SPECIAL REPORT No 24/98

concerning risk capital operations financed from the resources of the European Development Funds, together with the Commission's replies

(submitted pursuant to Article 188C(4)(2) of the EC Treaty)

(98/C 389/02)

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1. INTRODUCTION

General

1.1. Projects or programmes financed under the Lomé Conventions may be financed by grant or risk capital from the European Development Funds (EDF) or by loans from the European Investments Bank's (EIB or the Bank) own resources or jointly by two or more of these means of financing [1]. This report deals with the use of risk capital resources.

1.2. Risk capital constitutes a special method of financing that exists under both the Lomé III and Lomé IV Convention allowing reimbursable financial assistance to be given under favourable conditions to priority sectors in African, Caribbean and Pacific (ACP) States and overseas countries and territories (OCT) in particular where the beneficiaries' capacity to borrow does not allow financing from the own resources of the EIB [2].

1.3. Risk capital funds forming part of the EDF [3] are administered by the EIB on behalf of the Community and in accordance with the Bank's Statute and the Financial Regulations related to the EDF [4].

1.4. The amounts earmarked for risk capital operations (RCOs) under the Lomé III and Lomé IV Conventions are respectively ECU 615 million and ECU 850 million. Of these totals, the amounts decided [5], net commitments and disbursements (for ACP States only) as at 31 December 1997 are given in *Table 1*. Of the funds available under the Lomé III and Lomé IV Conventions 88 % has been committed. However, only 64 % of the funds has been disbursed to the loan recipients.

(1) Article 233 of the Lomé IV Convention (OJ L 229, 17.8.1991).

(2) Where in this report the term ACP State is used, this means ACP State and OCT and if there is a need to refer to the legal framework for risk capital operations, this is done in relation to Lomé IV only. Relevant provisions of the Lomé III framework will only be mentioned in as far as they comprise deviations from that for Lomé IV.

(3) See Article 10(2) of the Internal Agreement (IA) on the financing and administration of Community aid under the Lomé IV Convention (OJ L 229, 17.8.1991).

(4) See Article 15(1) of the IA.

(5) Including amounts decided upon but for which initial commitment has been annulled.

Conduct of the audit

1.5. In carrying out its audit, the Court has taken into account the recommendation of the European Parliament [6] in which it 'invited the Commission, the EIB and the Court of Auditors to make regular and frequent on-the-spot audits of actions realised by the EIB under mandate'.

1.6. The Court's audit constitutes the third examination of aid operations managed by the EIB under mandate for the EDF [7] and has been conducted on the basis of the Tripartite Agreement concluded between the EIB, the Commission and the Court of Auditors [8]. The main relevant observations related to its two earlier audits were:

a) documentation concerning management of risk capital funds by EIB in Commission files insufficient and insufficiently used;

b) the EIB acts more as a commercial bank than as a development bank.

1.7. The Commission's files still appeared to be incomplete and not fully utilised although extensive documentation was made available by the Bank to the services of the Commission and although the filing system was improved in the course of the Court's audit. In the course of the audit, supplementary information was requested from the Bank.

1.8. Generally speaking, cooperation with the Bank has been good, particularly during on-the-spot missions. However, some important information was provided at such a late stage that it hampered an efficient conduct of the Court's audit.

1.9. Information concerning the results of official invitations to tender, other than in the form of procurement tables containing only very global information, has never been received.

(6) See resolution containing observations forming part of the decisions to give discharge to the Commission for its management of the fifth, sixth and seventh EDF during the 1993 financial year — PE 189.073/58.

(7) See 1984 special report, May 1984, and the annual report for the year 1991, paragraphs 17.42 — 17.61 (OJ C 330, 15.12.1992).

(8) The Court also recently published in its Special Report 1/98 observations regarding risk capital operations managed by the EIB from budget resources in respect of the bilateral financial and technical cooperation with the Mediterranean countries (OJ C 98, 31.3.1998).

1.10. The Court has examined 42 RCOs out of which 33 projects were visited on the spot [9] comprising an examination of the operations of financial intermediaries (FIs) and of the final beneficiaries of the risk capital financing (cf. Annex I).

2. RISK CAPITAL AS A FINANCIAL AID INSTRUMENT

Types of risk capital financing

2.1. Risk capital is used for investment financing in order to assist the implementation of directly productive investment, both public and private, contributing to the economic and industrial development of the ACP states (cf. Article 263 of the Lomé IV Convention).

2.2. As specified by Article 234 of the Lomé IV Convention, risk capital may be provided in the form of **loans** or **equity participation**.

2.3. Within the category of loans, **global loans** constitute a special form of conditional loan and can be compared with 'credit lines' opened with financial institutions. These institutions which can be situated in the ACP States (financial institutions or small local venture capital companies) or the Member States of the Community will — subject to the Bank's approval — on-lend the funds to the final beneficiary, in particular SMEs, in the form of individual sub-loans or equity participations.

2.4. **Loans with participating rights** constitute a special form of risk capital financing introduced by the Bank to bring conditional or subordinated loans more in line with the concept of quasi-capital [10]. These loans normally have remunerations comprising firstly a fixed interest component and secondly a variable component set as a percentage of dividends paid.

2.5. In the case of **equity participation**, risk capital funds are used to acquire on behalf of the Community temporary minority holdings in the capital of ACP enterprises or institutions financing development projects or promoting and financing investments in ACP States. For a breakdown of the types of risk capital financing, see Annex II.

Intervention sectors and allocation of funds

2.6. The main guideline for the Bank's interventions in the area of RCOs is to be found in Article 236 of the Lomé IV Convention. This Article stipulates that the Bank should finance in the first instance productive projects and programmes in industry, agro-industry, tourism, mining, energy and in transport and telecommunications linked to these sectors.

2.7. A total amount of ECU 406 or 49 % of available funds under Lomé IV (ECU 270 million or 45 % under Lomé III) had been allocated to the 46 least developed ACP states in the form of guaranteed minimum amounts in the National Indicative Programme (NIP). For 14 of them (Lomé IV), the amounts of RCOs decided upon at the end of 1997 stayed ECU 1 million or more below these minimum amounts.

2.8. Few (global) guidelines for risk capital financing of individual projects or programmes exist. Article 233.2 of the Lomé IV Convention (Article 197.2 and 3 of the Lomé III Convention) gives criteria to be considered in deciding upon the method(s) of financing for aid projects or programmes:

(a) the level of development, the geographical situation and economic and financial circumstances of the ACP States;

(b) the nature of the project or programme, its economic and financial return as well as its social and cultural impact;

(c) in the case of loans the factors guaranteeing their servicing.

2.9. The main orientation given by the Bank for the use of risk capital funds [11] is that it considers it as an alternative financing instrument to its own resources to be used in cases where financing from own resources is considered inappropriate. The Bank chooses between risk capital and own resources financing on the basis of: the creditworthiness of a country and the overall economic

(9) Dominican Republic, Guinea, Haiti, Madagascar, Mauritania, Mozambique and New Caledonia.
(10) Loan with equity characteristics.

(11) Source: EIB reply to a general questionnaire from the Court, August 5, 1996, PA/ACP-111/JRL.

and political situation of the country; the existence of securities or guarantees in relation to the financing; the structure of the project financing; and the financial assistance required.

2.10. The criteria defined in the Lomé IV Convention and by the Bank are broad so that any judgement as to whether the financing of a project is appropriate is subjective. As a matter of fact the financing proposals [12] examined do not contain a clear and distinct evaluation of the criteria mentioned above in justifying the choice to finance the action wholly or partially from risk capital resources. A more explicit justification however would make the decision to finance from risk capital more transparent.

2.11. In this context, the Court found a number of operations financed from risk capital resources for which it is debatable, whether the risk elements that should be inherent to this type of operation were present and whether they needed such funding.

2.12. These were:

(a) the modernisation of joint venture fishing fleets in Mozambique and in Madagascar in which their Governments have minority stakes. The joint venture operations are profitable and generate hard currency for repayment of the loans so that other sources of financing could have been found;

(b) in the Dominican Republic the proceeds of the two global loans given to a financial intermediary have been used in its entirety for on-lending to established SMEs which had proven to be successful in their operations. In several cases the loan would have been given to the final beneficiary even without the EIB global loan being available;

(c) the use of risk capital funds in the form of global loans and a loan with participating rights in New Caledonia, where other sources of funding could easily have been mobilised.

Stricter criteria and guidelines for the utilisation of risk capital funds should be developed, in order to obtain an additional value for development purposes.

(12) Financing proposal for the operation discussed in the Committee mentioned in Article 28 of the IA for the Lomé IV Convention (OJ L 229, 17.8.1991) or in Article 22 of the IA for the Lomé III Convention (OJ L 86, 31.3.1986).

The implementation of risk capital operations by the European Investment Bank

Tendering procedures

2.13. In managing the tendering procedures under Lomé III, the Bank decided that contracts would be awarded under a competitive procedure taking into account the specific character of the project and the type of expenditure. However, the Bank did not comply with the EDF rule that tenders should be open only to firms having their main seat in ACP or EU Member States.

2.14. The documentation made available by the Bank in the form of procurement tables did not allow the Court to establish that the conduct of the tender procedure has been in compliance with the EDF rules, i.e. those stipulating that supplies should originate in EU Member or ACP States, unless a derogation applies. However, in several cases supplies originated in non-ACP and non-EU Member States.

2.15. For the Cahora Bassa project, the works at the northern part (financed from EDF resources managed by the Commission) and the southern part (financed from EIB own resources and EDF risk capital funds) of the transmission line have been the subject of two different tenders and contracts although they were finally awarded to the same contractor. The reason for this is that the Commission and the Bank could not agree on the tender conditions as EDF procurement rules differed from those used by the Bank (i. e. rules of origin on supplies from South Africa). The Court welcomes the change in the Bank's policy in 1995 by which it now applies EDF rules at least under Lomé IV.

Loan conditions and undertakings

2.16. Several cases occurred where undertakings by ACP States or beneficiaries were not or not fully met. In particular, they had not submitted the necessary information such as progress reports, project completion reports, audited financial statements or for the FIs reports on the performance of the final beneficiaries [13]. Furthermore, although detailed analyses of the

(13) See also paragraph 1.31 of Special Report 1/98.

beneficiaries' economic and financial performances were received by the Court during its missions, the Bank did not confirm receiving these systematically from the financial intermediaries (FIs) [14]. On this particular point, the financial contracts between the EIB and the FIs are not clear, the respective articles allowing for different interpretations as regards the FIs' obligations.

2.17. Other cases concern:

(a) the borrower's (ACP State) failure to make available to the final beneficiary foreign currency (of about ECU 2 million) in exchange for an equivalent amount in local currency in spite of several reminders given by the Bank during its on-the-spot missions;

(b) ECU 6 million of risk capital that was assigned to be used for the modernisation of a fishing fleet. Although the project as such is being successfully implemented, there are concerns about the protection of fish resources of the ACP State. Although data for the total allowable catch, submitted by the borrower, are incomplete, they already show that the ceiling for total allowable catch was set above the level mentioned in the financing proposal for the project. At the same time, the total number of fishing licences issued has also increased;

(c) ECU 3,2 million of risk capital was assigned to the modernisation of fishing boats and the equipment for the treatment of prawns. The Government of Madagascar continued to issue further fishing licences despite a commitment to the contrary and reminders from the Bank. The observed reduction in the quantities of fish caught per hour of fishing would already indicate that there is over-fishing.

2.18. The Bank's reactions in such situations have been inconsistent: in a number of cases reminders were sent to the borrower, in other cases the Bank would appear to have accepted the situation.

3. INTEREST RATES AND THE USE OF THE INTEREST MARGIN IN CASE OF ON-LENDING OPERATIONS

General

3.1. The only direct reference to interest rates applicable to RCOs is made in Article 234.1(c) of the Lomé IV Convention. It stipulates that in the case of loans the interest rate shall be, in any case, less than 3 %. For Lomé III the Convention [15] provides that the interest rate shall be determined by reference to the characteristics of each project and shall not be higher than 8 %.

3.2. When funds are on-lent to the beneficiaries through a financial institution in the ACP State or its Government, the intermediaries benefit in the first instance from a rate lower than 3 %. Final beneficiaries pay higher interest rates unless loans are granted to them directly by the Bank or the intermediary on-lends on the same conditions.

3.3. The margin between the two interest rates is destined to enable the intermediary to cover administrative costs, exchange and financial risks and the cost of technical assistance given to the final recipient. Any remaining amount is to be used for development purposes [16].

Level of the interest

3.4. For the projects examined, where loans were made through the governments of ACP States interest rates were generally set below market rates.

3.5. For loans on-lent to SMEs by a financial institution, interest rates are usually set at market level for several reasons: to avoid distortion of competition; to mitigate the risk of irregularities occurring in the selection of beneficiaries (risk of corruption); and to make loan beneficiaries self supporting in the longer term. For the final beneficiary the only advantage of this risk capital financing is that it provides easier access to medium- or long-term financing.

3.6. Loans from the Bank's own resources benefit from an EDF interest subsidy paid. This could lead to a situation where the net interest rate on the Bank's own resources loans to be paid by the final beneficiaries is lower than that for risk capital loans. For example, for

(14) See also Special Report 1/98 in respect of the bilateral financial and technical cooperation with the Mediterranean countries, paragraph 1.31.

(15) Articles 196(3b) and 199(4).

(16) See Article 233.4(b) of the Lomé IV Convention.

an investment in a hotel complex in Guinea, the interest rate charged on the EIB own resources loan was 3 % whilst the risk capital loan through a financial intermediary was 8 %.

3.7. From a development policy point of view, the Bank's policy to set interest rates for SMEs at market level and to use more concessional interest rates for larger sized enterprises in the private and public sector is against the spirit of the Lomé Convention and can lead to an unbalanced situation in the allocation of the advantages of risk capital financing to the beneficiaries.

3.8. The following examples are given to illustrate the above situation:

(a) an electricity producing and distributing company in the Dominican Republic has received a 6 % loan under an on-lending agreement with the Government of the Dominican Republic and with the exchange rate risk to be borne by the beneficiary. In the same country SMEs have to pay interest rates of between 22 % and 32 % for loans on-lent to them by a FI, however, with the exchange rate risks to be borne by the intermediary;

(b) in Mozambique a local subsidiary of an European enterprise active in fisheries borrowed at an interest rate of 4 % from the Government through an on-lending agreement. The exchange rate risk it had to bear was limited as its operations generated hard currency. Newly established SMEs paid interest rates varying between 40 and 46 % on on-lending agreements with FIs as the latter had to cover the exchange rate and the inflation risks.

3.9. In a number of loan contracts (concluded under the provisions of the Lomé IV Convention) the total remuneration to the EIB allows the interest (remuneration) on the loan to exceed 3 %, in particular in the case of loans with participating rights (see paragraph 2.4) ([17]). Such additional yield is not provided for by the Lomé Convention.

Remuneration of financial allocations from global loans

3.10. For several cases the Court was not able to verify that the rates applied by the FIs were in compliance with the conditions set in the loan contract concluded between the intermediary and the Bank either because 'reference' rates did not exist (for example in Haiti) or because definition of the rates applied by the FIs made a comparison with 'reference' rates impossible. The following cases illustrate problems encountered as regards the remuneration:

(a) in the Dominican Republic the interest rates for some sub-loans, of which the rates varied between 20 % and 26 % in January 1997, were higher than the 'preferential rate' published by the Central Bank of about 20 % and applicable since October 1996. This rate constitutes the reference rate for the FI to set the interest rate for its loans. According to the Bank, rates used by the FI had been in line with the 'preferential rate' up to October 1996. The discrepancy is now being investigated by the Bank;

(b) in the case of another global loan to a FI in Madagascar, the finance contract stipulated that sub-loans should bear a global effective interest rate including cost, commissions and other remunerations, reflecting rates used in that country for operations of the same nature, duration and amount and agreed upon by the Bank. In this case it appears hardly possible to establish whether the rates were set in conformity with the Bank's guidelines.

3.11. In such cases, the Bank should have ensured that 'reference' rates mentioned in finance contracts do actually exist in the countries concerned and allow for proper verification of the interest rates applied by the FIs.

Mechanisms used for covering the exchange rate risk

3.12. In the case of on-lending of the initial loan in a different currency, the finance contracts allocate the exchange rate risks between the final beneficiaries and the initial borrower.

3.13. Under Lomé III the risk was entirely for the borrower who had to pay back the loan in ecu or another European currency. In the case of an on-lending operation the risk is (partially) transferred to the beneficiary under the sub-loan contract through a higher interest rate.

3.14. The Lomé IV Convention (Article 234.2) provided for a change by stipulating that:

([17]) See also annual report for the financial year 1996, volume II statement of assurance, paragraph 22.24(a) (OJ C 348, 18.11.1997).

(a) the risk is as a general rule borne by the Community in the case of risk capital financing to strengthen the enterprises' own funds;

(b) it should be shared between the Community and other parties involved in the case of risk capital financing for investments of private sector firms and SMEs.

3.15. Article 234.2(b) also stipulates that on average the foreign exchange rate risk shall be shared equally. This Article needs clarification as to how it should be applied, when and by whom and how calculations for this purpose should be made as well as what use is to be made of the results.

3.16. Moreover, the Convention does not indicate what arrangements are to be made for the exchange rate risk in case of on-lending of funds to the non-private sector or other than SMEs.

3.17. The exchange rate risk problem which constitutes a major element in setting the level of the interest rate for the on-lending operation is dealt with in different ways by the Bank for reasons not evident to the Court:

(a) in the first of two similar projects provisions for sharing the exchange rate risk between beneficiary and Community are non-existent whereas for the other the Community would bear at maximum 25 % of the exchange risk;

(b) in another case, the financial contract with the loan beneficiary foresees that the exchange rate risks are borne entirely by the beneficiary which is in contradiction with the respective provision of the Lomé IV Convention;

(c) in Mozambique, Madagascar and New Caledonia, FIs had not constituted at the time of the Court's mission the so-called exchange rate risk funds as stipulated in the finance contracts. In addition, finance contracts do not stipulate for what purpose any balance left from the exchange rate risk fund is to be used after the loan has been repaid.

Use of the interest margin for administrative cost and for development purposes

3.18. In a number of cases, administrative arrangements for determining the portion of the margin (including any yields from participations) to be used for administrative cost and development purposes were either lacking, contrary to the provisions of the Lomé IV Convention, incomplete or not precise. The Bank should take actions to ensure that the provisions of the Lomé IV Convention [18] on the use of the margin are being respected i. e. that any net benefit for the intermediaries is to be used for concrete development purposes.

4. PROJECTS FINANCED WITH RISK CAPITAL

Scope

4.1. Though the investments forming part of the RCOs have been adequately prepared, implemented and monitored by the Bank, the following observations are being made which relate to the long-term viability of the projects, the allocation procedures and disbursement period and rate in the case of global loans and delays in implementation.

Factors relating to the 'long-term viability of the project'

4.2. In the following cases the 'long-term viability of the project' is endangered even if the preparation and the implementation of the investments have been sound. Even when formally the Bank and the Commission have few possibilities to intervene after the investments have been realised, they should find ways to ensure that there is effective monitoring at national level of projects to avoid problems as cited below:

(a) ECU 13 million of risk capital were assigned to a ECU 42 million investment plan to restore the production capacity and to improve the productivity and the reliability of the industrial installations of an alumina producing factory. Other investments in plant and equipment required to guarantee the viability of the operations have been canceled or put off by the company which has used the funds becoming thus available, to offset losses that the shareholders had originally agreed to bear as laid down in a Memorandum of Understanding between the two main shareholders;

(b) ECU 20 million of risk capital were assigned to a ECU 152 million project (meanwhile reduced to a

[18] See article 233.4(b) of the Lomé IV Convention.

ECU 120 million project) for the rehabilitation of a power transmission line linking the hydroelectric station in Mozambique with the electricity net of South Africa (RSA). Because the tariff rate for the supply of electricity to RSA (negotiated in 1975 and laid down in a contract that cannot be changed) is considerably lower than the current rates, the full recovery of cost will become very difficult, on top of losses made so far;

(c) ECU 6 million of risk capital were assigned to the construction of two facilities (of ECU 3 million each) for the processing of cashew nuts. The first project, decided upon in 1992, started its operations with the 1995/96 campaign. The second one decided upon in 1995, has been suspended by the promoter, due to the unclear and risky situation in the cashew nut market. The two projects suffer from an unclear and changing policy of the government in the cashew nut sector;

(d) ECU 14 million of risk capital was assigned to the financing of an agro-industrial project comprising the establishment of new estates and facilities to process rubber and palm oil using the output from both family and industrial plantations (Soguipah). However, insufficient attention was paid to factors such as access to markets, marketing of the product and the acceptability of the palm oil for local tastes. The sustainability of the operations that provides employment for 1 686 people and work and income opportunities to locals in the region, is uncertain with accumulated losses in the period 1992-1995 amounting to more than 50 % of the share capital, access to markets being limited and the company being heavily dependent on grants and loan finance;

(e) in Madagascar and the Dominican Republic, the creation of new jobs in five out of the 11 SMEs visited by the Court and having benefitted from the EDF risk capital funds to the sum of ECU 783 000 has not reached the figures expected and mentioned in the loan allocation reports. In the case of one of these companies, the majority shareholder had not met its commitment to invest in the newly established SME which then appeared to have a negative impact on the latter's commercial operations for the years 1994 and 1995.

Allocation procedures in respect of global loans

4.3. Global loans for on-lending to SMEs are used for both the set up of new activities and the expansion of existing activities. For the cases examined, by far the greatest part of the financing from global loans was used by FIs for financing the expansion of operations of existing clients ([19]). Some of them would probably have received a loan from the intermediaries' own resources. Details of loan allocations are given in *Table 2*.

4.4. In New Caledonia global loans had been also used for the refinancing of operations which already had been the subject of loans granted by the FI from its 'own resources' or for operations which had been previously financed by the SME from its own treasury. The additional value in terms of development aid is not evident in such cases.

Disbursement period and disbursement rate

4.5. Disbursement periods for global loans are set in the finance contract between the Bank and the FI and normally cover a three-year period with the possibility of an extension to be decided upon by the Bank. For details of disbursement periods, see *Table 3*.

4.6. The low disbursement rate in Mozambique was partially due to the existence of competitive loans with less restrictive conditions, as well as to the high inflation rate and corresponding high, on-lending interest rates (40-46 %). In Madagascar, the general economic situation (devaluation of franc malgache in 1994) has constituted a hindrance for the creation or expansion of SMEs.

4.7. In Madagascar and Mozambique the financial intermediaries did not immediately make available the proceeds of the EIB loans to the beneficiaries. In one case the financial intermediary retained ECU 100 000 of the EIB funds allocated to the final beneficiary without any explanation being available.

Delay in implementation of projects and actions

4.8. In its annual report for the financial year 1996, Volume II statement of assurance ([20]), the Court mentioned the existence of RCOs for which there had been no disbursement for at least 18 months.

4.9. The Court has found a number of projects for which implementation has been severely delayed for a

([19]) See also Special Report 1/98, paragraph 1.30.

([20]) OJ C 348, 18.11.1997, paragraph 22.12.

variety of reasons, leading to a situation where risk capital funds have been committed without the funds being effectively used:

(a) in December 1994, a finance contract was concluded for the rehabilitation of a crude oil pipeline. The provisional disbursement timetable foresaw disbursements of ECU 9 million for the period 1995-1997. At the end of the year 1997, only ECU 0,4 million had been disbursed but the annual report on the conduct of the operation as at 31 December 1995 compiled by the Bank did not contain any particular remark in respect of the delay;

(b) a ECU 14 million loan to the Government of Ethiopia for a regional telecommunication project was disbursed for ECU 0,6 million only at the end of the year 1997, although the project was estimated at appraisal to be completed in December 1996. Disbursement of the remainder of the loan has been blocked because of serious problems with the tender for the switching of telephone lines, identified by the Bank [21] but not yet solved by the latter;

(c) in the Dominican Republic, the Bank granted in December 1994 a ECU 15 million conditional loan to the Government for the study, design, implementation, commercial commissioning and operation of investments, as part of a wider project with estimated cost of ECU 47 million, in the transmission network in the capital city and the South and East parts of the country. The project, expected to be commissioned by the end of 1996 had not started by the end of 1997.

4.10. Therefore, the Commission should, in consultation with the Bank, formulate a policy on the decommitment of ‘sleeping’ balances of RCOs.

Management of global loans by European Community Financial Intermediaries (ECFIs)

4.11. A global amount of ECU 15 million has been made available to ECFIs in the form of conditional loans (see also paragraph 2.3). The utilisation rate of this ECU 15 million facility has been rather low: at August 1997, four and a half years after the finance contracts were signed and nineteen months after the initial allocation period had expired, 100 % of the global loan amount had been allocated but only 42 % disbursed. In seven of the twelve EU Member states (B, D, EL, IRL, I, L, P) no use had been made of the facility so far.

4.12. According to the ECFIs visited by the Court the reasons for the low utilisation rate are: the time it has taken for the facility to become known, the limitations set for the amounts of individual allocations, and a lack of suitable projects. Disbursement is further delayed because of the time-consuming set up of legal and administrative frameworks within which investments are to operate.

4.13. Acknowledging that it is important that risk capital funds are made available widely and at different levels, some participations were noted where the efficiency and the transparency of the funding arrangements are questionnable:

(a) in the case of investments in venture capital funds (VCF) there appeared to be four levels through which funds pass before they reach the final beneficiary (the SME) which would appear to be costly (commissions and fees) and time consuming;

(b) for an investment in Guinea (Conakry), two different forms of financing from risk capital were used through two different intermediaries in combination with the direct financing by the Bank from its own resources under a variety of conditions.

5. ROLE OF THE COMMISSION

5.1. As already mentioned (see paragraph 1.3), the Bank administers risk capital from the Fund’s resources on behalf of the Community and also undertakes the financial execution of operations carried out with risk capital.

5.2. Based on Article 11 of the IA, ‘the Commission shall be responsible for implementing the aid policy defined by the Council and the guidelines for development finance cooperation defined by the ACP-EEC Council of Ministers pursuant to Article 325 of the Convention’. For this purpose and to ensure a certain coordination between the Commission and the Bank, the IA mentions the exchange of information between the Bank and the Commission [22] (see paragraph 1.7).

5.3. To fulfil its role stipulated in Article 11, it would therefore be of primary importance for the Commission to follow critically the appraisal process carried out by the EIB. However, on the operations which have been

[21] See EIB periodic progress report dated 22.10.1996.

[22] See for example Articles 12(1) and 12(2), 17(4)and 30(4) of the IA.

examined in the course of the audit, the Court has only found very little written evidence of active participation be it in the Commission's files or in the minutes of the Article 28 Committee. The quality and scope of the reactions to the Bank's proposals by the central services of the Commission as well as the exchange of information with Delegations depends mainly upon the initiative of the respective Commission officers.

5.4. The formulation of guidelines for the procedures to follow and the main elements to be considered in giving a reaction to the proposals of the Bank would make such reactions more transparent and valuable.

5.5. Article 33.6 of the IA provides that the Commission shall draw up periodically, in agreement with the Bank, lists of the information it receives from the latter in order to assess how the Bank is carrying out its brief and encourage close coordination between the Commission and the Bank.

5.6. For the purpose of such assessment, a number of reports envisaged by the IA could, in principle, be very helpful such as:

(a) the report on the evaluation of the projects to be provided periodically by the Commission and the Bank to the Council, in particular in relation to development objectives set ([23]). However, these reports have not been produced;

(b) the report on the execution of operations financed from the fund resources managed by the Bank to be provided yearly ([24]). However, these reports are mainly based on the commitments of funds following financing decisions taken and on economic data presented in the appraisal stage of the operations.

5.7. For none of the operations examined by the Court the Bank made an *ex post* evaluation of projects financed with risk capital resources. No information on evaluation is thus provided.

5.8. The Commission has not carried out any audit or evaluation missions or activities in relation to risk capital operations either. Based on the above, it is therefore not clear how and to what extent the Commission has fulfilled its obligations under the articles of the IA.

([23]) See Article 30.6 of the IA.

([24]) See Article 33.5 of the IA.

6. CONCLUSION

6.1. The manner in which risk capital operations have been prepared, implemented and monitored by the Bank does not give rise to observations. Nevertheless, the transparency and effectiveness of the operations can still be improved.

6.2. Important information was provided by the Bank at a late stage which hampered an efficient conduct of the Court's audit (see paragraphs 1.8 — 1.9).

6.3. The criteria which should guide the allocation of risk capital resources are very general. The Bank is thus more or less free to choose between risk capital or its own resources in making loans. The justification of the decision to use risk capital funds for a project does not clearly emerge from the project appraisal documentation (see paragraphs 2.10 — 2.12) ([25]).

6.4. The use of different types of financing (direct loans, loans via an ACP State, global loans) has led to unequal treatment of final beneficiaries: while some benefit from the 3 % maximum interest rate mentioned in the Lomé Convention, the others have to pay market rates. Though not the only determining factor, the effects of exchange rate fluctuations play an important role in setting interest rates above the 3 % level. These effects and thus the justification for higher interest rates can be calculated only after loans have been fully repaid. In addition, in the case of loans with participating rights, the total remuneration to the EIB — being at least partly dependent on the result of the beneficiary enterprises — could well exceed the 3 % limit (see paragraphs 3.4 — 3.9).

6.5. The principle of an average equal sharing of the foreign exchange rate risk introduced by the Lomé IV Convention is limited to investments in the private sector or in SMEs and further needs to be clarified. Different formulae were used by the Bank in order to adhere to it sometimes involving rather heavy administrative arrangements (see paragraphs 3.12 — 3.17).

([25]) See also paragraphs 1.22, 1.24 of Special Report 1/98.

6.6. Provisions concerning the use of the interest margin by the financial intermediary are often not clear. The Bank should ensure that finance contracts stipulate precisely how the amount of the interest margin is to be used and that any such use is in compliance with the provisions of the Lomé IV Convention (see paragraph 3.18).

6.7. Support to the private sector through global loans has been given mainly to existing — instead of emerging — SMEs which moreover often benefitted from financing from the FIs' other resources (see paragraphs 4.3 — 4.4) [26].

6.8. In a number of cases the effectiveness of the RCOs for development purposes is hampered by the fact that the disbursement of funds is delayed or because the long-term viability of the operations financed is being threatened (see paragraphs 4.2, 4.8 — 4.10).

6.9. An *ex post* evaluation function is needed to provide information about the viability of operations having benefitted from risk capital finance and their real contribution to the economic and social development of the ACP states. Such an evaluation system should be developed in cooperation between the Bank and the Commission (see paragraph 5.6).

6.10. In addition, the Commission should have played a more active role at the appraisal stage and regarding the evaluation of the overall effects of RCO on the development of the ACP State. Guidelines should be developed setting out the responsibilities of and the procedures to be followed by the services concerned (see paragraph 5.8).

6.11. The preceding recommendations are made in the context of improving the existent systems of the management of RCOs. However, alternative systems should be considered. As a matter of fact, the Commission's role in the management of the RCOs seems to be limited in practice to an exchange of information with the Bank. The involvement of the Commission in a number of tasks (appraisal, accounting, monitoring and evaluation), which are indeed not clearly defined, are not adhered to by the Commission. It is therefore that the Court proposes alternatively that consideration should be given to the possibility to entrust the entire management of RCO to the Bank outside the European Development Funds. In this context it is noted that repayments of risk capital funds and the received yields on the funds already remain outside the EDF.

This report was adopted by the Court of Auditors at the Court meeting of 14 and 15 October 1998.

For the Court of Auditors

Bernhard FRIEDMANN

President

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[26] See also paragraphs 1.25 — 1.30 of Special Report 1/98.

Table 1

Utilisation of risk capital funds

(in Mio. ECU)

	Amount available	Amout decided	Net commitment	%	Amount disbursed	%
Lomé III	600,0					
— Loans		644,5	500,0	83	494,5	83
— Direct participations		1,0	1,0	0	0,5	0
		645,5	**501,0**	83	**495,0**	82
Lomé IV	825,0					
— Loans		763,0	732,5	89	395,0	48
— Direct participations		24,5	24,5	3	16,5	2
		787,5	**756,5**	92	**411,5**	50
TOTAL	**1 425,0**	**1 433,0**	**1 257,0**	**88**	**906,5**	**64**

Table 2

Loan allocations (*)

Project	Total number of allocations	Value (million ECU)	Number of allocations to newly established companies	%
6 MOZ 071	3	1,9	2	67
7 MAG 050 + MAG 051	11	1,1	9	82
7 HA 028	12	1,8	3	25
7 DO 014 + 7 DO 031	144	11,0	—	0
6 NC 011 + 7 NC 017 + NC 016	15	7,8	2	13
7 GPR 003	27	15,0	18	67
TOTAL	212	38,6	34	16

(*) Including participations.

Table 3

Disbursement periods

Project	Disbursement rate	Time period elapsed	Observation
6 MOZ 071	32 %	After 3 years	Cancelled for the rest
6 MAG 050	10 %	After 3 years	
7 MAG 051	40 %	After 2,5 years	
7 HA 028	100 %	After 2 years	
7 DO 014	100 %	After 2 years	
7 DO 031	100 %	After 3 years	
6 NC 11	100 %	After 3 years	
7 NC 17	70 %	After 3,5 years	
7 GPR 003	42 %	After 4,5 years	

ANNEX I

Table I.1

SUMMARY OF RCOs EXAMINED

Country	Intervention sector	Amount in million ECU	
		Committed	Disbursed
Mozambique	Global loan	6,0	1,9
	Agro-industrial	3,0	3,0
	Fisheries	6,0	4,7
	Energy	20,0	12,5
	Agro-industrial	3,0	—
Sub-total		**38,0**	**22,1**
Madagascar	Energy	2,0	2,0
	Energy	13,5	13,5
	Agro-industrial	1,3	1,3
	Agro-industrial	4,4	4,4
	Agro-industrial	0,4	0,4
	Agro-industrial	1,0	1,0
	Agro-industrial	1,8	1,8
	Global loan	1,0	0,1
	Global loan	1,0	0,7
	Agro-industrial	3,5	3,5
Sub-total		**29,9**	**28,7**
Guinea	Industrial	13,0	13,0
	Water	6,0	6,0
	Hydro-electric power stations	19,0	6,0
	Hydro-electric power stations	6,0	—
	Water	8,0	7,4
	Agro-industrial	14,0	14,0
	Thermal power stations	20,0	17,3
Sub-total		**86,0**	**63,7**
Mauritania	Energy	5,0	4,9
	Mining	10,0	10,0
	Mining	10,0	10,0
	Mining	1,5	1,5
	Mining	5,0	5,0
Sub-total		**31,5**	**31,4**
Dominican Republic	Global loan	3,0	3,0
	Energy	15,0	—
	Global loan	8,0	8,0
Sub-total		**26,0**	**11,0**
Haiti	Global loan	4,0	4,0
Sub-total		**4,0**	**4,0**

Country	Intervention sector	Amount in million ECU	
		Committed	Disbursed
New Caledonia	Global loan Global loan Loan with participating rights	3,0 4,0 2,0	3,0 3,0 2,0
Sub-total		**9,0**	**8,0**
Uganda	Global loan	15,0	13,0
Sub-total		**15,0**	**13,0**
Ethiopia	Telecommunications Telecommunications	6,0 14,0	4,6 0,6
Sub-total		**20,0**	**5,2**
Lesotho	Centrales hydrauliques	15,0	12,5
Sub-total		**15,0**	**12,5**
Regional General	Air transport Air transport Energy Global loan	15,0 22,0 18,0 15,0	11,0 22,0 0,4 8,0
Sub-total		**70,0**	**41,4**
TOTAL		**344,4**	**241,0**

ANNEX II

Table II.1

BREAKDOWN (*) OF RISK CAPITAL FINANCINGS

	Lomé III		Lomé IV	
	Amount decided	%	Amount decided	%
Direct loans and pariticipations				
— Loans	122,5	19	122,0	15
— Participations	1,0	0	24,5	3
Indirect loans				
— ACP States	418,7	65	411,0	52
— Global loans	88,6	14	209,3	27
— Other development banks	14,7	2	5,7	1
— ECFIs	—	0	15,0	2
Total	**645,5**	**100**	**787,5**	**100**

(*) Amounts calculated by the Court on the basis of data submitted by the EIB.

COMMISSION REPLIES

1. INTRODUCTION

Conduct of the audit

1.7. The Commission has undertaken a major reorganisation of its files concerning the documentation made available by the Bank. The Commission holds all documentation concerning the major steps of risk capital operations from 1993 to the present: financing proposal, Article 28 Committee opinion, financing decision, financing execution of payments and reimbursement. Since 1997, these files have been readily available and regularly utilised.

1.8. The EIB and its Audit Committee constantly endeavoured to provide the Court of Auditors with every assistance by providing the supplementary information requested, preparing the logistics of the visit, helping the Court to select meaningful samples to include in the visit, holding a pre-visit general briefing on how risk capital is used under the various mandates as well as project-specific meetings with loan officers and/or responsible Heads of Division on the projects included in the visit, arranging for EIB staff familiar with projects to accompany the joint visits and providing information and documentation in answer to post-mission requests.

In any event, the EIB has always acted in accordance with the tripartite agreement. At the Court's request, this agreement is now being renegotiated.

1.9. The EIB provided the Court with standard procurement tables for the requested projects where an official call for tender was applicable. The EIB is at the disposal of the Court should it require any further information.

2. RISK CAPITAL AS A FINANCIAL AID INSTRUMENT

Intervention sectors and allocation of funds

2.8 to 2.10. Under an internal agreement between the representatives of the Governments of the Member States meeting in the Council on the financing and management of Community aid, an Article 28 Committee was set up at the Bank. This Committee is made up of representatives of the Governments of the Member States; a representative of the Commission also takes part. The Committee thus guarantees transparency, in particular *vis-à-vis* the Member States.

At nearly all of its meetings, the Article 28 Committee receives several proposals for financing under the Lomé Convention, so that detailed comment in each report on the background to the reasons for using risk capital is not required. Most reports do provide a succinct justification (e.g. non-creditworthiness of the country), and usually the justification is rather obvious. The question of the utilisation of risk capital as against the EIB's own resources is only rarely raised as an issue for discussion, and where there are particular aspects on this point they are discussed during the meetings to the satisfaction of participants, as far as we are aware.

2.12(a) That the fishing projects in Mozambique and Madagascar are profitable and generate hard currency is a positive feature and fully justifies the operations. We would make two comments.

(i) One cannot conclude that if a project is profitable, financing can always be found from other sources. In Mozambique and Madagascar a few years ago (and still today) it was very difficult to find sources of long-term financing for private-sector projects, on account of the hazards and uncertainties of doing business in those countries.

(ii) The EIB seeks under its Lomé mandate to encourage private sector investors to invest in and manage profitable ventures as is the case of the two projects cited by providing part-financing of the projects. It should be remembered that financing from risk capital is designed to be repaid, so it is important to try to select projects which are going to be successful.

2.12(b) and (c) The statement does not sufficiently reflect the very particular function fulfilled by the financial intermediaries in the Dominican Republic and New Caledonia. The Financial Intermediaries (FIs) help to introduce and develop 'banking habits' among SME clients, offering investment finance at prevailing prime market rates through a network of qualified field service employees. Alternative sources of finance for such SMEs would be money-dealers offering very short-term loans (weekly or monthly) at significantly higher interest rates.

The implementation of risk capital operations by the European Investment Bank

Tendering procedures

2.13 to 2.15. Until recently, the EIB applied its normal procurement procedures (bidding open at least to EU and

ACP suppliers) to projects financed from risk capital resources, as well as to projects financed from the Bank's own resources — in the interests of achieving the most economically advantageous bids for the project. The Cahora Bassa project in Mozambique was an example of this policy. Following consultation with the Commission, the EIB applies the more restrictive procurement procedures of the EDF for risk capital financing.

Loan conditions and undertakings

2.16. It is true that ACP governments and borrowers often do not comply with obligations to supply information to the Bank in good time. The EIB monitors the situation and chases up borrowers continuously, but certainly not with 100 % success.

2.17(b)(c)(d) See 2.16 above. It should be noted that fishing licences and quotas are a notoriously difficult area in many countries of the world, including in the EU. Where public administrative capacity is weak, as is the case in Mozambique and Madagascar, difficulties can certainly occur, even despite close monitoring by the EIB.

2.18. See 2.16 above.

3. INTEREST RATES AND THE USE OF THE INTEREST MARGIN IN CASE OF ON-LENDING OPERATIONS

Level of the interest rates

3.4 to 3.8. The EIB has certainly not deliberately developed any policy which might contravene the spirit of the Convention. In setting the interest rates that are applied to projects which it finances, the EIB has, on the one hand, to respect the conditions of the Lomé Convention which specify subsidised rates and, on the other hand, to take account of the need to ensure that end-borrowers, notably in the private-sector, pay rates more akin to market rates, where these can be determined. This can indeed give rise to some anomalies, but:

(i) it is quite normal for a loan to a strong borrower with a strong guarantor to be at a lower interest rate than a less well secured loan (so an own-resources loan might well have a lower interest rate than a riskier loan made from risk capital), and

(ii) a loan in a local ACP currency will normally carry a significantly higher nominal interest rate than a loan in ecu because of the underlying rates of expected price inflation.

With regard to the hotel complex in Guinea (point 3.6) any comparison between interest costs on the own-resources loan and the risk-capital operation needs to be nuanced: for the own resources loan, the borrower incurs an additional cost for the provision of guarantees acceptable to the Bank (as regards the risk capital operation, the advantage to the final beneficiary is not intended to reside in the interest rate, but rather in the other financial conditions attached to the quasi-equity nature of the operation).

3.9. The Lomé IV Convention caps interest payable on risk capital loans at 3 % per annum but places no limit on remuneration or profit sharing. Frequently a profit-sharing component is added to a fixed-interest component on a financing operation, which is not prohibited by the Lomé Convention.

Remuneration of financial allocations from global loans

3.10 to 3.11. Since finance contracts are standardised as far as possible, it is not surprising that mention should be made of 'reference' rates even if in some cases there are no 'reference' rates. The EIB therefore checks the rates according to quarterly/half-yearly reports produced by the Central Bank. This can only be done after the event, because the Central Bank publishes the rates with a time lag without modifying the standard terms of the financing contract.

Mechanisms used for covering the exchange rate risk

3.13. Under Lomé III the borrower had to pay back the loan in ecu or the equivalent in a European currency. The exchange risk was based solely on the ecu and not on the ecu or another European currency.

3.14 to 3.17. As regards risk-sharing, the key-words in the last sentence of Article 234(2)(b) of the Lomé Convention are 'on average', i.e. over all risk capital projects.

Allocation of 100 % of the FOREX risk to a final beneficiary in certain cases is perfectly consistent with Article 234 of the Convention (and indeed it would be illogical to exonerate a promoter from FOREX risk if his entire sales proceeds were denominated in FOREX — far better in such a case to examine the other types of risk to which he might be exposed, and provide for mitigating measures against those risks). Article 234 says that the FOREX risk should be shared equally on average, and this is what the EIB aims to achieve across the board.

As a matter of fact, under most of the small business financing schemes (global loans) from risk capital, the on-lending to SME sub-borrowers is denominated in local currency — as typically SMEs sell into the local market rather than the export market.

Use of the interest margin for administrative cost and for development purposes

3.18. In selecting the FI or DFC (development finance corporation), the EIB pays careful attention to the soundness of its financial situation, its development role and its support to the country's economy. In this regard, most of the DFCs are non-profit-making institutions with a strong developmental impact, particularly in relation to small enterprises. These criteria are in accordance with Article 233(4)(b) of the Lomé IV Convention, First Financial Protocol.

4. PROJECTS FINANCED WITH RISK CAPITAL

Factors relating to the 'long-term viability of the project'

4.2. While it is true that the EIB and the Commission no longer intervene directly *vis-à-vis* beneficiaries once investments have been made, they do maintain indirect supervision through their political dialogue with the local authorities.

It is impossible to imagine any risk-capital operations where there is not a danger that, in a number of cases and in spite of all the guarantees provided, long-term viability may be jeopardised by measures originating within or outside the firm in question.

Fortunately the risks cited in the report as examples have so far not become a reality, which puts their significance into perspective.

Allocation procedures in respect of global loans

4.4. In the context of a global financing plan where the rate at which financing is implemented cannot be fully guaranteed, it is often the case that either the beneficiary firm, using its own resources, or the Financial Intermediary (FI), through additional temporary loans, acts as a 'bridge'. In fact the EIB's intervention consists merely of refinancing its own contribution, in so far as this is a supplementary contribution and does not replace that of the FI.

Disbursement period and disbursement rate

4.6. The global loan in Mozambique was made alongside loans from the World Bank (from IDA resources) and the French development aid programme: none of the three loan facilities was very successful. Part of the reason for the slow utilisation of the funding was the insufficient level of the margins for the FIs, and during the allocation/disbursement period of the loan facilities the split of the total margin between the Central Bank and the FIs was renegotiated — with the result that the margin allowed to the FIs was increased over the initial levels, on both the EIB and the World Bank credit facilities alike.

Delay in implementation of projects and actions

4.9(a) The finance contract for the project was signed in December 1994, but disbursements only started in 1997 (and are continuing in 1998). This project is being co-financed by the EIB with the World Bank (credit from IDA resources), and coordination between the two institutions is close, notably as regards monitoring of the project. There were a number of tough conditions prior to first disbursement which had to be fulfilled by Zambia including some sectoral reform issues and this explains why disbursements could not be started for a period of over two years.

4.9(b) The problems have since been resolved and the remainder of the loan is being disbursed.

4.9(c) The main reason for the delay was the previous government's lack of resolve to carry out vital sector reforms, in particular the ratification of the Electricity Law, which is an important condition of disbursement in the EIB's finance contract. The law has been stalled in Congress for two years due to political bickering ahead of the 1996 presidential election and the tug-of-war between two different vested interests (private power investors versus importers of stand-by generating equipment). The new government is pressing ahead with sector reforms and disbursement of the loans has taken place.

4.10. Every quarter, the Commission and the EIB take stock of dormant commitments; after taking account of the information exchanged and analysing the situation, the EIB asks the Commission to decommit the unused funds.

Management of global loans by European Community Financial Intermediaries (ECFIs)

4.11 and 4.13(a) Points noted. Appropriate modifications were made to the follow-up ECFI II facility approved in April 1998.

4.13(b) As indicated above (see 3.4 to 3.8), any comparison between interest costs on the own-resources loan and the risk-capital operation needs to be nuanced: for the own resources loan, the borrower incurs an additional cost for the provision of guarantees acceptable to the Bank; as regards the risk-capital operation, the advantage to the final beneficiary is not intended to reside in the interest rate, but rather in the quasi-equity nature of the operation, a shareholders' advance.

5. ROLE OF THE COMMISSION

5.2 to 5.4. The Commission services and the EIB work closely together at the time of the 'programming' of Community aid at the start of a Convention (e.g. the signing of the National Indicative Programme and the EIB's Annex thereto). Close contacts (often informal) are maintained between EIB staff and Commission delegations throughout the ACP during the life of a Convention.

Article 33(5) stipulates the role of the Commission concerning the operations financed by the resources of the fund and managed by the Bank. Each year the Commission receives from the Bank a report of the financial execution in coordination with the Bank (coordination meetings take place at all levels).

On the basis of the draft proposals prepared by the Bank, the Commission consults the geographical desks (and if necessary the delegations) concerned and, accordingly, presents its observations, comments, suggestions and objections to the Bank.

5.6(a) The Council receives Article 29/33 reports, which serve to meet the obligation to provide information mentioned by the Court.

5.7. As a rule, the reports by the EIB's Evaluation Unit have a thematic or sectoral basis. The Unit's work programme covers all of the EIB's operations and takes into account the preponderance of the Bank's activity inside the Union. At present there are no plans for any study involving EDF risk capital.

6. CONCLUSION

The Commission and the EIB note with satisfaction that the Court does not have any observations with regard to the manner in which risk capital operations have been prepared, implemented and monitored by the Bank.

As regards the Commission's role, it is worth stressing that both Article 1 of the Lomé IV Financial Protocol and Article 10(2) of the Internal Agreement state that risk capital is to be managed by the EIB. In so doing the EIB acts on behalf of the Community, not of the Commission (Article 10(2)). This is confirmed by Articles 58(1) and (2) of the Financial Regulation for the seventh EDF.

Where the Commission is called on to assume responsibility for the reliability of the EDF accounts, its responsibility is confined, in the case of operations financed under EIB management, to checking that the amounts entered in the accounts match the information supplied by the EIB.

With regard to the issue of evaluation of the risk capital operations, the Commission will carry out a review of the overall effects of risk capital operations on the development of the ACP States before making concrete proposals for any post-Lomé Convention.

Finally, the Commission feels that the Member States are particularly well served when it comes to transparency, as their representatives sit alongside the Commission on the Article 28 Committee.