

No. 12593

**SWEDEN
and
TUNISIA**

Development Credit Agreement—*Second Tunisia Water Supply Project* (with annex). Signed at Washington on 30 June 1970

Authentic text: English.

Registered by Sweden on 14 June 1973.

**SUÈDE
et
TUNISIE**

Contrat de crédit de développement — *Deuxième projet relatif à l'adduction d'eau pour la Tunisie* (avec annexe). Signé à Washington le 30 juin 1970

Texte authentique : anglais.

Enregistré par la Suède le 14 juin 1973.

DEVELOPMENT CREDIT AGREEMENT¹*(SECOND TUNISIA WATER SUPPLY PROJECT)*

BETWEEN THE KINGDOM OF SWEDEN AND THE REPUBLIC OF TUNISIA
(HEREINAFTER CALLED THE AGREEMENT)

WHEREAS the Kingdom of Sweden and the Republic of Tunisia, desiring to strengthen the traditional cooperation and cordial relations between them, have agreed that as a contribution to the economic and social development of Tunisia, the Kingdom of Sweden (hereinafter called the Lender) shall extend to the Republic of Tunisia (hereinafter called the Borrower) a development credit (hereinafter called the Swedish Credit) to assist in the financing of part of the national 1968-1973 programme for the further development of the Borrower's water supply facilities (hereinafter called the Project);

WHEREAS Société Nationale d'Exploitation et de Distribution des Eaux (hereinafter called SONEDE) will, with the Borrower's assistance, carry out the Project and, as part of such assistance, the Borrower will make available to SONEDE the proceeds of the Swedish Credit;

WHEREAS the Borrower has entered into a development credit agreement of even date² (hereinafter called the Association Development Credit Agreement) with the International Development Association (hereinafter called the Association) with regard to further assistance towards the financing of the Project; and

WHEREAS the Lender, the Borrower, the Association and SONEDE have also entered into an agreement of even date³ (hereinafter called the Joint Financing Agreement) in respect of the allocation, withdrawal and use of the proceeds of financing under the aforementioned agreements and the execution of the Project, as well as other matters;

NOW THEREFORE the Lender and the Borrower agree as follows:

Article I. THE SWEDISH CREDIT

1. The Lender shall make available to the Borrower a development credit in an amount of eighteen million five hundred thousand Swedish Kronor (SKr. 18,500,000) subject to the provisions of the Agreement, of which the attached annex forms an integral part, and to such other provisions as may be agreed upon between the Parties.

2. The Swedish Credit shall be available for withdrawal in an amount of SKr. five million from the entry into force of the Agreement and in its entirety from July 1, 1971.

Article II. USE OF THE PROCEEDS OF THE SWEDISH CREDIT

The Borrower shall cause the proceeds of the Swedish Credit to be used by SONEDE in accordance with the Agreement and the Joint Financing Agreement, to assist jointly with the credit provided for under the Association Development Credit Agreement in financing the Project. To that end, the Borrower shall relend the proceeds of the Swedish Credit to SONEDE on the same terms and conditions with respect to interest and amortizations as apply according to article V of the Agreement.

¹ Came into force on 30 June 1970 by signature, with effect from 12 November 1970, the date when the related Development Credit Agreement between the Association and Tunisia (see foot-note 2 below) became effective, in accordance with article VII (1).

² See p. 185 of this volume.

³ See p. 197 of this volume.

Article III. THE SPECIAL ACCOUNT

The amount to be made available in accordance with article I shall be paid by the Lender, as required to meet requests by the Borrower for withdrawals, to the credit of an account in Swedish Kronor opened in the books of the Sveriges Riksbank, Stockholm, acting as agent for the Lender. The account shall be denominated, Republic of Tunisia Special Account No. 5 (hereinafter called the Special Account).

Article IV. WITHDRAWAL FROM THE SPECIAL ACCOUNT

1. The Borrower shall be entitled, subject to the provisions of the Agreement and the Joint Financing Agreement, to withdraw from the Special Account such proportion of the reasonable cost of goods and services required for the Project and to be financed by the Lender and the Association as agreed in accordance with the terms of the Joint Financing Agreement.

2. The closing date for withdrawals shall be December 31, 1974, or such other date as may be agreed upon between the Parties.

Article V. SERVICE OF THE SWEDISH CREDIT

1. The Borrower shall pay to the Lender service charge at the rate of three-fourths of one per cent ($\frac{3}{4}$ of 1%) per annum on the principal amount of the Swedish Credit withdrawn from the Special Account and outstanding from time to time. The service charge shall be payable semi-annually on June 30 and December 31 in each year. The first payment shall, however, be made not before June 30, 1972. The service charge shall be computed on the basis of a 360-day year of twelve 30-day months.

2. The Borrower shall repay to the Lender the principal of the Swedish Credit withdrawn from the Special Account in semi-annual installments payable on June 30 and December 31 commencing December 31, 1980 and ending June 30, 2020, each installment to and including the installment payable June 30, 1990 to be one-half per cent ($\frac{1}{2}\%$) of such principal amount and each installment thereafter to be one and one-half per cent ($1\frac{1}{2}\%$) of such principal amount. The Borrower shall have the right to repay in advance of maturity all or any part of the principal amount of one or more maturities of the Swedish Credit specified by the Borrower.

3. The principal of and service charge on the Swedish Credit shall be paid by the Borrower in Swedish Kronor to the Sveriges Riksbank in favor of the Lender.

4. The principal of and service charge on the Swedish Credit shall be paid without deduction for, and free from, any taxes and charges and free from all restrictions imposed under the laws of the Borrower or laws in effect in its territories.

Article VI. MISCELLANEOUS

1. The Borrower shall take all necessary steps within its power to enable SONEDE to perform, and shall not take any action which would prevent SONEDE from performing the covenants, agreements and obligations of SONEDE under the Joint Financing Agreement.

2. The Borrower shall furnish to the Lender evidence of the authority of the person or persons who will, on behalf of the Borrower, take any action or execute any document under the Agreement.

3. Any notice or request under the Agreement and any agreement between the Parties contemplated by the Agreement shall be in writing. Such notice or request shall

be deemed to have been duly given or made when delivered through diplomatic channels.

Article VII. EFFECTIVE DATE; TERMINATION

1. The Agreement shall become effective after it has been signed by duly authorized representatives of the Parties and concurrently with the Association Development Credit Agreement becoming effective.

2. The Agreement and all obligations of the Parties hereunder, except those set forth in article V and in the annex, shall terminate on a date 25 years after the date of the Agreement or the date upon which the Parties shall have fulfilled all obligations, including those set forth in article V, arising from the Agreement, whichever shall be the earlier.

IN WITNESS WHEREOF, the Kingdom of Sweden and the Republic of Tunisia, acting through their representatives thereunto duly authorized, have caused the Agreement to be signed.

DONE in the District of Columbia, United States of America, on the 30th day of June, 1970, in two original copies in English.

For the Kingdom of Sweden:

[Signed]

By HUBERT DE BESCHE

For the Republic of Tunisia:

[Signed]

By S. EL GOULLI

ANNEX

The following provisions shall govern the rights and obligations under the Agreement, of which they are considered an integral part with the same force and effect as if they were fully set forth therein.

Paragraph 1. Cancellation and Suspension

1.1. The Borrower may by notice to the Lender cancel any amount of the Swedish Credit which the Borrower shall not have withdrawn, and with respect to which the Lender shall not be bound through a special commitment entered into by the Association pursuant to the Joint Financing Agreement, prior to the giving of such notice.

1.2. If any of the following events shall have happened and be continuing, the Lender may by notice to the Borrower suspend, in whole or in part, the right of the Borrower to make withdrawals from the Special Account:

- (a) A default shall have occurred in the payment of principal or service charge under the Agreement or in the payment of principal, service charge or interest under any other financial commitment entered into by the Borrower in relation to the Lender.
- (b) The Borrower or SONEDE shall have failed to meet any other obligation under the Agreement or the Joint Financing Agreement and shall not have rectified such failure after notice by the Lender.
- (c) An extraordinary situation shall have arisen which shall make it improbable that the Borrower will be able to perform its obligations under the Agreement.
- (d) The right of the Borrower to withdraw the proceeds of the Development Credit provided for in the Association Agreement shall have been suspended or terminated, in whole or in part.

- (e) The outstanding principal of the Development Credit provided for in the Association Development Credit Agreement shall have been declared, or become, due and payable in advance of the agreed maturity thereof.
- (f) The Borrower shall have cancelled any part of the Development Credit provided for in the Association Development Credit Agreement without the Borrower's having cancelled a corresponding proportion of the Swedish Credit.
- (g) A change shall have been made in the laws and statutes regarding SONEDE so as to adversely affect the ability of SONEDE to carry out its obligations under the Joint Financing Agreement, without the prior agreement between the Borrower and the Lender.

1.3. The right of the Borrower to make withdrawals from the Special Account shall continue to be suspended in whole or in part, as the case may be, until the event or events which gave rise to such suspension shall have ceased to exist or until the Lender shall have notified the Borrower that the right to make withdrawals has been restored, whichever is the earlier; provided, however, that in the case of any such notice of restoration, the right to make withdrawals shall be restored only to the extent and subject to the conditions specified in such notice, and no such notice shall affect or impair any rights, power or remedy of the Lender in respect of any other or subsequent event described in this paragraph.

1.4. If (a) the right of the Borrower to make withdrawals from the Special Account shall have been suspended with respect to any amount of the Swedish Credit for a continuous period of thirty days, or (b) by the date specified in article IV, section 2, of the Agreement as the closing date an amount of the Swedish Credit shall remain unwithdrawn from the Special Account, the Lender may by notice to the Borrower terminate the right of the Borrower to make withdrawals with respect to such amount. Upon the giving of such notice such amount of the Swedish Credit shall be cancelled.

1.5. No cancellation or suspension by the Lender shall apply to amounts with respect to which the Lender shall be bound through a special commitment entered into by the Association pursuant to the Joint Financing Agreement.

1.6. Notwithstanding any cancellation or suspension all the provisions of the Agreement shall continue in full force and effect except as in this paragraph specifically provided.

Paragraph 2. Remedies of the Lender

If any event specified in sub-paragraph 1.2 (a), (d) or (f) of paragraph 1 shall occur and shall continue for a period of thirty days, or if any event specified in sub-paragraph 1.2 (b), (c) or (g) of paragraph 1 shall occur and shall continue for a period of sixty days after notice thereof shall have been given by the Lender to the Borrower, or if the event specified in sub-paragraph 1.2 (e) of paragraph 1 shall occur, then at any subsequent time the Lender, at his option, may declare the principal of the Swedish Credit then outstanding to be due and payable immediately, and upon any such declaration such principal shall become due and payable immediately, anything in the Agreement to the contrary notwithstanding.

Paragraph 3. Failure to Exercise Rights

No delay in exercising, or omission to exercise any right, power or remedy accruing to either Party under the Agreement upon any default shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such default; nor shall the action of such Party in respect of any default, or any acquiescence in any default, affect or impair any right, power or remedy of such Party in respect of any other or subsequent default.

Paragraph 4. Arbitration

(a) Any controversy between the Parties to the Agreement and any claim by either Party against the other arising under the Agreement which cannot be settled in a satisfactory manner through diplomatic channels, within six months, will at the request of either Party be submitted to arbitration by an Arbitral Tribunal as hereinafter provided.

(b) The Parties to such arbitration shall be the Lender and the Borrower.

(c) The Arbitral Tribunal shall consist of three arbitrators appointed as follows: one arbitrator shall be appointed by the Lender; a second arbitrator shall be appointed by the Borrower; and the third arbitrator (hereinafter called the presiding arbitrator) shall be appointed by agreement of the Parties or, if they shall not agree, by the President of the International Court of Justice or failing appointment by him, by the Secretary-General of the United Nations. If either of the Parties shall fail to appoint an arbitrator, such arbitrator shall be appointed by the president arbitrator. In case any arbitrator appointed in accordance with this paragraph shall resign, die or become unable to act, a successor arbitrator shall be appointed in the same manner as herein prescribed for the appointment of the original arbitrator and such successor shall have all the powers and duties of such original arbitrator.

(d) Arbitration proceedings may be instituted under this paragraph upon notice by the Party instituting such proceeding to the other Party. Such notice shall contain a statement setting forth the nature of the controversy or claim to be submitted to arbitration, the nature of the relief sought, and the name of the arbitrator appointed by the Party instituting such proceeding. Within thirty days after the giving of such notice, the adverse Party shall notify the Party instituting the proceeding of the name of the arbitrator appointed by such adverse Party.

(e) If, within sixty days after the giving of such notice instituting the arbitration proceeding, the Parties shall not have agreed upon a presiding arbitrator, either Party may request the appointment of a presiding arbitrator as provided in sub-paragraph (c) of this paragraph.

(f) The Arbitral Tribunal shall convene at such time and place as shall be fixed by the presiding arbitrator. Thereafter, the Arbitral Tribunal shall determine where and when it shall sit.

(g) Subject to the provisions of this paragraph and except as the Parties shall otherwise agree, the Arbitral Tribunal shall decide all questions relating to its competence and shall determine its procedure. All decisions of the Arbitral Tribunal shall be by a majority vote.

(h) The Arbitral Tribunal shall afford to the Parties a fair hearing and shall render its award in writing. Such award may be rendered by default. An award signed by a majority of the Arbitral Tribunal shall constitute the award of such Tribunal. A signed counterpart of the award shall be transmitted to each Party. Any such award rendered in accordance with the provisions of this paragraph shall be final and binding upon the Parties to the Agreement. Each Party shall abide by and comply with any such award rendered by the Arbitral Tribunal in accordance with the provisions of this paragraph.

(i) The provisions for arbitration set forth in this paragraph shall be in lieu of any other procedure for the determination of the controversies between the Parties to the Agreement and any claims by either Party against the other Party arising thereunder.

(j) Service of any notice or process in connection with any proceeding under this paragraph or in connection with any proceeding to enforce any award rendered pursuant to this paragraph shall be made through diplomatic channels.
