

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(78) 708 final

Brussels, 8 December 1978

REQUESTS FOR TRANSFERS FOR 1975 SUBMITTED BY CERTAIN ACP STATES
UNDER THE EXPORT EARNINGS STABILIZATION SYSTEM

(Commission Communication to the Council)

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1. Background

Three ACP States sent the Commission late requests for transfers for 1975 under the export earnings stabilization system. The countries in question were Kenya (request received 9 February 1977), Mali (21 March 1977) and Gabon (31 March 1977).

The Commission was unable to accept these requests for legal reasons since it considered that the appraisal of requests presented after the end of the financial year following the year of application was contrary to Articles 18 (2) and (3) and 19 (3) of the Lomé Convention.

The ACP States requested, first at a meeting of the ACP/EEC Subcommittee on the stabilization of export earnings on 7 February 1978, then at a meeting of the Committee of Ambassadors on 28 February 1978, that the Community reconsider the Commission's refusal. Lastly, on 13 - 14 March 1978, the ACP States requested that the ACP/EEC Council of Ministers ask the Commission to appraise the three requests in question. The ACP/EEC Council of Ministers then agreed to initiate, via the two Presidents of the said Council, the good offices procedure provided for in Article 81 (2) of the Lomé Convention.

2. The recommendation resulting from the good offices procedure

Following this decision, Mr. E. Frank Francis, Permanent Secretary, representing the President of the ACP Council of Ministers, and Mr. Niels Ersbøll, State Secretary, representing the President of the Council of the European Communities, drew up a joint note, the conclusion of which is as follows: "They therefore recommend that the Council of Ministers request the Commission to examine the three requests."

Together with this recommendation there were observations which will be particularly important for the future implementation of the system:

- "They considered, however, that the administration of the Stabex system may have caused difficulties in relation to the first year of application." ...

"Under these circumstances, they are of the opinion that the delay which has occurred in the presentation of the above-mentioned requests should

not prevent their examination."

- "It was recognized that the need for speedy transfers - as stipulated in Article 19 (6) of the Convention - and the implementation of the Convention's provisions relating to the Stabex system imply that transfer requests should be presented before the end of the year following the year of application." ...

"They considered that some support for this view could be found in the fact that it was decided at the meeting of the ACP/EEC Committee of Ambassadors on 28 March 1977 to introduce a specific time limit for the submission of requests for Stabex transfers." ... The recommendation was based "on the understanding that no further claims may be accepted in respect of years where the time limit referred to above has expired."

- "They also took account of the fact that justice requires that these three requests should not be placed in a preferred position over other requests, submitted within the specified time limit, with regard to the availability of funds. They therefore further recommend that if the examination by the Commission of these requests results in proposals to make financial transfers, the relevant payments shall be made when the Commission is able to certify that the necessary funds will be available."

3. The Commission's position

The Commission is of the opinion that at the next meeting of the ACP/EEC Council of Ministers the Community should propose acceptance of the recommendation resulting from the good offices procedure, to the effect that the three late requests presented for 1975 be examined.

The Commission would emphasize, however, that the recommendation can be accepted only if the ACP States' attention is drawn to the observations cited at point 2 above, which are inseparable from the recommendation itself.

In addition, the recommendation must be implemented in accordance with the rules governing the system.

In practical terms, the above considerations mean that :

- The recommendation constitutes a request that the applications be examined. It in no way prejudices the outcome of the appraisal, which will be conducted in accordance with the usual rules and may or may not lead to proposals for financial transfers.
 - The aim of the recommendation is to ensure that the delay which has occurred in the presentation of the three requests caused in the exceptional circumstances of the system's teething troubles does not prevent their examination. This, then, can be only an exceptional measure and can in no way constitute a precedent, and the authors of the note drawn up under the good offices procedure state this very clearly.
 - Should the appraisal of the requests result in one or more transfer proposals, the rules of the system require that any payments made should come out of the 1975 annual instalment. This is confirmed, moreover, by the authors of the note resulting from the good offices procedure when they state that the three requests concerned should not be placed in a preferential position over other requests that were presented within the specified time limit. The funds would have to be made available from the balance remaining from the 1975 annual instalment; should this balance prove inadequate, the ACP-EEC Council of Ministers would have to authorize a backdated advance payment from the 1976 instalment to cover the difference, subject, however, to a limit of 20% of that instalment. The balance remaining after the payments made for 1976 are perfectly adequate for such an operation, which represents the only way of maintaining the straightforward system of payment by annual instalment set up by the Lomé Convention.
4. The Commission proposes that the Council accept the recommendation resulting from the good offices procedure, on the terms set out in point 3 above.