

FINANCING AGREEMENT

between

THE EUROPEAN ECONOMIC COMMUNITY

and

THE ASSOCIATION OF SOUTH EAST ASIAN NATIONS

(ASEAN)

ASIAN AQUACULTURE DEVELOPMENT AND
COORDINATION PROGRAMME



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The Commission of the European Communities, hereinafter referred to as "THE COMMISSION", acting for and on behalf of the European Economic Community (EEC), hereinafter referred to as "THE COMMUNITY",

of the one part, and

THE ASSOCIATION OF SOUTH EAST ASIAN NATIONS (ASEAN)
hereinafter referred to as "THE RECIPIENT",

of the other part,

HAVE AGREED AS FOLLOWS:

The measures referred to in Article 1 below shall be executed and financed out of the budget resources of THE COMMUNITY in accordance with the provisions set out herein.

This agreement comprises provisions, entitled "General Conditions", which are of general effect and provisions, entitled "Special Conditions" and "Technical and Administrative Provisions" (Annex A), which apply specifically to the project referred to in Article 1 below.

The Special Conditions and Technical and Administrative Provisions shall supplement the General Conditions and in the event of conflict prevail over the latter.

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SPECIAL CONDITIONSARTICLE 1 - NATURE AND SUBJECT

As part of its 1979 aid programme, THE COMMUNITY shall contribute, by way of grant, towards the financing of the following project:

Project No: NA/79-17/C2

Title: Asian Aquaculture Development and Coordination Programme
hereinafter referred to as "THE PROJECT".

ARTICLE 2 - COMMITMENT OF THE COMMUNITY

The commitment of THE COMMUNITY is fixed at 300 000 EUA,
(European Units of Account)
hereinafter referred to as the "EEC GRANT".

ARTICLE 3 - ADDRESSES

Correspondence relating to the performance of this Agreement, stating THE PROJECT'S number and title, shall be addressed to the following:

(a) for THE COMMUNITY:

Commission of the European Communities
Directorate-General for Development
rue de la Loi 200
B-1049 Brussels

Telegraphic address: COMEUR BRUXELLES
Telex: 21877 COMEU B

(b) for THE RECIPIENT:

ASEAN Secretariat
6 Jalan Taman
Pejambon
Jakarta

Telegraphic address : ASEAN SEC JAKARTA

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ARTICLE 4 - NUMBER OF COPIES

This Agreement is drawn up in the English language in two copies each being equally valid.

ARTICLE 5 - ENTRY INTO FORCE

This Agreement shall enter into force on the date that it has been signed by both parties.

The Annexes shall be deemed an integral part of this Agreement.

Done at Brussels,
this 13th day of October 1980

THE RECIPIENT

Done at Brussels,
this 13th day of October 1980

THE COMMUNITY

GENERAL CONDITIONSTITLE I: FINANCING OF PROJECTSARTICLE 1 - COMMITMENT OF THE COMMUNITY

The commitment of THE COMMUNITY, the amount of which is laid down in the Special Conditions, shall determine the limit within which commitment and execution of payments shall be carried out, within the framework of duly approved contracts and estimates.

Any expenditure over and above the commitment of THE COMMUNITY shall be borne by THE RECIPIENT.

ARTICLE 2 - COMMITMENT OF THE RECIPIENT

Where project execution depends on financial commitments out of the own resources of THE RECIPIENT, as laid down in Annex A, the disbursement of the EEC Grant, in accordance with the schedule fixed in Annex A, shall be conditional upon performance of the obligations incumbent on THE RECIPIENT.

ARTICLE 3 - DISBURSEMENT

Within the limit set on the EEC Grant, requests for funds shall be presented by THE RECIPIENT in accordance with the schedule laid down in Annex A and on presentation of documentary evidence relating to payments made in respect of THE PROJECT.

However, supplies contracts and study contracts may provide for direct payment by THE COMMISSION to the contractors. Each contract shall lay down the rate and time of such payments, together with the documentary evidence to be produced.

Further, in projects executed on the basis of prepared estimates, a first payment instalment which, save where Annex A otherwise provides, shall not exceed 20% of the amount of the estimate approved by THE COMMISSION, may be made in favour of THE RECIPIENT in order to facilitate the launching of THE PROJECT. Other payment instalments shall be made available, at the request of THE RECIPIENT, on presentation of documentary evidence relating to payments made.

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TITLE II: CONCLUSION OF CONTRACTSARTICLE 4 - CONCLUSION

The procedure to be followed prior to conclusion of works and supplies contracts, and prior to conclusion of technical cooperation contracts, shall be laid down in Annex A, following the principles set out below.

ARTICLE 5 - PROCUREMENT

1. For those operations for which THE COMMUNITY is the sole source of external aid, participation in invitations to tender and contracts shall be open on equal terms to all natural persons, firms and companies falling within the scope of the Treaty establishing the European Economic Community and to all natural persons, firms and companies of THE RECIPIENT.

Such participation may also be extended to other developing countries receiving Community aid under the programme referred to in Article 1 of the Special Conditions and the two previous programmes.

2. The same rules shall apply in cases where THE COMMUNITY co-finances with other agencies.

In cases of co-financing, participation by third countries in the contracts, tendering procedures and other procedures for the award of contracts, may be allowed only after case-by-case examination within THE COMMUNITY.

ARTICLE 6 - EQUALITY OF CONDITIONS

THE COMMISSION and THE RECIPIENT shall take the measures necessary to ensure equality of conditions for participation in the contracts, tendering procedures and other procedures for the award of contracts financed by THE COMMUNITY.

To this end, steps will be taken in particular to ensure that:

- (a) there is prior publication of invitations to tender simultaneously in the Official Journal of the European Communities and the Official Gazette of THE RECIPIENT, or by any other suitable means of advertisement;
- (b) adequate time limits are introduced by mutual agreement for the submission of tenders;

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- (c) any discriminatory practice or technical specification such as might prejudice the participation under equal conditions of all natural and legal persons of the states entitled to participate by virtue of Article 5 shall be eliminated;
- (d) General Conditions of Contract shall be drawn up in conformity with the models in international use, such as the General Conditions of Contract applicable in Developing Countries receiving EEC Aid.

ARTICLE 7 - AWARD OF WORKS AND SUPPLIES CONTRACTS

THE COMMISSION and THE RECIPIENT shall ensure that for every operation, Article 6 hereof is respected and that the offer selected is economically the most advantageous, particularly in view of the qualifications and guarantees offered by the tenderers, the nature and conditions for execution of the works or supplies, the price of the services, their cost of utilization and technical value.

Results of the invitations to tender shall be published in the Official Journal of the European Communities as quickly as possible.

ARTICLE 8 - TECHNICAL COOPERATION CONTRACTS

1. Technical cooperation contracts shall be concluded by mutual agreement or when technical, economic or financial reasons so justify, following invitation to tender.
2. For each technical cooperation project, one or more candidates shall be selected on the basis of criteria guaranteeing their qualifications, experience and independence and taking into account their availability for the project in question.
3. Contracts shall be drawn up, negotiated and concluded either by THE RECIPIENT or by THE COMMISSION when Annex A so provides.
4. Where contracts are drawn up, negotiated and concluded by THE RECIPIENT, THE COMMISSION shall select one or more candidates on the basis of the criteria laid down in paragraph 2.

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When there is a mutual agreement procedure and THE COMMISSION has selected several candidates, THE RECIPIENT shall freely choose the candidate with which it proposes to conclude the contract from among those put forward.

When there is recourse to an tendering procedure, the contract shall be awarded to the candidate which has submitted the offer which is acknowledged by THE RECIPIENT and THE COMMISSION to be economically the most advantageous.

TITLE III: EXECUTION OF CONTRACTS

ARTICLE 9 - ESTABLISHMENT AND RIGHT OF INSTALLATION

Natural and legal persons taking part in works, supplies or services contracts shall benefit, under equal conditions, from a provisional right of residence and installation if the nature of the contract so justifies. The said right shall be acquired only for the benefit of the technical staff necessary to carry out studies preparatory to drawing up tenders; it shall continue until expiry of one month following the nomination of the successful tenderer.

The tenderer to whom the contract has been awarded shall enjoy similar rights throughout the period of execution of the contract and until expiry of one month following final acceptance.

Natural and legal persons who have established themselves for the purpose of executing works, supplies or services shall enjoy the absolute freedom, if they so desire, to re-export materials imported by them into the state of THE RECIPIENT for the purpose of execution.

ARTICLE 10 - ORIGIN OF MATERIALS AND SUPPLIES

Save when otherwise authorized by THE COMMUNITY, materials and supplies required for execution of contracts must originate in the states entitled to participate by virtue of Article 5.

ARTICLE 11 - IMPORT AND EXCHANGE CONTROL

THE RECIPIENT hereby undertakes to grant the import permits and exchange control permits necessary to execute THE PROJECT. It equally undertakes to apply the national regulations in the field of exchange control without discrimination among the states entitled to participate by virtue of Article 5.

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ARTICLE 12 - TAX REGULATIONS

Taxes, customs and import duties shall be excluded from the financing of THE COMMUNITY.

ARTICLE 13 - PAYMENT PROCEDURES

1. For contracts financed by THE COMMUNITY, tenders shall be drawn up and payments made, either in European units of account (EUA), or in the currency of THE RECIPIENT, or in the currency of the state where the tenderer has his registered place of business, or in the currency of the state where the supplies were produced.

2. When tenders are drawn up in EUA, payments relating thereto shall be made, as appropriate, in the currency named in the contract, on the basis of the equivalent value of the EUA on the day preceding payment.

3. THE COMMISSION shall take all measures necessary to ensure execution of payments due to contractors within the shortest possible time.

ARTICLE 14 - DISPUTES BETWEEN THE RECIPIENT AND THE CONTRACTOR

Disputes arising between THE RECIPIENT and the contractor during performance of a contract financed by THE COMMUNITY shall be settled definitively in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce.

TITLE IV: COLLABORATION BETWEEN THE COMMISSION AND THE RECIPIENTARTICLE 15 - FOLLOW-UP OF EXECUTION

1. THE COMMISSION shall have the right to send its own agents or duly authorized representatives to carry out any technical or financial mission or audit that it considers necessary to follow the execution of THE PROJECT.

THE RECIPIENT hereby undertakes to supply all information and documents which shall be requested of it, and to take all suitable measures to facilitate the work of persons instructed to carry out audits or inspections. It shall be kept informed of the visit of the officials referred to above.

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2. The Court of Auditors of THE COMMUNITY shall have the right to carry out, on the basis of documents and if need be locally, any financial audit or inspection, as regards the accounts, invoices and other documentation relating to THE PROJECT which may be available in the state of THE RECIPIENT and which relate to the EEC Grant.

ARTICLE 16 - FOLLOW-UP OF PROJECT

THE COMMISSION shall follow the execution of THE PROJECT, may request any explanation and, where necessary, may agree, with the consent of THE RECIPIENT, on a new project orientation which is agreed to be better adapted to the objectives in view.

THE RECIPIENT shall make reports to THE COMMISSION following the time-schedule laid down in Annex A, throughout the period of project execution and after completion thereof.

Where there is a failure to carry out an obligation set out in this Agreement, which has not been the subject of remedial measures taken in due time, THE COMMISSION may suspend the financing of THE PROJECT.

TITLE V: GENERAL AND FINAL PROVISIONS

ARTICLE 17 - RENUNCIATION BY THE RECIPIENT

THE RECIPIENT may, with the agreement of THE COMMISSION, renounce in whole or in part the execution of THE PROJECT.

An exchange of letters shall set out the details of the said renunciation.

ARTICLE 18 - AMENDMENT

Any amendment to this Agreement must be agreed between the parties hereto and shall only be adopted after approval in writing by the parties.

ARTICLE 19 - CONSULTATION - DISPUTES

1. Any question relating to execution or interpretation of this Agreement which has not been resolved by application of the provisions herein shall be the subject of consultation between THE RECIPIENT and THE COMMISSION.

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2. Any dispute relating to this Agreement which cannot be resolved by applying paragraph 1 of this Article shall be settled according to the arbitration procedure referred to in the Annex hereto (Annex B).

ARTICLE 20 - NOTICES - ADDRESSES

Any notice and any agreement between the parties provided for herein must be the subject of a written communication referring explicitly to the number and title of THE PROJECT. Such notices or agreements shall be made by letter sent to the party authorized to receive the same, and sent to the address notified by the said party. In case of urgency, telegraphic or telex communications shall be permitted and deemed to have been validly served, provided that they are confirmed immediately by letter.

The addresses are set out in the Special Conditions.