-exported as such to the Community shall be accepted for import into the Community free of customs duties and taxes having equivalent effect providing that they:

- (a) have paid, in the OCT concerned, customs duties or taxes having equivalent effect of a level equal to, or higher than, the customs duties applicable in the Community on import of these same products originating in third countries eligible for the most-favoured-nation clause;
- (b) have not been the subject of an exemption from, or a refund of, in whole or in part, customs duties or taxes having equivalent effect, without prejudice to paragraph 2;
- (c) are accompanied by an export certificate.

2. Without prejudice to paragraph 1, the Commission may, following a duly substantiated request from the authorities of the OCT concerned and in the light of the objectives of this Decision, authorise OCT public financial aid to those operating the transshipment procedure. The request shall in particular indicate the nature and the anticipated volume of trade, which would benefit from the aid.

This aid must take the form of an aid for transport of goods put in free circulation, including legitimate running costs supported in relationship with the transshipment procedure. This aid shall not provoke a serious disturbance or difficulties, which may result in a deterioration in an economic sector of the Community or of one or more Member States.

The OCT authorities may make representations to the Commission in order to provide further information to substantiate their written request.

If the OCT authorities so request, a partnership working party referred to in Article 7(3) shall be convened to resolve any issues arising from the administration of the transshipment procedure.

3. Paragraphs 1 and 2 shall not apply to:

(a) the agricultural products listed in Annex I to the Treaty nor to products covered by Council Regulation (EEC) No 3448/93 of 6 December 1993 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products⁽⁸⁾ except, as from 1 February 2002 and subject to the adoption by the Commission of the necessary implementing arrangements, for fisheries products:

(A) falling within CN codes 0303 31 10 00, 0304 20 95 10 and 0306 13 10 transhipped through Greenland within an annual quantity of 10000 tons, and

(B) falling within CN codes 0302 21 10, 0303 31 10, 0305 49 10, 0306 12 10, 0306 12 90, 0306 22 91, 0306 22 99, 0306 13 10, 0306 13 30, 0306 13 40, 0306 13 50, 0306 13 80, 0306 23 10, 0306 23 31, 0306 23 39, 0306 23 90 transhipped through Saint-Pierre-et-Miquelon within an annual quantity of 2000 tonnes;

(b) products subject, on import into the Community, to quantitative restrictions or limitations or to anti-dumping duties.

4. The conditions for entry into the Community of products not originating in the OCTs but in free circulation in an OCT, and the methods of administrative cooperation relating thereto, are laid down in Annex IV.

Article 37

Committee procedure

1. In matters covered by Article 36, the Commission shall be assisted by a Committee.

2. Articles 3 and 7 of Decision 1999/468/EC shall apply to the proceedings of the Committee.

3. The Committee shall adopt its rules of procedure.

Article 38

Quantitative restrictions and measures having equivalent effect

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

2. Paragraph 1 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality or public policy, the protection of health and life of humans, animals and plants, the protection of national treasures possessing artistic, historic or archaeological value, the conservation of exhaustible natural resources or the protection of industrial and commercial property.

Such prohibitions or restrictions shall in no case constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction of trade generally.

Article 39

Waste

1. Movements of waste between the Member States and the OCTs shall be controlled in accordance with international and Community law. The Community shall support the establishment and development of effective international cooperation in this area with a view to protecting the environment and public health.

2. The Community shall prohibit all direct or indirect export of waste to the OCTs, with the exception of exports of non-hazardous waste destined for recovery operations while at the same time the OCT authorities shall prohibit the direct or indirect import into their country of such waste from the Community or any other country, without prejudice to specific international undertakings concerning these areas that have been made, or may be made in future, in the competent international fora.

3. As regards the Community, Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community(9) shall apply.

4. As regards those OCTs, which, due to their constitutional status, are not Party to the Basle Convention, their relevant authorities shall expedite adoption of the necessary internal legislation and administrative regulations to implement the provisions of the Basle Convention(10).

5. In addition, the Member States concerned shall promote the adoption by the OCTs of the necessary internal legislation and administrative regulations to implement:

(a) Regulation (EEC) No 259/93 as follows:

(i) Article 13 as regards shipments of waste within the OCTs,

(ii) Article 18 as regards exports of waste to the ACP States from the OCTs;

(b) Regulation (EC) No 1420/1999(11);

(c) Commission Regulation (EC) No 1547/1999(12);

(d) European Parliament and Council Directive 2000/59/EC subject to the time limits for transposition laid down in Article 16 thereof(13).

6. As regards imports into the Community from the OCTs of hazardous waste and of non-hazardous waste destined for final disposal, Articles 1 to 12 and 25 to 39 of Regulation (EEC) No 259/93 and Commission Decision 94/774/EC(14), shall apply.

7. One or more OCTs and the Member State to which they are linked may apply national procedures to export of waste from the OCTs to that Member State.

In this case, the Member State concerned notifies to the Commission the applicable legislation within six months from the entry into force of this Decision or of any future relevant national legislation, including any amendments to it.

Article 40

Measures adopted by the OCTs

1. In view of the present development needs of the OCTs, the authorities of the OCTs may retain or introduce, in respect of imports of products originating in the Community, such customs duties or quantitative restrictions as they consider necessary.

2. (a) The trade arrangements applied to the Community by the OCTs may not give rise to any discrimination between Member States nor be less favourable than most-favoured-nation treatment.

(b) Notwithstanding specific provisions of this Decision, the Community shall not discriminate between OCTs in the field of trade.

(c) The provisions of (a) shall not preclude a country or territory from granting certain other OCTs or other developing countries more favourable treatment than that accorded to the Community.

3. The authorities of the OCTs shall communicate to the Commission, within a period of three months following the entry into force of this Decision, the customs tariffs and lists of quantitative restrictions which they apply.

They shall also communicate to the Commission any subsequent amendments to such measures as and when they are adopted.

Article 41

Surveillance clause

1. The products originating in the OCTs referred to in Article 35 or products not originating in the OCT referred to in Article 36 may be subject to special surveillance. The Commission shall decide to which products surveillance shall apply in consultation with the OCT authorities and the Member State to which the OCT is linked.
2. Article 308d of Commission Regulation (EEC) No 2454/93 of 2 July 1993, laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 on the Community Customs Code(15), shall apply.
3. The Commission and the competent OCT authorities shall ensure the effectiveness of the surveillance measures by introducing the methods of administrative cooperation set out in Annexes III and IV.

Article 42

Safeguard measures

1. If, as a result of the application of this Decision, serious disturbances occur in a sector of the economy of the Community or one or more of its Member States, or their external financial stability is jeopardised, or if difficulties arise which may result in a deterioration in a sector of the Community's activity or in a region of the Community, the Commission may, on its own initiative or at the request of one or more Member States and following consultation with the Committee referred to in Article 43 take or authorise the Member States concerned to take the necessary safeguard measures, in accordance with the paragraphs below.
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. They cannot exceed the withdrawal of the preferential treatment granted by this Decision.
3. When safeguard measures are taken or modified, particular attention shall be paid to the interests of the least-developed OCTs.
4. This Article is without prejudice to the rights and obligations of the Community under WTO rules, including those contained in the WTO Agreement on Safeguards(16). Neither shall it preclude application of the regulations establishing a common organisation of agricultural markets, or Community or national administrative provisions derived therefrom, or the specific rules adopted under Article 235 of the Treaty for processed agricultural products.
5. (a) If a Member State asks the Commission for safeguard measures to be applied, the Commission shall inform the Council, the Member States and the OCT authorities accordingly within three working days from the date of receipt of the Member State's request, and shall invite the OCT authorities to supply any information which they consider important to the situation at hand.
(b) When the Commission acts on its own initiative, it shall inform the OCTs concerned and the Member States at the earliest possible stage.
(c) If the OCT authorities so require and without prejudice to the deadlines referred to in this Article, a partnership working party referred to in Article 7(3) shall be convened. The outcome of the working party shall be transmitted to the consultative committee. In this case, the deadline referred to in paragraph 9 of this Article shall be extended by ten working days. At the same time it shall invite the Member States to a meeting of the committee referred to in Article 43.

Member States and the OCTs shall provide the Commission with any information necessary to justify their requests to apply safeguard measures or not to do so.

6. The Commission shall notify the Council, the Member States and the OCT authorities immediately of the decision to take the necessary safeguard measures. The Decision shall apply with immediate effect.

7. Any Member State may refer the Commission's decision referred to in paragraph 6 to the Council within 10 working days of receiving notification of the decision.

8. Should the Commission fail to adopt a decision within 21 working days or if it rejects the request or if the Commission decides not to take safeguard measures, any Member State that has brought the matter before the Commission may refer it to the Council.

9. In the cases referred to in paragraphs 7 and 8, the Council, acting by a qualified majority, may adopt a different decision within 21 working days.

Article 43

Committee procedure

1. In matters covered by Article 42, the Commission shall be assisted by a Committee.

2. Articles 3 and 7 of Decision 1999/468/EC shall apply to the proceedings of the Committee.

3. The Committee shall adopt its rules of procedure.

Chapter 2

Trade in services and rules of establishment

Article 44

General objective

The long-term aim in this area is a progressive liberalisation of trade in services, with due respect for the OCTs' local policy objectives, and taking due account of the level of development of the OCT and the obligations entered into by the Community, Member States or the OCTs in the WTO framework.

Article 45

General principles of establishment and the provision of services

1. For the purposes of this Chapter, the following definitions shall apply:

(a) "companies or enterprises": companies or enterprises constituted under civil or commercial law, including public or other companies, cooperative societies and any other legal person or association governed by public or private law, save for those which are non-profit-making.

"Companies or enterprises of Member States" are those formed in accordance with the laws of a Member State and whose registered office, central administration or principal place of business is in a Member State. However, a company or enterprise having only its registered office in a Member State must be engaged in an activity which has an actual and continuous link with the economy of that Member State.

"OCT companies or enterprises" are those formed in accordance with the law applicable in a given OCT and whose registered office, central administration or principal place of business is in that OCT; however, a company or enterprise having only its registered office in a country or territory must be engaged in an activity which has an actual and continuous link with the economy of that country or territory;

(b) "inhabitants of an OCT": persons ordinarily resident in an OCT who are nationals of a Member State or who enjoy a legal status specific to an OCT. This definition is without prejudice to the rights conferred by citizenship of the Union within the meaning of the Treaty.

2. As regards the arrangements applicable to establishment and the provision of services, in line with Article 183(5) of the Treaty and subject to paragraph 3 below:

(a) the Community shall apply to the OCTs the undertakings entered into under the General Agreement on Trade in Services (GATS) under the conditions laid down in that Agreement and in accordance with this Decision; in application of such undertakings, Member States shall not discriminate between inhabitants, companies or enterprises of the OCTs;

(b) the OCT authorities shall afford nationals, companies or enterprises of the Member States treatment that is no less favourable than that which they extend to nationals, companies or enterprises of third countries and shall not discriminate between nationals, companies or enterprises of Member States.

3. The authorities of an OCT may with a view to promoting or supporting local employment, adopt regulations to aid their inhabitants and local activities.

In this event, the OCT authorities shall notify the Commission of the regulations they adopt so that it may inform the Member States.

4. With regard to the professions of doctor, dentist, midwife, general nurse, pharmacist and veterinary surgeon, the Council, acting unanimously on a proposal from the Commission, shall adopt the list of professional qualifications specific to OCT inhabitants which are to be recognised in the Member States.

Article 46

Maritime transport

The objective of cooperation in this field shall be to ensure harmonious development of efficient and reliable shipping services on economically satisfactory terms by facilitating the active participation of all parties according to the principle of unrestricted access to the trade on a commercial basis.

This provision shall not apply to Greenland.

Chapter 3

Trade-related areas

Article 47

Current payments and capital movements

1. Without prejudice to paragraph 2:

(a) Member States and the OCT authorities shall impose no restrictions on any payments in freely convertible currency on the current account of balance of payments between residents of the Community and of the OCTs;

(b) with regard to transactions on the capital account of balance of payments, the Member States and the OCT authorities shall impose no restrictions on the free movement of capital for direct investments in companies formed in accordance with the laws of the host Member State, country or territory and to ensure that the assets formed by such investment and any profit stemming therefrom can be realised and repatriated.

2. The Community, Member States and OCTs shall be entitled to take the measures referred to mutatis mutandis in Articles 57, 58, 59, 60 and 301 of the Treaty in accordance with the conditions laid down therein. Equally, where one or more OCTs or one or more Member States is in serious balance of payments difficulties, or under threat thereof, the OCT authorities, the Member State or the Community may, in accordance with the conditions established under the GATT, GATS and Article VIII and XIV of the Articles of Agreement of the International Monetary Fund, adopt restrictions on current transactions which shall be of limited duration and may not go beyond what is necessary to remedy the balance of payments situation. When taking such measures, the OCT authorities, the Member State or the Community shall inform each other without delay and submit to each other as soon as possible a timetable for the elimination of the measures concerned.

Article 48

Competition policies

1. The introduction and implementation of effective and sound competition policies and rules are of crucial importance in order to improve and secure an investment friendly climate, a sustainable industrialisation process and transparency in the access to markets.

2. To ensure the elimination of distortions to competition and with due consideration to the different levels of development and economic needs of each OCT, the Community and the OCTs undertake to implement local, national or regional rules and policies including the control and, under certain conditions, the prohibition of agreements between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition. The above prohibition also relates to the abuse by one or more undertakings of a dominant position in the territory of the Community or of the OCTs.

Article 49

Protection of intellectual property rights

1. An adequate and effective level of protection of intellectual, industrial and commercial property rights, including means for enforcing such rights, shall be ensured in line with the highest international standards with a view to reducing distortions and impediments to bilateral trade.

2. Intellectual property rights cover copyright, including in particular the copyright on computer programmes and neighbouring rights, utility models, patents including bio-technological inventions, industrial designs, geographical indications including appellations of origin, trademarks for goods or services, topographies of integrated circuits, the legal protection of data bases and the protection against unfair competition as referred to in Article 10 bis of the Paris Convention for the Protection of Industrial Property and protection of undisclosed information on know-how.

Article 50

Standardisation and certification

Closer cooperation shall be pursued in the field of standardisation, certification and quality assurance to remove unnecessary technical barriers and to reduce differences in those areas, so as to facilitate trade.

Article 51

Trade and the environment

Development of international trade shall be promoted in such a way as to ensure sustainable and sound management of the environment, in accordance with the relevant international agreements and undertakings and with due regard to the respective levels of development of the OCTs. The special needs and requirements of the OCTs shall be taken into account in the design and implementation of environmental measures.

Bearing in mind the Rio Principles, cooperation shall aim at ensuring the mutual supportiveness of trade and environment policies, in particular through the reinforcement of quality controls of goods and services related to the environment and the improvement of environment-friendly production methods.

Article 52

Trade and labour standards

The internationally and nationally recognised core labour standards must be respected, in particular the freedom of association and protection of the right to organise, application of the right to organise and to bargain collectively, the abolition of forced labour, the elimination of worst forms of child labour, the minimum age for admission to employment and non-discrimination in respect to employment.

Article 53

Consumer policy and consumer health protection

Cooperation shall be pursued in the area of consumer policy and consumer health protection, having due regard to the legislation in force in OCTs and the Community to avoid barriers to trade.

Article 54

Prohibition of disguised protectionist measures

The provisions of this Chapter shall not be used as a means of arbitrary discrimination or a disguised restriction on trade.

Chapter 4

Monetary and tax matters

Article 55

Tax carve-out clause

1. Without prejudice to the provisions of Article 56, the most-favoured-nation treatment granted in accordance with the provisions of this Decision shall not apply to tax advantages which the Member States or OCT authorities are providing or may provide in the future on the basis of agreements to avoid double taxation or other tax arrangements, or domestic fiscal legislation in force.
2. Nothing in this Decision may be construed to prevent the adoption or enforcement of any measure aimed at preventing the avoidance or fraud of taxes pursuant to the tax provisions of agreements to avoid double taxation or other tax arrangements, or domestic fiscal legislation in force.
3. Nothing in this Decision shall be construed to prevent the respective competent authorities from distinguishing, in the application of the relevant provisions of their fiscal legislation, between taxpayers who are not in the same situation, in particular with regard to their place of residence, or with regard to the place where their capital is invested.

Article 56

Tax and customs arrangements for Community-funded contracts

1. The OCTs shall apply to Community-funded contracts tax and customs arrangements no less favourable than those applied by them to the most-favoured States or international development organisations with which they have relations. For the purpose of determining the most-favoured-nation treatment, account shall not be taken of arrangements applied by the relevant authorities of the country or territory concerned to other developing countries.
2. Subject to paragraph 1, the following arrangements shall apply to contracts financed by the Community:
 - (a) the contract shall not be subject in the beneficiary OCT to stamp or registration duties or to fiscal charges having equivalent effect, whether such charges already exist or are to be instituted in the future; however, such contracts shall be registered in accordance with the laws in force in the OCT and a fee corresponding to the service rendered may be charged for it;
 - (b) profits and/or income arising from the performance of contracts shall be taxable according to the internal fiscal arrangements of the OCT concerned, provided that the natural or legal persons who realise such profit and/or income have a permanent place of business in that OCT, or that the performance of the contract takes longer than six months;
 - (c) enterprises which must import equipment in order to carry out works contracts shall, if they so request, benefit from the system of temporary admission as laid down by the legislation of the beneficiary OCT in respect of that equipment;
 - (d) professional equipment necessary for carrying out tasks defined in a service contract shall be temporarily admitted into the beneficiary OCT in accordance with the legislation of that OCT free of fiscal, import and customs duties and of other charges having equivalent effect where these duties and charges do not constitute remuneration for services rendered;

(e) imports under supply contracts shall be admitted into the beneficiary OCT without customs duties, import duties, taxes or fiscal charges having equivalent effect. The contract for supplies originating in the country or territory concerned shall be concluded on the basis of the ex-works price of the supplies, to which may be added such internal fiscal charges as may be applicable to those supplies in the country or territory;

(f) fuels, lubricants and hydrocarbon binders and, in general, all materials used in the performance of works contracts shall be deemed to have been purchased on the local market and shall be subject to fiscal rules applicable under the legislation in force in the beneficiary OCT;

(g) personal and household effects imported for use by natural persons, other than those recruited locally, engaged in carrying out tasks defined in a service contract and members of their families, shall be exempt from customs or import duties, taxes and other fiscal charges having equivalent effect, within the limits of the legislation in force in the beneficiary OCT.

3. Any matter not covered by paragraphs 1 and 2 shall remain subject to the legislation of the OCT concerned.

4. The Commission officials, excluding locally hired staff, shall be exempt from all taxes levied in the country or territory where they are posted.

Chapter 5

Vocational training, eligibility for Community programmes and other provisions

Article 57

Vocational training

Individuals from an OCT with the nationality of a Member State shall be eligible to receive vocational training in the Community on the same basis as nationals of the Member State in question where they can meet the conditions required to be met by those nationals, including any condition of residence within the Community or the EEA.

Article 58

Programmes open to the OCTs

Individuals from an OCT and where applicable the relevant public and/or private bodies and institutions in an OCT shall be eligible for the Community programmes listed in Annex II F and any programmes succeeding them, subject to the rules of the programmes and the arrangements applicable to the Member State with which they are connected.

The Commission may modify this list at the request of an OCT or a Member State or at its own initiative.

Article 59

Euro-Info Correspondence Centres (EICC)

At the request of the OCT authorities and in accordance with the procedures specified in Part Three, Title I, a Euro-Info Correspondence Centre, hereinafter referred to as "EICC", may be set up in an OCT. Part-financing may be made available to the EICC host structure from the grant aid available under the SPD or regional cooperation.

The tasks of the EICCs, the tools and services made available to them, the establishment procedures and criteria for selecting the host structure are set out in Annex V.

Article 60

CDE and CTA

At the request of their authorities, the OCT shall be eligible for the services of the Centre for the Development of Enterprise (CDE) and of the Technical Centre for Agricultural and Rural Cooperation (CTA) referred to in Article 1 of Annex III to the ACP/EC Partnership Agreement. Any costs resulting from services provided by the CDE or CTA for the benefit of the OCTs shall be financed from the funds provided for in Annex II A.