



TWENTY-FIRST ITEM ON THE AGENDA

Matters relating to the Administrative Tribunal of the ILO**Recognition of the Tribunal's jurisdiction by the Centre for the Development of Enterprise (CDE)**

1. By a letter dated 24 November 2006 (see appendix), Mr Hamed Sow, Director of the Centre for the Development of Enterprise (CDE), informed the Director-General of the International Labour Office that the ACP-EC Committee of Ambassadors had decided, in adopting the Centre's new Staff Regulations, to recognize the Tribunal's jurisdiction in accordance with article II, paragraph 5, of its Statute.
2. The CDE was established as the Centre for Industrial Development under Article 36 of the Lomé Convention, signed on 28 February 1975 by the African, Caribbean and Pacific States (ACP), on the one hand, and the European Economic Community (EEC) and its Member States, on the other. The CDE currently operates on the basis of Annex III of the ACP-EC Partnership Agreement signed at Cotonou on 23 June 2000, which entered into force on 1 April 2003 for a period of 20 years. In addition to the European Community, the Agreement is binding on a large number of States of the ACP group and of the Member States of the European Union.
3. The CDE is financed by a regular budget constituted by an annual contribution from the European Community, notably the European Development Fund (EDF). The CDE is administered by the ACP-EC Committee of Ambassadors, the Executive Board and the management.
4. The CDE's main activity is to support the implementation of private sector development strategies in the ACP countries by providing non-financial services to their companies and businesses, as well as to joint initiatives set up by economic operators of the Community and of the ACP States. The CDE aims to assist private ACP enterprises to become more competitive and to facilitate and promote partnerships between ACP and EU enterprises. It also assists with the development of business support services through support for capacity building in private sector organizations and support for providers of technical, professional, management, commercial and training services. It provides assistance for investment promotion activities and for initiatives that contribute to the development and transfer of technology and know-how and the promotion of best practices in all aspects of

business management. The CDE is also called upon to inform the ACP private sector about the provisions of the Cotonou Agreement and about the product standards and quality that are required in external markets, and to provide European companies and private sector organizations with information on business opportunities and modalities in ACP countries.

5. According to article 1 of Decision No. 8/2005 of the ACP–EC Committee of Ambassadors on 20 July 2005 on the Statutes and rules of procedure of the CDE, the Centre is a joint ACP–EC technical body which has legal personality and enjoys “the most extensive legal capacity accorded to legal persons of the same kind” in all parties to the Cotonou Agreement. The Cotonou Agreement also provides for the Centre to enjoy the customary privileges, immunities and facilities. The Centre’s headquarters is in Brussels, and it can set up decentralized offices in every ACP region. The headquarters agreement concluded on 29 November 1978 between the Centre for Industrial Development and Belgium, which since 2004 has been extended to the CDE as its successor, confers on it the privileges and immunities enjoyed by international organizations in Belgium.
6. The CDE currently has a staff of 66. Their conditions of employment are set out in the Staff Regulations of the Centre, adopted by the ACP–EC Committee of Ambassadors on 27 July 2005. Subject to the agreement of the ILO Governing Body, the Regulations provide for the possibility of referring any dispute between the staff, other than local staff, and the CDE to the Administrative Tribunal of the ILO.
7. In order to be eligible for approval under article II, paragraph 5, of the Tribunal’s Statute, the CDE must be considered either to be an intergovernmental organization (*organisation de caractère interétatique*) or to fulfil certain criteria set out in the annex to the Statute. According to the available information, the CDE is an international organization – assimilated to an intergovernmental international organization – established by an international treaty, having objectives that respond to the general interest of the international community, and is endowed with functions of an ongoing nature. In addition, the CDE is not required to apply any national law in its relations with its officials and enjoys immunity from legal process in the host country. The financial contributions of members that are provided for in the Cotonou Agreement guarantee the stability of its budgetary resources.
8. The Tribunal’s jurisdiction under article II, paragraph 5, of its Statute already extends to 49 organizations other than the ILO. The recognition of the Tribunal’s jurisdiction by other organizations entails no additional cost to the ILO, since the organizations against which complaints are filed are required by the Statute to bear the expenses of sessions and hearings and to pay any award of compensation made by the Tribunal. These organizations also contribute, in amounts proportionate to the number of their staff, to much of the running costs of the Tribunal’s secretariat.
9. ***In the light of the above, the Committee may wish to recommend that the Governing Body approve the recognition of the Tribunal’s jurisdiction by the Centre for the Development of Enterprise (CDE), with effect from the date of such approval.***

Geneva, 8 February 2007.

Point for decision: Paragraph 9.

Appendix

Mr Juan Somavia
Director-General
International Labour Organization
4, route des Morillons
1211 Geneva 22
Switzerland

Brussels, 24 November 2006

Re.: Recognition of the jurisdiction of the ILO Administrative Tribunal

Sir,

Following an exchange of correspondence with the Clerk, Ms Contet, and in my capacity as Director of the Centre, I hereby request recognition of the competence of the Administrative Tribunal of the ILO.

The Centre for the Development of Enterprise (hereafter “CDE”) is an international organization established jointly by the ACP Group of States (Africa, Caribbean and Pacific) and the European Union (EU), in the context of the Lomé Convention – since replaced by the Cotonou Agreement signed in July 2000.

The headquarters of the CDE, which currently has a staff of 66, is in Brussels, Belgium. A headquarters agreement was concluded with the Kingdom of Belgium in 1978.

On 27 [error in original] July 2005, the ACP–EC Committee of Ambassadors adopted the new Staff Regulations of the CDE.¹ This legislation is based on a proposal from the European Commission of the EU and contains many analogies with the EU’s Staff Regulations and rules for local staff.

Chapter III of the Staff Regulations of the CDE concerns appeals provisions and provides for a sequence of two administrative procedures² and, as a last resort, the possibility of reverting to the Administrative Tribunal of the ILO.³

Consequently, in accordance with article II, paragraph 5, of the Statute of the Administrative Tribunal of the ILO and the annex to the Statute, I have the honour to inform you that, in adopting the Staff Regulations of the CDE, the Committee of Ambassadors recognized the jurisdiction of the Administrative Tribunal of the ILO in any dispute regarding the legality of acts adversely affecting the staff and deriving from an alleged misunderstanding, in form or in substance, of the contracts of CDE staff members, including the Staff Regulations as a whole, the internal rules on the transposition of those Regulations and the conditions laid down in the Statute of the Tribunal, and accepted the Tribunal’s rules of procedure.

¹ Decision No. 9/2005 of the ACP–EC Committee of Ambassadors of 27 July 2005 concerning the Staff Regulations of the Centre for the Development of Enterprise (CDE), *Official Journal* of the EC, L 348, 30/12/2005, pp. 54-73.

² Articles 66 and 67, para. 1, of the Staff Regulations.

³ Article 67, paras. 2 et seq., of the Staff Regulations.

I would be grateful if you would kindly submit this formal request to the ILO Governing Body and invite it, in accordance with article II, paragraph 5, of the Statute, to approve the declaration recognizing the jurisdiction of the Tribunal embodied in the Staff Regulations of the CDE.

Copies of the following documents are attached for your information:

- (a) ACP–EC Partnership Agreement (Cotonou Agreement);⁴
- (b) Staff Regulations of the Centre for the Development of Enterprise (CDE);
- (c) headquarters agreement concluded between the Centre and the Kingdom of Belgium;
- (d) internal rules clarifying the principles embodied in the Staff Regulations.⁵

Kindly accept, Sir, the expression of my cordial greetings.

(Signed) Hamed Sow,
Director.

⁴ Notably Annex III.

⁵ These rules have been approved by the CDE's Executive Board and have been submitted to the ACP-EC Committee of Ambassadors for approval.