

No. 18264

**DENMARK
and
TOGO**

**Loan Agreement concerning a loan by the Kingdom of
Denmark to the Togolese Republic (with annexes and
exchange of letters). Signed at Bonn on 18 May 1979**

Authentic text: French.

Registered by Denmark on 30 January 1980.

**DANEMARK
et
TOGO**

**Accord de prêt relatif à un prêt du Royaume du Danemark
à la République togolaise (avec annexes et échange de
lettres). Signé à Bonn le 18 mai 1979**

Texte authentique : français.

Enregistré par le Danemark le 30 janvier 1980.

[TRANSLATION — TRADUCTION]

LOAN AGREEMENT¹ BETWEEN THE GOVERNMENTS OF THE KINGDOM OF DENMARK AND THE TOGOLESE REPUBLIC CONCERNING A LOAN BY THE KINGDOM OF DENMARK TO THE TOGOLESE REPUBLIC

The Government of the Kingdom of Denmark and the Government of the Togolese Republic, desiring to strengthen the traditional co-operation and cordial relations existing between their countries, have agreed that, with a view to the economic development of Togo, a Danish Government loan shall be extended to the Togolese Republic in accordance with the following provisions of this Agreement and the attached annexes which form an integral part of the Agreement.

Article I. THE LOAN

The Government of Denmark (hereinafter called the Lender) shall extend to the Government of the Togolese Republic (hereinafter called the Borrower) a loan of 40 (forty) million Danish kroner for the purposes described in article VI below.

Article II. LOAN ACCOUNT

(1) An account designated "Government of the Togolese Republic Loan Account No. 2" (hereinafter called "Loan Account") shall be opened with Danmarks Nationalbank (acting as agent for the Lender) in favour of the Ministry of Finance and Economy (acting as agent for the Borrower). The Lender shall ensure that sufficient funds are always available in the Loan Account to enable the Borrower to effect punctual payments for the capital goods and services which may be provided under the Loan.

(2) The Borrower (or the Ministry of Finance and Economy) shall be entitled, subject to the provisions of the Agreement, to withdraw from the Loan Account amounts needed for payment for capital goods or services provided under the Loan.

Article III. RATE OF INTEREST

The Loan shall be free of interest.

Article IV. REPAYMENT

(1) The Borrower undertakes to repay the Loan in 35 semi-annual instalments of 1,110,000 Danish kroner each, the first instalment on 1 October 1986 and the last instalment on 1 October 2003, and the final balance of 1,150,000 Danish kroner on 1 April 2004.

(2) If, in accordance with the provisions of article VI, paragraph 8, the Loan has not been fully utilized, the amount of the semi-annual instalments shall be revised by agreement between the Borrower and the Lender.

¹ Came into force on 18 May 1979 by signature, in accordance with article X (1).

Article V. PLACE OF PAYMENT

The Borrower undertakes to repay the Loan to Danmarks Nationalbank in convertible Danish kroner by crediting the current account of the Danish Ministry of Finance with Danmarks Nationalbank.

Article VI. USE OF THE LOAN BY THE GOVERNMENT
OF THE TOGOLESE REPUBLIC

(1) The Borrower shall use the Loan to finance imports from Denmark of such capital goods (including transport charges from Denmark to Togo) as are to be used for the projects mentioned in annex II to this Agreement.

(2) In addition, the Loan shall be used for payment for Danish services required for the implementation of the projects mentioned in annex II, including, in particular, pre-investment studies, preparation of plans, experts engaged in the execution of projects, assembly or construction of plants or buildings, and technical and administrative assistance during the putting into operation of undertakings established by means of the Loan.

(3) All the contracts financed by means of the Loan shall be subject to approval by the Borrower and the Lender.

(4) By approving a contract concluded under the Loan, the Lender shall not assume any responsibility as to the proper execution or implementation of the contract.

Moreover, the Lender shall not be responsible for the profitable use of the goods provided and the services financed by the Loan, or for the proper execution of the plans, etc., of which such goods and services form part.

(5) A contract concluded under the Loan shall not contain any provisions under which the Danish exporter grants special credit facilities.

(6) The Loan shall be used only to pay for capital goods and services for which a contract is signed after the entry into force of the Agreement, unless otherwise agreed by the Borrower and the Lender.

(7) The Loan shall not be used for payment of customs duty, taxes or other government or public charges in any form, for example, import surcharges, duties to compensate for domestic excise taxes, charges or deposits in connection with the issue of payments licences or import licences to the Borrower.

(8) The Borrower may draw against the account with Danmarks Nationalbank referred to in article II in fulfilment of contracts approved by the Lender and the Borrower for a period of up to three years from the date on which the Agreement enters into force or from another date decided on by agreement between the Lender and the Borrower.

Article VII. NON-DISCRIMINATION

(1) The Borrower undertakes not to accord the Lender 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 this Agreement shall be effected in accordance with the principle that all ships have the right to participate in international trade in conditions of free and equal competition.

Article VIII. MISCELLANEOUS PROVISIONS

(1) Prior to the first drawing against the 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 shall be legally binding on the Borrower.

(2) The Borrower shall inform the Lender of persons authorized to act on its behalf and shall provide an authenticated specimen signature of each of them.

(3) In the case of competitive bidding for contracts to be financed under the Loan the Borrower shall send the Lender for transmittal to potential bidders all material relevant to the bidding.

(4) Any notice, request or arrangement under this Agreement shall be in writing.

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 provided for in the domestic law of the Borrower. The Agreement shall be exempt from any charges under the present or future laws of the Borrower in connection with the issue, conclusion, registration or entry into force of the Agreement or otherwise.

Article X. DURATION OF THE AGREEMENT

(1) This Agreement shall enter into force on the date of its signature.

(2) The Agreement shall terminate as soon as the entire principal has been repaid.

Article XI. ADDRESSES

The following addresses are specified for the purposes of this Agreement:

The Borrower:

Ministère des finances et de l'économie
Lomé, Togo

Telegraphic address:

MINIFINANCES LOME

The Lender: with respect to disbursements:

Ministère des affaires étrangères
Division de la coopération internationale pour le développement
Copenhague

Telegraphic address:

ETRANGERES COPENHAGUE

The Lender: with respect to the transmittal of bidding materials:

Ministère des affaires étrangères
Division des relations commerciales
Copenhagen

Telegraphic address:

ETRANGERES COPENHAGUE

The Lender: with respect to the repayment of the semi-annual instalments:

Ministère des finances
Copenhagen

Telegraphic address:

FINANS COPENHAGUE

IN WITNESS WHEREOF the representatives, duly authorized by the Lender and the Borrower, have signed the Agreement in two copies in the French language at Bonn, on 18 May 1979.

For the Government of the Kingdom of Denmark:

T. OLDENBURG

For the Government of the Togolese Republic:

ASSIONGBON AGBENOU

ANNEX I

The following provisions shall apply to the rights and obligations arising from the Agreement concluded between the Governments of the Kingdom of Denmark and the Togolese Republic regarding a Danish State loan to Togo (hereinafter called the Agreement). They are considered an integral part of the Agreement with the same validity and effect as if they were stipulated therein.

Article I. CANCELLATION AND SUSPENSION

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

2) In case of failure on the part of the Borrower to carry out any obligation or decision pursuant to the Agreement, the Lender shall have the right to suspend wholly or in part the right of the Borrower to draw on the loan account. Should the circumstance which entitled the Lender to suspend the drawing right of the Borrower continue to obtain for over 60 days after the Lender has given notice of the suspension to the Borrower, the Lender may, at any time thereafter, require immediate repayment of the sum withdrawn under the loan notwithstanding any provision to the contrary in the Agreement, unless the cause of suspension ceases to exist.

3) Notwithstanding any cancellation or suspension, all the provisions of this Agreement shall retain their validity and effect, except as otherwise expressly provided in this article.

Article II. SETTLEMENT OF DISPUTES

1) Any dispute between the Lender and the Borrower 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 president of the tribunal, who shall be a national of a third country, shall be elected by agreement between the Lender and the Borrower. Should the Parties fail to agree on the election of the President 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 president of the arbitral tribunal.

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

ANNEX II

I. The loan shall be used for the implementation of the following projects: partial financing of equipment for a diesel power plant of approximately 40 MW at Lomé.

II. Any proposal from the Government of the Togolese Republic involving substantial changes in the plans for the implementation of the above-mentioned projects, and any proposal by the Government of the Togolese Republic involving the replacement of one or more of these projects by new projects, shall require the approval of the Government of the Kingdom of Denmark.

EXCHANGE OF LETTERS

I

Bonn, 18 May 1979

Sir,

With reference to the Agreement signed this day between the Governments of the Kingdom of Denmark and the Togolese Republic regarding a development loan (hereinafter called "the Agreement"), I have the honour to propose that the following rules shall apply to the implementation of article VI of the Agreement:

Disbursements from the Loan Account shall be effected in the following manner:

(1) The Danish exporter or expert and the Togolese importer or investor shall conclude a contract which shall in the last instance be approved by the Togolese and Danish authorities. No contract for an amount less than 200,000 Danish kroner, except in the case of utilization of a final balance less than the said amount, shall be financed under the Agreement.

(2) The Government of the Togolese Republic shall submit to the Danish Ministry of Foreign Affairs copies of contracts drawn up under the Agreement. The Ministry of Foreign Affairs shall ascertain, *inter alia*, whether:

(a) The goods or services covered by the contract fall within the scope of the Agreement, and whether

(b) The capital goods in question were manufactured in Denmark or the services required will be rendered by persons carrying on business in Denmark, and it shall inform the Government of the Togolese Republic of its decision.

(3) When the contracts have been approved, the Government of the Togolese Republic may draw on the Loan Account opened with Danmarks Nationalbank in order to effect payment for the consignment of goods or the services referred to in the contract. Disbursements from this account to pay Danish exporters or experts shall be subject to presentation of the necessary documents after Danmarks Nationalbank has determined that all the conditions for making such disbursements have been fulfilled.

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

Accept, Sir, etc.

For the Government of the Kingdom of Denmark:

T. OLDENBURG

His Excellency Mr. Assiongbon Agbenou
Ambassador of Togo
Bonn

II

Bonn, 18 May 1979

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, etc.

For the Government of the Togolese Republic:

ASSIONGBON AGBENOU

His Excellency Mr. T. Oldenburg
Ambassador of Denmark
Bonn