

No. 9282

**DENMARK
and
SENEGAL**

**Protocol of Agreement regarding a Danish Government Loan
to Senegal (with annex and exchange of letters). Signed
at Dakar, on 3 April 1968**

Official text: French.

Registered by Denmark on 17 October 1968.

**DANEMARK
et
SÉNÉGAL**

**Protocole d'accord relatif à un prêt du Gouvernement danois
au Sénégal (avec annexe et échange de lettres). Signé à
Dakar, le 3 avril 1968**

Texte officiel français.

Enregistré par le Danemark le 17 octobre 1968.

[Translation — Traduction]

No. 9282. PROTOCOL OF AGREEMENT¹ BETWEEN DENMARK AND THE REPUBLIC OF SENEGAL REGARDING A DANISH GOVERNMENT LOAN TO SENEGAL. SIGNED AT DAKAR, ON 3 APRIL 1968

Between the Government of the Republic of Senegal, represented by Mr. Jean Collin, Minister of Finance, and

The Government of the Kingdom of Denmark, represented by His Excellency, Mr. Viggo Jensen, Ambassador at Dakar,

Which, desiring to strengthen the traditional co-operation and cordial relations between their countries,

Have agreed and decided as follows :

Article I

THE LOAN

With a view to the development of Senegal, the Danish Government undertakes to extend to the Senegalese Government (hereinafter called the Borrower) a loan of ten million Danish Kroner for the purpose of purchasing capital goods and paying for services as described in article VI of this Agreement.

Article II

LOAN ACCOUNT

(1) An account designated " Government of Senegal Special Account " (hereinafter called " Special Account ") shall be opened with Danmarks Nationalbank (acting as agent for the Lender) in favour of the Banque Nationale pour le Développement du Sénégal (BNDS) (acting as agent for the Borrower). The Lender shall ensure that sufficient funds are always available in the Special Account to enable the Borrower to effect punctual payment for the goods and services for which contracts have been concluded under the loan, provided, however, that the amounts successively made available to the Borrower shall not, in the aggregate, exceed the amount specified in article I.

(2) The Banque Nationale pour le Développement du Sénégal (BNDS) (acting as agent for the Borrower) shall be entitled, subject to the provisions of

¹ Came into force on 30 April 1968, the date on which the Danish Government informed the Government of Senegal that the Danish Parliamentary Committee on Ways and Means had approved the said Agreement, in accordance with article XIV (1).

this Agreement, to withdraw from the Special Account amounts needed for the purchase of goods or the payment of services for which contracts have been concluded under the loan.

Article III

RATE OF INTEREST

The loan shall be free of interest.

Article IV

REPAYMENT

(1) The Borrower undertakes to repay to the Lender the principal paid into the Special Account in thirty-five semi-annual instalments of 280,000 Danish Kroner each, the first of which shall fall due on 31 May 1975 and the last on 31 May 1992, and a final payment of 200,000 Danish Kroner, to be made on 30 September 1992.¹

(2) The Borrower shall have the right to repay in advance of maturity all or part of one or more payments specified by him.

Article V

PLACE OF PAYMENT

The Borrower undertakes to repay the loan to Danmarks Nationalbank, in Danish Kroner or in any other convertible currency acceptable to that Bank, by crediting the current account of the Danish Ministry of Finance with Danmarks Nationalbank.

Article VI

USE OF THE LOAN BY SENEGAL

(1) The Borrower shall use the loan to pay for imports from Denmark (including transport charges from Denmark to Senegal) of capital goods required for carrying out Senegal's development plan (and included in the annexed list, which may be amended or extended with the mutual consent of the Contracting Parties). Under the Agreement the total disbursement shall not exceed the amount of ten million Kroner specified in article I.

¹ The original text which read : ... " the first of which shall fall due on 31 May 1975 and the last on 30 September 1992, and a final payment of 200,000 Danish Kroner to be made on 31 May 1993. " was corrected by an exchange of notes of 7 November 1968 at Rabat and 22 April 1969 at Dakar. A Certified Statement was registered by Denmark on 5 August 1969.

(2) The loan may also be used to pay for services rendered by Denmark and required for carrying out Senegal's development plan, including, in particular, pre-investment studies, preparation of projects, installation costs, services of engineering consultants, and technical and administrative assistance during, for example, the putting into operation of undertakings established by means of the loan.

(3) The Borrower shall ensure that the loan is used exclusively to pay for goods and services needed to fulfil contracts approved by both Parties. The special conditions relating to the payment of such goods and services, other than the conditions referred to in article II, shall be defined in detail by the Lender and the Borrower.

(4) The Lender shall approve contracts concluded under the loan but such approval shall not cause him to be held responsible for the proper execution or subsequent implementation of such contracts.

(5) The terms of payment laid down in a contract or other document establishing that an order has been placed with a Danish exporter for goods or services of the type mentioned above shall be deemed to be normal and reasonable when the said contract or document contains no clauses under which the Danish exporter grants special credit facilities.

(6) The Loan shall be used only to pay for goods or services contracted for after the entry into force of this Agreement.

(7) The Borrower may draw on the account with Danmarks Nationalbank referred to in article II for up to three years from the date of the entry into force of the Agreement or such other date as shall be fixed by agreement between the Lender and the Borrower.

(8) If the proceeds of the Loan have not been fully utilized within the period specified above, the semi-annual payments shall be reduced in the same proportion as the amount not utilized bears to the principal of the loan.

Article VII

NON-DISCRIMINATION

(1) The Borrower undertakes not to accord the Danish creditor less favourable treatment with regard to the repayment of the loan than that accorded to other foreign creditors.

(2) All shipments of capital goods under the loan shall be effected in accordance with the principle that all ships have the right to engage in international trade in conditions of free competition.

Article VIII

MISCELLANEOUS PROVISIONS

(1) Prior to the first drawing against the Special Account referred to in article II, the Borrower shall satisfy the Lender that all the constitutional or other legislative requirements of the country of the Borrower have been met, so that this Agreement, under the conditions laid down therein, shall be legally binding on the Borrower.

(2) The Borrower shall furnish to the Lender evidence that the person or persons who will take any action or execute any documents under this Agreement are duly authorized thereto and shall provide a specimen signature of each of them.

(3) Any notice or request concerning this Agreement and any arrangement under the Agreement made by the Contracting Parties shall be in writing. Such notice or request shall be deemed to have been validly given or made when it has been delivered by hand or transmitted by letter, telegram or radiogram to the Party concerned at the address specified in this Agreement or at any other address communicated in writing by the said Party to the Party giving such notice or making such request.

Article IX

PARTICULAR COVENANTS

The repayment of the loan shall be effected without deduction of and free from all taxes and charges and from all restrictions applied under the domestic law of the Borrower. This Agreement shall be exempt from any charges which may be levied now or in the future under the domestic law of the Borrower on its entry into force, conclusion, delivery or registration.

Article X

CANCELLATION AND SUSPENSION

(1) The Borrower may, by a notice to the Lender, cancel any amount of the loan which he has not utilized.

If either of the following contingencies should arise and continue to obtain, the Lender may, by a notice to the Borrower, suspend, wholly or in part, the Borrower's right to draw on the Special Account :

- (a) failure to repay the principal in accordance with the terms of this Agreement or of any other payment undertaking assumed by the Borrower in relation to the Lender;
- (b) failure on the part of the Borrower to carry out any other obligation or decision pursuant to this Agreement.

(2) The right of the Borrower to draw on the Special Account shall continue to be suspended wholly or in part, as the case may be, until such time as the circumstance or circumstances which caused such suspension cease to exist or the Lender notifies the Borrower that the right to make withdrawals has been restored, provided, however, that where the right is restored by means of a notice to that effect, it shall be restored only to the extent and subject to the conditions specified in the said notice and that the notice shall in no way affect or impair any right, power or remedy of the Lender in respect of any contingency other than or subsequent to that which caused the suspension referred to in this article.

Should the Borrower's right to draw on the Special Account be suspended with respect to any amount of the loan for a period of sixty consecutive days, the Lender may, by a notice to the Borrower, suspend his right to withdraw such amount. The said amount shall be cancelled by such notice.

(3) Notwithstanding any cancellation or suspension, all the provisions of this Agreement shall remain in force, except as otherwise expressly provided in this article.

Article XI

REMEDIES OF THE LENDER

Should either of the contingencies referred to in article X (a) and (b) arise and continue to obtain for sixty days after the Lender has given notice thereof to the Borrower, the Lender may, at any time thereafter, declare that the outstanding balance of the principal has fallen due and become payable immediately. Upon such declaration being made, the outstanding balance of the principal shall become due and shall be paid immediately, notwithstanding any provision to the contrary in the Agreement.

Article XII

APPLICABLE LAW

Unless otherwise provided for in the Agreement, the Agreement and all rights and obligations deriving therefrom shall be governed by Danish law.

Article XIII

SETTLEMENT OF DISPUTES

(1) Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement which has not been settled within six months through the diplomatic channel shall, at the request of one of the Parties, be submitted to an arbitral tribunal of three members. The chairman of the

tribunal, who shall be a national of a third country, shall be elected by agreement between the Contracting Parties. Should the Parties fail to agree on the election of the chairman of the tribunal, each of them may request the President of the International Court of Justice to make the appointment. Each of the Parties shall appoint its own arbitrator. Should one Party fail to appoint its arbitrator, the latter may be appointed by the chairman of the arbitral tribunal.

(2) Each of the Contracting Parties shall observe and carry out the awards rendered by the arbitral tribunal.

Article XIV

VALIDITY OF THE AGREEMENT

(1) This Agreement shall enter into force on the date on which the Lender informs the Borrower that the finansudvalget (the finance commission of the Danish Parliament) has approved it.

(2) This Agreement shall terminate when the entire principal has been repaid.

Article XV

ADDRESSES

The addresses to be used by the two Parties are :

The Borrower :

Ministry of Finance

Telegraphic address :

Finans Senegal

The Lender :

With respect to disbursements under the loan :

Ministry of Foreign Affairs

Secretariat for Technical Co-operation with Developing Countries

Copenhagen

Telegraphic address :

Étrangères Copenhagen

With respect to repayments of the loan :

Ministry of Finance

Copenhagen

Telegraphic address :

Finans Copenhagen

IN WITNESS WHEREOF the undersigned, duly authorized by their respective Governments, have signed this Agreement.

DONE at Dakar, on 3 April 1968, in two copies in the French language.

For the Government of Denmark :
Viggo JENSEN

For the Government of Senegal :
Jean COLLIN

ANNEX

This Agreement shall apply to deliveries by Denmark to Senegal of machinery and capital goods for :

1. A fruit-juice factory;
2. A fish-drying plant;
3. A spray-drying plant;
4. An electric battery factory;
5. Other industries.

EXCHANGE OF LETTERS

I

ROYAL EMBASSY OF DENMARK

Dakar, 3 April 1968

Sir,

With reference to the Agreement signed this day between the Government of Denmark and the Government of Senegal concerning a development loan (hereinafter called the Agreement), I have the honour to propose that the following rules shall apply with respect to the implementation of article VI of the said Agreement.

Disbursements from the loan account shall be effected in the following manner :

(1) The Danish exporter or expert and the Senegalese importer or investor shall negotiate a contract. No contract for Danish goods or services of a value of less than 100,000 Kroner, save where a final balance of a lesser amount is to be used, shall be financed under the Agreement.

(2) The contract shall be submitted to the Danish authorities, which shall decide whether it satisfies the requirements for financing under the Agreement. They shall ascertain, *inter alia*, whether :

- (a) the goods or services covered by the contract fall within the scope of the Agreement;
- (b) the capital goods in question were manufactured in Denmark or the services required will be rendered by persons carrying on business in Denmark.

(3) The Senegalese authorities shall be notified when the contract has been approved by the Danish authorities; they may then draw on the loan account with Danmarks Nationalbank in order to effect payment for the goods or services referred to in the contract. Disbursements from this account to Danish exporters shall be subject to presentation of the necessary documents after Danmarks Nationalbank has determined that the conditions for making such disbursements have been fulfilled.

If the foregoing provisions are acceptable to the Government of Senegal, I have the honour to propose that this letter and your reply shall constitute an agreement between our two Governments on this matter.

Accept, Sir, the assurance of my highest consideration.

For the Government of Denmark :

Viggo JENSEN
Ambassador of Denmark

II

Dakar, 3 April 1968

Sir,

I have the honour to acknowledge receipt of your letter of today's date which reads as follows:

[*See letter I*]

I have the honour to inform you that my Government is in agreement with the foregoing.

Accept, Sir, the assurance of my highest consideration.

For the Government of Senegal :

Jean COLLIN