

April 2018

A renewed partnership with the countries of Africa, the Caribbean and the Pacific

Impact assessment (SWD(2016) 380, SWD(2016) 381 (summary)) accompanying the joint communication by the European Commission and the High Representative to the European Parliament and the Council – A renewed partnership with the countries of Africa, the Caribbean and the Pacific (JOIN(2016) 52 final), and a Commission recommendation for a Council decision authorising the opening of negotiations on a Partnership Agreement between the European Union and countries of the African, Caribbean and Pacific Group of States (COM(2017) 763 final)

Background

This note seeks to provide an initial analysis of the strengths and weaknesses of the above-mentioned [impact assessment](#) (IA), which originally accompanied the [joint communication](#) on a renewed partnership with the countries of Africa, the Caribbean and the Pacific, published on 22 November 2016. Subsequently, on 12 December 2017, the Commission adopted a [recommendation](#) for a Council decision authorising the opening of negotiations with the countries of the Cotonou Agreement, which was referred to Parliament's Committee on Foreign Affairs (AFET). The Commission considers the analysis and conclusions of the impact assessment conducted in 2016 for the joint communication to be valid for the December 2017 recommendation for the opening of negotiations, which are to begin officially before 1 September 2018.

The 2000 Cotonou Partnership Agreement (CPA) between the EU and the 79 countries of the African, Caribbean and Pacific regions (ACP) is due to expire in February 2020. According to the Commission, the ambitions and interests of both the EU and ACP countries have evolved since the CPA was signed almost twenty years ago. As new strategic frameworks and agreements have come into force alongside the ACP agreement, such as the EU's Global Strategy on Foreign and Security Policy and the Paris Climate Change agreement, they have also defined the EU's relations with the ACP countries. Moreover, the three regions covered by the ACP agreement have developed very differently to one other over the years.

In the light of these developments, the Commission proposed a new post-Cotonou framework – a 'renewed partnership' – with the African, Caribbean and the Pacific countries, as indicated in the Commission's 2017 annual work programme. The Commission explains that the proposed new partnership will better define the EU's strategic objectives and interests in the regions of the Cotonou agreement, as well as take into account the specificities of each region. The legal status of the new partnership, as well as the essential institutional set-up are considered particularly important in terms of the implementation of the proposed agreement.

Problem definition

The Commission's impact assessment refers to two key problems, namely the weak state of cooperation between EU and ACP countries on the global scale and the divergence of interests between the three ACP regions. There are also other problems mentioned, such as the insufficient implementation of some provisions (particularly in the area of migration) and the fact that the joint institutions and specific means of cooperation have not worked

as expected. Although the Commission provides 'intervention logic' - an overview of the problems, issues and drivers (IA, p. 21) - the difference and links between the three is not always apparent. Moreover, the language used for the description of the problem is rather vague. The impact assessment would certainly have benefited from a clearer presentation of the problem, preferably structured as a problem tree.

With regard to the contents of the problem section, the lack of examples and analysis of the specific issues in each of the three ACP regions, beyond the general statements, does not allow the reader to grasp the problem. For example, the IA mentions that, in some cases, the level of participation of several non-state actors has been too limited and 'varies largely from one country to another'. At the same time, it states that 'in a number of countries, EU support has been particularly successful in contributing to strengthening NSAs and in developing their capacity to participate in policy dialogue with government' (IA, p. 17). While both these conclusions may well be correct, without more detailed examples it is difficult to compare them and therefore reach a more substantive understanding. Among the problem drivers mentioned, there are some for which one may wonder whether they require EU-level action at all, such as for example 'insufficient recognition of deepened regional dynamics within and beyond ACP' (IA, p. 15). The Commission also points out that 'some of the issues of pivotal relevance for the EU require stronger involvement of a range of actors placed outside of the ACP region' (IA, p. 15). This statement hardly explains exactly where the problem lies. Rather, it raises more questions, for example as to whether the EU should expand the Cotonou agreement beyond the ACP region, which is clearly beyond the scope of the impact assessment. Furthermore, the IA report stays at a rather abstract level when describing a 'changing global context' (IA, p. 7). Many of the points made in that section are fairly general and poorly linked to the Cotonou agreement as such, for example that the world is becoming more interdependent and interconnected and is facing 'new security challenges'.

Overall, it must be said that the presentation of the problem would certainly have benefited from a more detailed analysis focused on the achievements and shortcomings of the current agreement and on the problems that the EU faces in relation to the ACP countries rather than in the world in general. The Commission mentions that an [evaluation](#) of the CPA was indeed conducted, but it refers to its findings in a rather superficial way (IA, p. 8). It would have been helpful if the IA had referred more thoroughly to the results of the evaluation in the presentation of the problem and in general throughout the report.

Objectives of the proposal

The **general** objective of the proposal is to shape relations with partners in Africa, the Caribbean and the Pacific so 'as to best achieve the EU's strategic interests' (IA, p. 19).

The **specific** objectives are the following:

- to foster sustainable development in ACP countries;
- to enhance EU security and economic prosperity;
- to encompass evolving regional dynamics within and beyond ACP;
- to ensure stronger alliances in addressing global challenges;
- to strengthen inclusive participation of stakeholders at various levels.

The **operational** objectives include reinforcing trade cooperation, private investment and technological cooperation; promoting better managed migration flows; and promoting effective and efficient rules based on multilateralism (IA, p. 68). Regrettably, these operational objectives are not assessed together with the preferred option, nor are they specific, measurable or time-bound as advised by the Commission's better regulation guidelines.

Range of options considered

The IA presents two options, which were considered for the impact assessment, and three discarded options.

The three discarded options are:

1. Ad hoc agreement with thematic approaches

Under this option, the EU would pursue a thematic approach and abandon the EU-ACP framework. Instead, cooperation would be maintained on specific topics with the most relevant countries. According to the Commission, this option would result in a loss of positive aspects of the current framework and would weaken the role of the EU at the global level.

2. Partnership with least developed countries only

Under this discarded option, the EU would pursue partnerships with the least developed countries (LDCs) as a group that would combine the LDCs from the ACP region and the world at large. This would enable the EU to have targeted actions for the poorest countries in the world. At the same time, it would require the EU to pursue similar agreements for the other categories of countries (middle-income countries) in order to play its global role in a comprehensive way.

3. Partnership with African countries only

This discarded option proposed to bring together all African countries under one agreement. It is similar to discarded option 2 in the sense that it would require the EU to adjust its relations with the other groups of the ACP countries (the Caribbean and the Pacific) in order to sustain its global role.

The Commission explains that although each of the discarded options had merits, they all have 'evident limitations in the achievement of all identified objectives'. Given that their limitations are rather apparent, it is not clear why the Commission identified and formulated these options in the way that it did. It is also not clear to what extent these options were assessed before they were discarded and at what point during the assessment process the Commission chose to abandon them.

The two considered options are listed below with the preferred option highlighted:

Option 1 – no partnership

Under this option, future relations with the ACP countries after 2020 will be based on existing EU thematic and regional initiatives (e.g. EU Global Strategy, sustainable development goals, regional strategies for African, Caribbean and Pacific countries). In the absence of an overall framework due to the expiry of the current agreement, political dialogue with these countries will be based on ad-hoc arrangements, and specific instruments such as the African Peace Facility (APF) will cease to exist. Various other strategies that the EU has for the ACP regions will come to replace the CPA framework, namely the Joint EU-Africa Strategy, the Joint Caribbean EU Partnership Strategy, and the EU Strategy for a Strengthened Partnership with Pacific Islands. Under this option, national governments will remain the main partners for the EU together with regional inter-governmental organisations. The financing of cooperation with the ACP countries could be continued under the European Development Fund, as is currently the case. Moreover, new financing instruments could be created.

This option was supported by some stakeholders (not identified in the IA) who claimed that the three regions of the CPA framework are too different from each other and that maintaining a relationship with such a heterogeneous and wide group of countries would not be the best policy choice for the EU (IA, p. 25). At the same time, a number of stakeholders expressed the opinion that the current format does not need to be dismantled but rather improved. Regrettably, the IA does not provide more details regarding the stakeholders who expressed this viewpoint.

Option 2 – new partnership with ACP countries

Under this option, a new agreement with the ACP countries would be adopted, therefore building on the views of those stakeholders who advocated the need for a renewed and improved ACP agreement. This alternative is defined under three sub-options as follows:

Option 2.1 – a revised common agreement for all ACP countries

Under this option the current agreement is preserved. It will not be structured along the three existing pillars (development cooperation, political cooperation, economic and trade cooperation), however. Instead, it will include 'common values, principles and actors' as well as a wide range of cooperation areas applicable to all ACP countries and some new provisions for collaboration in the international area. It is worth noting that the IA report does not detail these common values and principles.

Option 2.2 – separate regional agreements (Africa, Caribbean and the Pacific)

As the Commission sees it, option 2.2 entails separate agreements with each of the three regions. The Commission indicates that each new regional partnership will go beyond the three pillars of the CPA, however no further explanation is provided as to what this means in practice. Each partnership will include a first section identifying common values principles and actors and a second section which would specify 'a targeted number of areas of cooperation' as is the case under Option 2.1.

Option 2.3 – three separate regional partnerships under a common umbrella

This option envisages one agreement with ACP countries but two components, in the form of an overarching umbrella of common values, principles and interests, and three separate regionalised partnerships with the countries in the three regions.

All three sub-options share the same general goals, such as promoting sustainable and inclusive development, enhancing EU interests of security and prosperity and tackling global challenges. They also identify the same range of stakeholders as being 'empowered NSAs, local authorities, and parliaments from ACP countries, regional organisations, third countries and private development actors'. It is rather difficult to understand precisely how these three sub-options differ in content and in practice. The Commission does not explain the difference between having common values and principles under a common umbrella (option 2.3), or embedding them in each partnership agreement separately (options 2.1 and 2.2).¹ Furthermore, as the three sub-options are similar in all but their architecture, it would have been helpful if the Commission had explained how the architecture – i.e. the legal status and the institutional mechanism – matter in this regard. The range of options (effectively limited to just one main approach) is very narrow, as the Commission mostly deliberates on the sub-options of option 2, leaving option 1 largely out of the range of realistic options.

The Commission identifies the **preferred option as option 2.3**. According to the Commission, this would enable the preservation of all the positive elements of the current CPA and 'will put in place the conditions for the EU to increase its impact on the international arena and improve the prospects for implementation of the Agenda 2030 goals' (Executive Summary).

Scope of the impact assessment

The IA assesses the options for their political, social, economic, environmental and administrative impacts. With regard to social impacts, the Commission identifies areas such as 'sustainable and inclusive development', 'migration-development nexus', and 'enhanced participatory approach to cooperation'. For political impacts, the following areas are examined: 'peace and security', 'democratic governance and human rights' and 'alliance building at the global level'. As far as the economic impacts are concerned, the Commission considers the following: 'trade cooperation', 'macro-economic stability, investment returns and private sector development'. For environmental impacts, 'environmental protection and climate change' are discussed. Finally, budgetary and administrative impacts are presented as such, with no specific area identified.

As far as the social impacts are concerned, option 1 (absence of a new agreement) would not lead to positive social impacts such as the timely achievement of the 17 sustainable development goals. Option 2, on the other

¹ Under option 2.3 the umbrella would have to be ratified by all EU and ACP countries; under options 2.1 and 2.2 each agreement is to be ratified by EU Member States and the 'A', 'C', or 'P' countries.

hand, will allow the EU to be 'more responsive' to different ACP countries' needs, ensure the involvement of all stakeholders, and serve the EU interests by creating more opportunities for European firms in the delivery of global public goods. The Commission assumes that the existence of a new partnership creates the favourable conditions needed to translate into significant positive social gains, such as better employment for migrants and better social conditions in host countries (thus reducing migration pressure on the EU). The Commission explains that the CPA's Article 13 provides a basis for a political dialogue on migration and human rights. The implementation of this article has been uneven and the Commission maintains that it requires review. Under option 1, this would obviously not be possible and would lead to abolishing the principles and legal obligations that were agreed between the EU and the 79 CPA countries. Under option 2, the scope of Article 13 would be widened to become more comprehensive. In this regard sub-options 2.1, 2.2 and 2.3 differ in terms of whether the scope would cover all the ACP countries or whether there would be regional-specific arrangements instead.

With regard to political impacts, under option 1, the EU would have to rely on ad hoc agreements in order to achieve its strategic goals for peace and security. The IA report states that 'crucial commitments to fighting international terrorism and preventing the proliferation of weapons of mass destruction would be lost' (IA, p. 43). It is not very clear how the expiry of the CPA agreement would lead to this, as these issues are not the primary scope of the current CPA. Of the three sub-options, it is sub-option 2.3 that is said to offer a 'good framework' for implementing the comprehensive approach to peace and security, because 'it combines the advantages of both thematic and geographic approaches' (IA p.44). The Commission does not elaborate much further in any specific terms on how this can be achieved. As far as human rights are concerned, option 1 is presumed to have negative impacts because the absence of a partnership with the countries where human rights violations are increasing would be perceived as a loss of the EU's long-standing commitment to promote the 'essential elements' of the CPA and would seriously damage its reputation of a 'normative actor' (IA, p.66). Under option 2.1 there will be a possibility to have flexible and participatory approaches to human rights at the national level. This advantage is also integrated into option 2.3. The Commission maintains, however, that agreeing on the same level of obligations on human rights as in 2000 (when the CPA was signed) may prove to be challenging irrespective of which option is chosen. This is because, admittedly, the EU does not have the same influence with regard to many of the ACP countries as it did twenty years ago.

When it comes to the economic impacts, most importantly concerning trade cooperation, the Commission's assessment discounts option 1 on the grounds that, in the absence of a holistic agreement, the EU would most likely have to renegotiate individual economic partnership agreements with the CPA countries. There would also be no instrument to address trade issues at all at the ACP level. Under options 2.1 to 2.3, the impacts on trade relations differ: options 2.1 and 2.3 would have positive impacts (due to the presence of EU-ACP political dialogue) and option 2.2. would have a negative impact, similar to option 1.

In terms of environmental impacts, option 1 has a limiting impact on environmental cooperation, particularly with regard to the implementation of the 2030 Agenda and the Paris Agreement. Under options 2.1 to 2.3, positive impacts are to be expected, with option 2.3 presenting the strongest potential for positive impacts both at the global and regional levels.

Overall, the assessment of impacts appears to be based on qualitative analysis and on somewhat linear assumptions, particularly when it comes to the nature (legally binding or voluntary) of the preferred option. As the Commission explains, the deliberations over whether the new agreement should be legally binding were mostly informed by the input from the stakeholders. Some stakeholders (not identified in the report) were advocating more flexibility for the EU's cooperation with the ACP countries. The reasoning behind this was that a legally binding agreement would not be fully implemented in any case. Other stakeholders, notably the EU delegations, were in favour of a legal agreement as this would enhance the EU's image as a normative actor in the field of human rights and good governance, but also trade. In the final analysis, the Commission favours the legally

binding nature of the preferred option, arguing that this is a realistic approach, given 'the longstanding relation through which trust and consensus over essential elements and values has been built' (IA, p. 67).

Subsidiarity / proportionality

The IA mentions Articles 209(2) and 217 of the Treaty on the Functioning of the European Union (TFEU) as the legal basis for the proposal. Both articles specify that the EU may conclude agreements with third countries and competent international organisations. The IA also mentions Article 21 of the Treaty on European Union (TEU), which defines the EU's objectives in external action.

Budgetary or public finance implications

The financing of the new agreement would be covered by the European Development Fund (EDF), which is fed by direct contributions from EU Member States according to a contribution key, and governed by its own financial rules (IA, p. 6). However, this is not dealt with within the framework of the impact assessment under review. The Commission explains that the 'reasons for this are the specific focus of the impact assessment on the way the relations [between the EU and ACP countries] should be best organised and the fact that the European Development Fund (EDF) instrument is part of the discussion on the new set of financial instruments for external action due in 2020 under the new multiannual financial framework (MFF).' (IA p. 73). The Commission mentions that under the current CPA, the EDF allocations earmarked to support the ACP joint institutions are €1.5 million per year and €8 million to support the ACP secretariat. Under option 1, these costs would naturally disappear. Under options 2.1 to 2.3, the costs are comparable to that of the current CPA.

SME test / Competitiveness

According to the Commission, EU-ACP trade cooperation is expected to bring substantial benefits to European firms, including small and medium-sized enterprises (SMEs) due to increased access to growing ACP markets. The Commission has not conducted any more thorough assessment of SMEs. The importance of EU-ACP relations for European SMEs is not clear from the report. It would therefore have been useful in this regard if the Commission had elaborated further on the place and role of the SMEs.

Impacts on third countries

Although the impact assessment concerns the future of the Cotonou agreement between the EU and the ACP countries, the Commission does not provide any substantial analysis on the expected costs and benefits for the ACP countries involved. Understandably, as the ACP framework is comprised of the EU and 79 third countries, it would be very challenging to analyse the impacts on each country. However, given the importance of certain impacts such as human rights, migration and trade, and the fact (stressed repeatedly by the IA) of geographic fragmentation of the ACP framework, the assessment appears to be heavily EU-centred. Furthermore, it is arguable as to whether it provides a sufficiently balanced analysis to effectively inform the EU's course of action on the matter.

Simplification and other regulatory implications

The Commission notes that the proposal directly contributes to other political frameworks for EU action such as the EU Global Strategy and the EU Consensus for Development. It is not clear whether the proposal leads to any simplification or significant regulatory implications.

Quality of data, research and analysis

In preparing the impact assessment, the Commission relied on the evaluation of the effectiveness of the current agreement. The analysis that this evaluation, and subsequently the impact assessment, were based upon is predominantly qualitative. The IA report also mentions that the analysis on specific topics was provided by

external consultants who analysed the responses received during the open consultation. The report does not provide further information regarding these studies. It would have been useful if the Commission had presented the research and analysis underlying the impact assessment in more detail. In the event, it is nearly impossible to verify any of the assumptions regarding the impacts of options, even though these assumptions are fairly general. The Commission also seems to be attaching considerable importance to the input of the stakeholders (for example, regarding the legal status of the proposed options). It could perhaps have corroborated the stakeholder input with other sources of expertise.

Stakeholder consultation

According to the IA, stakeholders were consulted through a public consultation which was launched in October 2015 and ran for twelve weeks until 31 December 2015. The outcome of the consultation is reviewed in Annex 3 of the IA in line with the better regulation guidelines. The consultation survey was structured around the themes of the CPA (e.g. peace and security, migration, environment) and not around the options under assessment. The Commission received responses from 15 EU Member States and 17 non-EU states representing a wide range of CPA countries. In terms of stakeholder categories, the majority of responses (103 in total) came from governments (41), civil society organisations (23) and industry associations (16). The presentation of the responses could have been made more precise, as the Commission does not provide details on which group of stakeholders expressed certain criticisms or expectations. The Commission also appears to have perhaps relied more on the input from the delegations than other groups of stakeholders, the delegations being the only stakeholders mentioned as such.

Monitoring and evaluation

The IA proposes a monitoring and evaluation system that covers the policy areas of the ACP agreement such as trade and investment, climate action and migration. In all, the monitoring is proposed to rely on the existing tools and mechanisms for review of the 2030 Agenda, the Global Partnership and Effective Development Cooperation and the EU International Cooperation and Development Results Framework. For the specific objective 2, the Commission proposes to use the indicators used for evaluation of the implementation of the Global Approach to Migration and Mobility (GAMM). For objectives 3, 4 and 5, the IA proposes a series of 'ad-hoc indicators', complemented by 'global and regional indicators such as the world governance indicators' (IA p.70). Regrettably, Annex 5, which lists the indicators, does not provide more specific information as to how they will be integrated into the proposed new ACP agreement. The indicators are not option-specific and not time-specific. Some of them seem rather weak, as does, for example, an indicator for objective 4 – increased role of the EU in international affairs and better external perception of the EU as a global actor. It is not at all clear how such indicators will be monitored. The Commission does not mention whether a sustainability impact assessment will be conducted in the course of negotiations.

Commission Regulatory Scrutiny Board

The Commission's Regulatory Scrutiny Board (RSB) issued a [negative opinion](#) on 8 June 2016. In the RSB's opinion, the impact assessment contained shortcomings such as lack of sufficient clarity of the policy context, the weakness of the intervention logic of the report, i.e. the need to ensure consistency between problem definition, objectives and options. The RSB also asked the lead Directorate-General, DG DEVCO, to clearly assess the policy choices to be considered in the impact assessment and the implications of different options.

The RSB considered a revised version of the IA submitted on 29 July 2016 and issued a [positive opinion](#) by written procedure. The Board's positive opinion was given on the understanding that the report would be improved in line with its recommendations. The Board identified four main areas for improvement, namely policy context and objectives, options, the role of the European Development Fund, and the impacts (for specific objective 1). The IA report describes in its Annex 1 the changes that were made according to the recommendations of the RSB, including a 'clearer spelling out of the objective and better clarification of the link between the problems, objectives and options' (IA, p. 73). However, more thorough revisions could have been expected as much of the

criticism expressed by the RSB is still applicable to the final version. In particular, the link between the IA report and the supporting expertise, most importantly the evaluation of the existing agreement, could have been strengthened further, as well as the presentation of options (as three options were discarded and only two considered).

Coherence between the Commission's proposal and IA

The proposal appears to follow the recommendations of the IA, namely those of the preferred option 2.3.

Conclusions

The Commission provides a convincing argumentation regarding the importance of the relationship between the EU and ACP countries after the expiry of the Cotonou agreement. Despite the magnitude of the current framework comprising the EU and 79 ACP countries, and the understandable difficulty to assess the impacts on all of them, one could have expected the impact assessment to provide a more thorough analysis of the problem and of the options proposed to solve it, which appear to be rather narrow. Furthermore, the IA report could have made greater use of the findings of the ex-post evaluation and other expertise available, and could have provided a more balanced review of the consultations with the stakeholders.

This note, prepared by the Ex-Ante Impact Assessment Unit for the European Parliament's Committee on Foreign Affairs (AFET), analyses whether the principal criteria laid down in the Commission's own Better Regulation Guidelines, as well as additional factors identified by the Parliament in its Impact Assessment Handbook, appear to be met by the IA. It does not attempt to deal with the substance of the proposal. It is drafted for informational and background purposes to assist the relevant parliamentary committee(s) and Members more widely in their work.

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Manuscript completed in April 2018. Brussels © European Union, 2018.

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