

RELATIONS WITH THE COUNTRIES OF AFRICA, THE CARIBBEAN AND THE PACIFIC: FROM THE YAOUNDÉ AND LOMÉ CONVENTIONS TO THE COTONOU AGREEMENT

Relations between the EU and the African, Caribbean and Pacific (ACP) countries were formalised over time through the conclusion of several agreements or conventions. These are the conventions of Yaoundé, Lomé and Cotonou. These agreements had as their primary goal the eradication of poverty through increased integration of the ACP countries into the world trading system and have gradually integrated significant elements of good governance, political dialogue and economic cooperation.

LEGAL BASIS

Article 217 TFEU).

OBJECTIVES

Following the expiration of the fourth Lomé Convention on 29 February 2000, the partnership agreement signed in Cotonou, Benin, on 23 June 2000 established a new 20-year framework for future relations between the EU and ACP countries. Just like the Lomé Convention, the Cotonou Agreement aims to improve the standards of living and economic development of the ACP countries and establish close cooperation with them on a spirit of true partnership. The new agreement, however, differs from the previous conventions in that its coverage extends beyond the traditional range of development issues. Its main aim is the eradication of poverty through fuller integration of the ACP countries into the world trading system. It also reinforces the institutional and political dimension of ACP–EU relations, especially in crucial areas such as human rights, democracy and good governance. The first revision of the agreement, in 2005, was designed to improve political dialogue, to enshrine all parties’ recognition of the jurisdiction of the International Criminal Court and to simplify procedures for the allocation of aid. References to the aims of curbing the proliferation of weapons of mass destruction and combating terrorism were also added to the agreement. The second revision of the agreement, signed in March 2011 and currently undergoing ratification, has included the following elements: revamping of trade provisions, after the expiry of the previously existing trade preferential regime specific for ACP countries; enhanced democratic and parliamentary dimension; inclusion of the African Union as an actor or the partnership; inclusion of aid effectiveness principles as a fundamental principle guiding the cooperation; and inclusion of measures to develop good fiscal governance in the ACP countries.

ACHIEVEMENTS

A. Previous agreements

1. From Yaoundé to Lomé

Part Four of the EEC Treaty, together with an implementing convention, governed relations between the EEC and overseas countries and territories (OCTs). After these countries gained independence, the 18-member, and later 19-member, African States, Madagascar and Mauritius (ASMM) group became associated with the EEC under the two Yaoundé Conventions (1964–69 and 1971–75). At the same time, the Convention of Arusha (1971–75) established trade links with the three East African States of Kenya, Uganda and Tanzania. Protocol 22 to the Acts of Accession of the United Kingdom, Ireland and Denmark offered the 20 Commonwealth countries in Africa, the Caribbean and the Pacific the opportunity to negotiate on the structure of their future relations with the EEC. Other African States that were not members of the Commonwealth or the ASMM group were also given the same option. This led to the First Lomé Convention (1975–80) which was followed by three more (1981–85, 1986–90 and 1990–2000).

2. The Fourth Lomé Convention

The Fourth Lomé Convention was signed on 15 December 1989 for a period of 10 years and came into force on 1 March 1990, while the associated Financial Protocol was adopted for 5 years only. The amended convention resulting from the mid-term review and the second Financial Protocol to the Lomé IV Convention were signed on 4 November 1995 and expired on 29 February 2000. Practically all products originating in the ACP countries (99.5 %) had free access to the Community. Reciprocal arrangements were not compulsory; the ACP countries were merely required to grant the EU most-favoured-nation status. The Stabex system (stabilisation of export earnings) guaranteed the ACP countries a certain level of export earnings by protecting the latter against the fluctuations to which they would normally be subject as a result of the functioning of markets or the vicissitudes of production. The system for mineral products (Sysmin) provided subsidies to deal with temporary production or export problems in the mining sector. Under Lomé IV the system covered eight minerals. As a result of the mid-term review, a clause (Article 366a) was inserted under which aid to a state might be partially or totally suspended if it breached Article 5 (human rights, democracy and the rule of law) of the convention.

B. The conclusion of the Cotonou Partnership Agreement

1. Process

The negotiations on the ACP–EU Partnership Agreement were concluded in Brussels on 3 February 2000 and signed in Cotonou (Benin) on 23 June 2000. A separate agreement was signed with South Africa (*6.5.1) in pursuance of the protocol establishing South Africa's partial accession with effect from April 1997. The ratification process was completed on 27 February 2003, when the Council of the EU deposited its instrument of ratification. The new agreement entered into force on 1 April 2003, but many of its provisions had already been applied since August 2000, though not the clauses relating to the ninth European Development Fund. The new agreement has a term of 20 years and may be revised at 5-yearly intervals (Article 95). The first revision of the agreement was concluded on 25 June 2005 and the second revision was signed in March 2011 and is currently undergoing ratification.

2. Main substance of the Agreement (Articles 2 and 4)

The Cotonou Agreement, characterised by the term 'partnership', is all about mutual commitment and responsibility; hence the emphasis given to political dialogue, covering such issues as democracy, good governance and migration issues, and to broad-based involvement of civil society. The agreement also focuses on the sustainable economic development of ACP countries and their smooth and gradual integration into the global economy through a strategy combining trade, investments, private-sector development, financial cooperation and regional integration. Development strategies focus on the reduction of poverty, which they establish as a priority objective.

3. The institutional and political dimension

a. Actors in the partnership (Article 6)

One of the most significant innovations of the Cotonou Agreement was the inclusion of a chapter on the actors involved in the ACP–EU Partnership. The ACP countries recognise the complementary role of non-governmental players in the development process. To this end, non-governmental bodies are informed and involved in consultation on cooperation policies and on the political dialogue. They are involved in the implementation of cooperation projects and provided with adequate support for capacity-building. The main innovation of the second revision of the agreement is the enhancement of the democratic and parliamentary dimension, by the explicit mentioning of the ACP national parliaments as actors of the cooperation (Article 6 and 10) which should be consulted in the preparation of the national and regional strategy papers (Articles 2 and 5 of Annex IV). The second revision of the agreement also introduced the African Union (AU) as an actor of cooperation, alongside other ACP organisations (Article 6). The role of the AU is also emphasised in the political dialogue (Article 8) and conflict prevention (Article 11). The continental dimension of the cooperation is also included in Title 1 of the Agreement, in an attempt to create synergies between the Cotonou Agreement and the Joint Africa–EU Strategy. In addition, new articles on HIV/Aids (Article 31a) and climate change (Article 32a) have been introduced.

b. Institutional chapter (Articles 14 to 17)

The joint institutions are the Council of Ministers, the Committee of Ambassadors and the Joint Parliamentary Assembly. The Cotonou Agreement renamed the former Joint Assembly 'the Joint Parliamentary Assembly' (JPA) in order to emphasise the parliamentary nature of this body. Included in the tasks of the JPA is the organisation of regular contacts, not only with economic and social actors as in the previous Lomé Convention, but also with civil society (Article 17). The second revision of the agreement introduced several modifications in order to increase consistency and convergence of different institutions (i.e. the Joint Council of Ministers has the obligation to report annually to the JPA on the implementation of the agreement). The consultative function of the JPA now explicitly mentions various issues which were already under the remit of the JPA, such as EPAs, strategy papers, EDF implementation, and capacity-building of national parliaments. The JPA will continue to meet twice a year (Article 17).

c. Political dialogue (Articles 8 to 10)

The parties are to engage regularly in a comprehensive and balanced political dialogue conducted in a flexible manner at the appropriate level in order to exchange information and to establish priorities and common principles. The objectives of the dialogue include regional cooperation, conflict prevention and peaceful settlement of disputes. Through dialogue, the parties are to contribute to peace, security and stability and promote a stable and democratic political environment (Article 8(3)). Following the 2005 revision of the Cotonou Agreement, representatives of the ACP Group and the ACP–EU Joint Parliamentary Assembly can now take part in the political dialogue. The dialogue covers all fields of cooperation laid down by the agreement as well as questions of common interest, including the environment, equality between men and women, migration and cultural matters. It devotes special attention to human rights, democratic principles, the rule of law and good governance, the arms trade, anti-personnel landmines, military expenditure, corruption, drugs and organised crime and ethnic, religious or racial discrimination. The EU provides assistance for capacity-building to promote democracy, transparency, improved access to justice and more efficient law-enforcement procedures. The second revision of the agreement recognises the role of ACP national parliaments and of ACP regional organisations, including the AU (Article 8). The revision also included a broader definition of political dialogue regarding non-discrimination, introducing the following clause, based on the Universal Declaration of Human Rights, in Article 8(4): ‘The dialogue should focus, inter alia, on [...] discrimination based on any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’.

d. Migration (Article 13)

The agreement establishes a framework for dealing with migration through the readmission clause: each ACP or EU State is to accept the repatriation of any of its nationals who are illegally present in the territory of an EU or ACP State and readmit them at the request of the latter without further formalities. The agreement also includes a provision establishing non-discriminatory treatment of legally employed workers from ACP countries in EU Member States or vice versa. During the discussions on the second revision, both parties agreed to leave the text unchanged, while they agreed on a Joint Declaration on Migration committing to deepen their dialogue on migration and report to the Joint Council.

4. Economic cooperation, regional integration and trade

a. The Economic partnership agreements (Articles 35 to 41) (*6.5.2)

The Cotonou Agreement foresees the finalisation of the long standing non-reciprocal trade preferences granted to ACP countries since the first Yaoundé convention. The agreement provided for a preparatory period of 8 years towards the conclusion of new WTO-compatible trade arrangements (the Economic Partnership Agreements, EPAs), by January 2008. During this preparatory period the trade preferences granted under Lomé IV were retained. The economic partnership agreements were initially designed to create an entirely new framework for the flow of trade and investment between the EU and the ACP countries, encouraging, amongst other positive factors, regional integration between ACP countries. Formal negotiations for these trade agreements

started in September 2002. At the end of 2005, the negotiations entered their third phase, in which the EU started negotiations on EPAs with the six ACP regions. The process was seriously delayed, however, due to principle disagreements between the parties about the timing and coverage of trade liberalisation, compensation measures for lost revenues and the degree of asymmetry in its implementation. As a result, only one 'full' EPA was concluded by the end of 2007, with the Cariforum. A series of interim agreements, covering almost exclusively goods liberalisation, were concluded with a number of individual countries and small regions in Africa and the Pacific, while negotiations to conclude full EPAs continue. The second revision of the agreement revamped the whole chapter on trade provisions, and detailed the institutional provisions aimed at ensuring the smooth implementation of the EPAs.

b. Trade-related areas and investment

For the first time, the ACP–EU Agreement contains provisions (Chapter 5) on trade factors such as non-tariff barriers, including intellectual property rights and biodiversity measures, competition policy, standards, plant-health measures and environmental and labour standards. In Article 46, both parties underline the importance of the international Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) and the Convention on Biological Diversity. The new agreement places greater emphasis on support for investment and the private sector. Cooperation in the field of investment will include:

- measures to create and maintain stable investment conditions, encouraging private investment in ACP countries,
- support for the long-term investment of financial resources, and
- investment-guarantee schemes.

c. Financial cooperation

The amount of EU financial assistance for the first five years of the agreement (2003–08) was EUR 13 500 million (ninth EDF). An additional sum of EUR 2 500 million was also available from the previous European Development Fund (EDF), taking the total to EUR 16 000 million, to which EUR 1 700 million was added from the European Investment Bank (EIB) in the form of loans. A further amount of EUR 10 000 in the form of grants was earmarked to support long-term development. The 10th EDF for the subsequent six-year period (2008–13) has been set at EUR 22 682 million. From these funds, a total of EUR 21 966 should be allocated to ACP countries, while EUR 286 million should be allocated to the OCTs (overseas countries and territories), and EUR 430 million to support the Commission's expenditures linked to EDF programming and implementation. Contrary to the past, balances from the ninth EDF or from previous EDF funds can no longer be recommitted, unless the EU Council decides otherwise by unanimity. The 10th EDF entered into force on 1 July 2008, after 6 months of delay. In addition to EDF funds, ACP countries should benefit from EUR 2 000 million under the Investment Facility, managed by the European Investment Bank. The Investment Facility is designed to help businesses in ACP countries by supporting sound private companies, promoting privatisation, providing long-term finance and risk capital and strengthening local banks and capital markets.

d. Resource allocation and programming

The Cotonou Agreement introduces significant changes to programming procedures and resource allocation. ACP countries must now define eligible non-governmental players and specify the amount of resources earmarked for such players in their national indicative programmes. Resource allocation to ACP countries will be based on both needs and performance. Each ACP State and region will receive an indication of the resources it could receive over a 5-year term. In addition to mid-term and end-of-term reviews of national indicative programmes, ACP and EU authorities will jointly carry out an annual review to identify the causes of any delays in implementation and propose measures to improve the situation. Following mid-term and end-of-term reviews, the EU may revise resource allocation to ACP countries according to their needs and performance. The allocated resources will consist of two main elements: an allocation for macroeconomic support, programmes and projects and an allocation to cover unforeseen needs, such as emergency assistance. The implementation of the 10th EDF will be regulated by the Council Regulation (EC) No 617/2007, adopted by the Council on 14 May 2007. The regulation indicates as the primary and overarching objective of cooperation the eradication of poverty in the context of sustainable development, including pursuit of the millennium development goals. Additional novelties introduced in the implementation of the 10th EDF are:

- the ‘incentive tranche’, i.e. resources to be added to national indicative allocations on the basis of good governance performance criteria;
- a significant increase in budgetary support, linked to positive progress towards achievement of the MDGs;
- substantial funding for regional integration, especially in the framework of the EPA process;
- the possibility of co-financing development projects with Member States or other donors;
- funding of the Africa Peace Facility (EUR 300 million).

e. Stabilisation of export revenue

The agreement replaces Stabex and Sysmin with a support system designed to mitigate the adverse effects of short-term fluctuations in export revenue. Resources for this system will be allocated through the national indicative programmes. Support may be provided if a worsening public deficit coincides with a loss of overall export earnings or a loss of export earnings from agricultural and mineral products. The least developed countries benefit from an arrangement whereby a smaller loss of export revenue triggers support payments (Article 68).

f. Debt relief

Outside the ACP–EU framework, the ACP countries agreed to an EU proposal for the use of up to EUR 1 billion from uncommitted EDF funds to support highly indebted poor countries in the ACP Group. On a case-by-case basis, uncommitted resources from past indicative programmes have been used for debt relief. Technical assistance relating to debt management will be provided to ACP countries (Articles 66 and 67).

C. EU Regional strategies

In 2006 the Commission presented concept papers for EU strategic relationships with individual ACP regions: the Caribbean, the Pacific, Africa and a separate one to deal with South Africa. The objective of the proposed EU regional strategies is to highlight how the challenges facing each of the regions can be transformed into opportunities by focusing on the right ‘policy-mix’, in parallel with full optimisation of the opportunities of the Cotonou Agreement. These objectives are to be achieved through a new enhanced partnership composed of a set of interrelated facets: shaping political partnership and helping the region address its economic, social and environmental vulnerabilities. Furthermore, the second summit was finally held in Lisbon in December 2007, after several delays. During this summit, which signalled a qualitative leap in EU–Africa relations, the Joint Africa-EU Strategy was adopted. The associated Action Plan (2008–10) establishes eight partnerships:

- peace and security,
 - democratic governance and human rights,
 - trade, regional integration and infrastructure,
 - the millennium development goals,
 - energy,
 - climate change,
 - migration, mobility and employment,
 - science, information society and space.
- The third Africa–EU Summit was held in Tripoli (Libya) in December 2010, and adopted a second action plan to implement the joint strategy.

ROLE OF THE EUROPEAN PARLIAMENT

The European Parliament (EP) is kept regularly informed by the Commission of the implementation of the ACP–EU Partnership Agreement. The powers of the EP in respect of the allocation of aid are though very reduced as the EDF is not included in the EC budget. Nevertheless, it must grant an annual discharge in respect of the operations financed under the EDF. The EP has regularly requested the inclusion of the EDF into the EC budget, and the Commission presented a communication in this sense in 2003. After the entry into force of the Lisbon Treaty this debate may be reopened since the new treaty eliminates the explicit exclusion of the EDF from the area of EC competence, and therefore of parliamentary scrutiny (formulation of former Article 179(3) of the EC Treaty, now eliminated in Article 209 of the TFEU). In addition, EP assented to the partnership agreement, and each revision is also subject to parliamentary assent, as well as each EPA. In the view of the EP, increases in aid under the Cotonou Agreement should have been important enough to honour the pledges given by the EU to increase public development aid in order to achieve the millennium development goals. The EP expressed its views on the second revision of the Cotonou Agreement in its resolution of 20 January 2010, where it deplored the fact that ‘the EP, the ACP–EU Joint Parliamentary Assembly (JPA), and the national parliaments of the ACP countries, as well as civil society organisations and non-state actors were — once again — not involved in the decision-making process that led to

the identification of areas and articles of the Cotonou Agreement for revision [...]’ (point 2). Amongst many other things, the EP also called in its resolution for negotiations to reinforce ‘the principle of non-negotiable human rights clauses and sanctions for failure to respect such clauses, inter alia with regard to discrimination based on [...] sexual orientation and towards people living with HIV/AIDS’ (point 32), two aspects not explicitly mentioned in the revised formulation of Article 8(4) of Cotonou Agreement.

The EP makes a significant contribution to ACP–EU cooperation through the work of its Committee on Development and through the ACP–EU Joint Parliamentary Assembly, the successor body to the former Joint Assembly, which has a fundamental role to play in the development and strengthening of relations between the EU and its ACP partners and brings together the elected representatives of the EU (the members of the European Parliament) and of the ACP countries twice a year. The EP has also established a delegation in charge of relations with the Pan-African Parliament (PAP), which makes substantial contributions in the implementation of the Joint Africa–EU Strategy and holds parliamentary pre-summits ahead of Africa–EU summits, in addition to its programme of regular meetings and field visits. Each year the EP adopts a resolution expressing its views and concerns about the work of the ACP–EU Joint Parliamentary Assembly and ACP–EU cooperation.

Members of the EP pay regular official visits to ACP countries, either in connection with their work in the Committee on Development and in the Joint Parliamentary Assembly or as election observers. Since the start of the seventh legislature in 2009 Members have monitored electoral processes in Togo, Sudan, Chad, Uganda and Nigeria.

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