

**CONCORD Cotonou Working Group  
Briefing paper**

## **The Revision of the Cotonou Partnership Agreement (CPA)**

We have some serious concerns on the content of the revision of the Cotonou Partnership Agreement, but also on the lack of transparency of the process. A better involvement of the civil society in the EU and in the ACP countries in the process would not only enhance transparency and democratic participation and legitimacy, but also enable citizens to hold their governments to account.

In the absence of any formal way to take part in the debate, we take the liberty to send you the following points illustrating our concerns and recommendations on a few issues that seem to be at the core of the negotiations.

We understand that the EU and ACP negotiators expect to conclude the negotiations in February and are very concerned that time pressure might lead to decisions taken without full assessment and command of their possible impact on EU-ACP relationships in the coming five years in particular in the areas of EU institutional reform, policy coherence for development, trade, climate change and migration.

### **Institutional and Policy aspects**

At institutional and policy level, while we welcome and encourage the establishment of a wide-ranging policy dialogue between the EU and the AU based on a partnership of equals sharing common values and principles, we are also concerned by the fact that the Joint Africa-EU Strategy orientations and priorities are increasingly integrated in the Cotonou Partnership Agreement. The JAES is itself under revision in preparation of the third EU-Africa Summit to take place at the end of this year and it is high time to clarify the distinction between the Joint Africa –EU Partnership as an instrument of dialogue and policy making between the EU and African Union and the various instruments and frameworks of technical and financial cooperation between EU and African countries that co-exist and in particular the EDF. In our view, the JAES should be used as a way to improve coordination and synergies between different existing cooperation programmes at EU and member states levels while not attempting to replace them or re-direct them towards the priorities of the joint strategy as occurs with the EDF.

It is clearly in the intention of the EU to legitimize the use of the regional and intra-ACP envelop in the 10<sup>th</sup> EDF to support the implementation of the Africa-EU Strategy partnerships in the long-run through pan-African programmes and facilities. Consequently, the political dimension of the CPA tends to converge with the orientations set up in the EU-Africa Strategy. Moreover, the regional approach in policy dialogue and cooperation that is promoted by the EU has a dividing effect on an already not very cohesive ACP group while support in favour of political coordination is very weak.

Civil Society actors within the EU and the ACP reaffirm the value of being a group sharing common visions on international challenges. Therefore they believe the regular and frequent meetings of the joint ACP-EU institutions provided for in the CPA (like the JPA, EU-ACP Council...) are much needed and should receive more attention from the EU side. They should be maintained and fixed in frequency to make the process more transparent and should be open and participative to give citizens the possibility to hold their governments and parliamentarians to account as it is foreseen in the CPA.

### **Institutional reform and external priorities of the EU**

But it is not only on ACP side that institutional changes are taking place, also the EU is undergoing a huge transformation on its external policy with a significant impact on the future EU-ACP dialogue.

With the entry into force of the Lisbon Treaty, the European Union has undergone crucial institutional changes. These alterations most importantly affect the external politics of the EU. Europe now wants to speak with 'one voice' and be a strong global player. The Lisbon Treaty makes no reference to the Cotonou Agreement or its budget, therefore 'budgetisation of the EDF – integrating the EDF into the EU budget - will no longer require any amendment to the Treaty. Unfortunately, in the current political climate, there is no guarantee that this will not have an effect on the level of funds which are specifically allocated to the ACP countries. Moreover, with the creation of a new European External Action Service the political dialogue with the ACP potentially can change. EC delegation will be transformed to EU delegations representing the EU at all times (and no longer the MS that holds the EU Presidency). The EEAS officials –partly composed of Members state officials – will be part of these EU delegations. Up till now it is not clear who will be leading on the EU-ACP dialogue. The revision of the Agreement will therefore have to take these factors into account.

Moreover, the political dimension of the CPA and the way the EU envisages to revise it increasingly focus on security, stability, migration control and governance performances of the ACP. Such an approach has legitimised the utilisation of the EDF for non ODA eligible expenditures in the areas of security - best illustrated by the African Peace Facility – or border and migration control. Member States however still account for 100% of the EDF as ODA in their annual reports. The EDF is put in place for development of the ACP countries so it should not be used for costs that do not have poverty eradication and the realisation of the MDGs as immediate objective.

### **Policy Coherence for Development (PCD)**

The institutional reform process is also a unique opportunity to ensure that all policies impacting on developing countries are coherent with development policy and its objectives. Policy decisions taken in all policy areas should be supportive of EU's pursuit of its development goals, and should certainly not undermine these goals. While this coherent approach should be focused on poverty eradication, it also needs to assure that equitable global power relations are promoted and respected, so that everyone has equal opportunities and the right to development is guaranteed. Ensuring Policy Coherence for Development is the political responsibility of all of the EU's institutional actors. There is increasing awareness of the potentially negative and harmful impacts of European policies on development but awareness is not enough.

The principle of policy coherence for development (PCD) is also enshrined in the Cotonou Partnership Agreement (Article 12). It is clear that the subject of coherence has been identified by both EU and ACP as an issue for the 2010 revision of Cotonou.<sup>1</sup>

Even if this article on PCD needs updating as it does not take into account more recent commitments made by the EU, the focus should remain on the obligation of the EU to inform the ACP on measures that affect the ACP countries within the scope of the CPA. Moreover it should explore how the EU can fulfil its obligation in a more systematic manner. All actors -including the JPA EU-ACP, the ACP secretariat, and the CSOs- should be involved in this information process. Article 12 was only recently used for the first time, nevertheless it would be of importance to assess its implementation and improve it on these grounds. This will also facilitate and stimulate a more proactive use of this article in the future.

Reasons for lack of progress on policy coherence on the ground are many. Up till now there is no legal requirement to ensure that the EU is held to account and there is no complaints mechanism open to governments or communities which are affected. Pro-poor and sustainable development policies should prevail over short-term and narrow European interests. Any criteria used to establish hierarchy or prioritisation of policies should be transparent and the trade-offs explicit.

Also the policy coherence sections in the ACP Country Strategy Papers could provide an opportunity for broader based consultation and democratic debate with governments, parliamentarians and civil society. Many areas of EU policy have the potential to impact, intentionally or unintentionally, on developing countries. Therefore EU commitments for PCD should not be confined to a limited number of areas. There must be opportunities for ongoing scrutiny and assessment of different policies in the true spirit of the PCD principles.

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<sup>1</sup> See also first formal consultations on PCD issues under Cotonou Article 12 took place at the request of the ACP side in February 2009 during a meeting of the joint ACP-EU Subcommittee on Trade Cooperation.

Nevertheless we want to stress four policy domains – trade, food security, climate change and migration – more in detail as we identify them as of particular relevance of current negotiations.

### ***Nexus of Trade - Food Security - Climate Change in ACP countries***

Food security cannot be seen in isolation of climate change or agricultural trade policies.

Climate change impacts on environmental and natural resources are major crosscutting issues that affect vulnerable countries.

Trade rules will enhance or constrain the possibilities of choice for different policy options that best suit ACP countries present and future needs, for example in support of the principle of food sovereignty.

Major outstanding negotiations increase uncertainties for ACP countries on available flexibilities or remedies, for example with regard to contentious issues in EPAs, details of a global climate change deal, modalities of the conclusions of the WTO Doha Development Round, or available trade capacity assistance (Aid for Trade).

The EP has expressed its support to a practical translation of the principle of vulnerability for ACP countries. Work by UNCTAD on the special problems of structurally weak, small or vulnerable countries look into categories of vulnerability that include all of the ACP countries.<sup>2</sup> In this regard, the ACP group should be entitled to special measures and schemes in relation to food security, trade, climate change or migration that address their specific vulnerabilities.

### ***Trade***

In relation to the chapter of the CPA relating to the negotiation of Economic partnership Agreements, we strongly recommend to:

Keep principles outlined in article 36.7 and amend it to address EPA process and implementation  
Keep principles outlined in article 36.8.

Include a new provision for a mandatory review of the EPA agreements:

In order to determine the impact of the EPA, including the costs and consequences of implementation and in order to amend its provisions and adjust their application as necessary.

In order to ensure that the objectives of the Agreement are realized and that the benefits for men, women, young people and children deriving from their partnership are maximized.

“A mandatory comprehensive review of EPA Agreements will be undertaken in five-yearly intervals, in order to determine the impact of the Agreement, including the costs and consequences of implementation; that its provisions will be amended and its application will be adjusted, as necessary; that there will be a comprehensive renegotiation of the EPA after the initial five year period;”<sup>3</sup>

While there is increasing acceptance of the need to sequence trade reforms with preconditions and accompanying measures if they are to contribute to poverty eradication and pro-poor growth, and while these needs are recognised to an extent in existing trade arrangements involving developing countries, the tools currently adopted in trade deals are not sufficient.

In support of the EP Resolution 430376, 5/18 PE 430 (point 11), we consider it necessary to uphold a number of principles and commitments which should not be lost from the Agreement when it comes to EPAs.

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<sup>2</sup> See the Sao Paulo Consensus, paragraph 33, “UNCTAD should enhance its work on the special problems of LCDs, small island developing States, and of landlocked developing countries and the related special problems and challenges faced by transit developing countries as well as structurally weak, vulnerable, and small countries”, in UNCTAD (2007) Structurally weak, vulnerable and small economies: who are they? What can UNCTAD do for them? (page 33)

<sup>3</sup> See: EN Official Journal L289/II/1955, 30.10.2008. Joint declaration on the signing of the EC-CARIFORUM EPA, 5th paragraph, page 1953

Amend article 36.4 and article 36.6 to include:

“Taking into account the special and differential treatment provisions included in Article 36.7 and 36.8 of the CPA, and in view of achieving the goal of poverty reduction, suitable EPA development indicators should serve three key purposes: to trigger implementation of EPA commitments by EPA signatory countries or to qualify them for exemptions; to monitor the impact of EPA implementation on sustainable development and poverty reduction; and to monitor the implementation of EC commitments, in particular disbursement and effective delivery of pledged financial and technical assistance;”<sup>4</sup>

### ***Food security***

We support the call of the ACP for a specific ACP instrument on food security. We also support the call by the EP (EP DEV Resolution, point 12) on the Commission, when implementing EU development policy, to incorporate the concept of food sovereignty, i.e. the right of every people to decide their own agricultural policies with regard to food, by regulating national agricultural production so as to guarantee fair prices for products and protection of national markets

We recommend to maintain article 54 (3):

“Specific agreements may be concluded with those ACP states which so request in the context of their food security policies” and to amend it to include the creation of an ACP agricultural food facility to address systemic food security challenges in ACP countries and to allow for regular assessments, coordination at national or regional level, and effective and long term ACP response on food security.

This request is also supported by Article 32 on environment and natural resources to support specific measures and schemes aimed at addressing critical sustainable management issues, relating to current and future regional and international commitments to ensure that sustainable and long lasting solutions are identified and supported.

We recommend that a specific ACP measure or scheme on food security should build on lessons learnt that increased agricultural productivity comes with a cost to soil, water and climate and is creating parts of the problems we are having today with regard to climate change and depletion of natural resources.

We recommend to take account of the independent expertise of the International Assessment of Agricultural Knowledge, Science and Technology for Development ([www.agassessment.org](http://www.agassessment.org)) and its key findings on functioning and sustaining of agricultural systems in view of their contribution to equitable, environmental and economic development.

The current EU Food Facility cannot substitute an ACP food security instrument as the ACP group is no partner to this EU Food Facility, with individual countries remaining recipients. In order to address systemic food security challenge in the ACP countries, a pre-requisite will be ownership of strategies and priorities, decision making power on funding priorities and allocation and a look at long term vision and action that look beyond the 10<sup>th</sup> EDF or the end of the CPA in 2020 to secure feeding their growing populations in 2050.

### ***Climate change***

The principles of environmental sustainability and sustainable management of natural resources are enshrined in the current Cotonou Agreement (Articles 1, 9, 20, 32). The Cotonou Agreement also states that “cooperation should take account of the vulnerability of small island ACP states to the threat posed by climate change and the worsening drought and desertification problems of least developed and land-locked countries.”

The very real impacts of climate change are now being experienced with many of the ACP countries in the front line. Adaptation strategies are not an option but a necessity in planning for land and coastal management, health, agriculture, water resources, disaster risk management etc. Therefore there is a need for substantial, new and additional resources to support national and local adaptation capacity and to strengthen resilience. The EU has promised “fast start” finance which should prioritize the least developed countries and the implementation of their national adaptation programmes of action (NAPAs). These

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<sup>4</sup> See RE\775920EN.doc 7/8 PE420.408v01-00, INTA Motion for a Resolution

countries should also be involved in decisions on governance and management of these funds reflecting the partnership spirit of Cotonou and ensuring the principles of effectiveness, equity, transparency, coherence, predictability and accountability.

## **Migration**

The revision of Article 13 on Migration of the Cotonou Partnership Agreement aims at bringing the current provision into line with the Global Approach to Migration centered on three pillars: legal migration, fight against illegal migration and the synergies between migration and development. However, there is a real danger that the fight against illegal migration, strongly advocated by the EU side, is prioritized and that ODA is used as a means and incentive to encourage legal and policy frameworks in origin and transit countries to limit migration and restrict migrants' rights.

Currently, Article 13 includes a clause on readmission, but to become operational, it requires the implementation of bilateral readmission agreements<sup>5</sup>. The implementation of readmission agreements includes important risks of:

- inhumane and degrading treatment
- extended an arbitrary treatment in the countries migrants are brought back to
- a breach of the principle of non-refoulement of asylum seekers when these countries do not guarantee access to a fair asylum procedure
- a breach of article 3 of the European Human Rights Convention which stipulates that a person should not be submitted to the risk of inhumane and degrading treatment, nor deported to a country where he or she risks exposure to such treatment.

The EU side would like the clause on readmission in the Cotonou Agreement to become self-executive and binding for all ACP countries without needing complementary bilateral agreements. This will imply unmanageable obligations for many countries and hence an increased risk of migrants rights violations throughout the process of readmission. In no way should EC and MS ODA be dependent on the signature of readmission agreements (being bilateral or multilateral). By making development aid conditional on cooperation on border control, the EU is turning development aid into a tool for implementing restrictive and security-driven immigration policies which are at odds with its commitment to make migration work for development.

Article 13 should rather be focusing on concrete opportunities for increased mobility and ensuring that ACP states are assisted in their national efforts to 'make migration work for development' (countering of the negative economic and social effects of brain drain and care drain, sustainable migration opportunities, facilitating remittances...). This would bring progress towards Policy Coherence for Development in the migration area.<sup>6</sup> Opportunities of legal migration, including for low skilled workers, and respect of migrants' rights are necessary conditions for exploiting the development potential of migration. Provisions on legal migration should be as strong and binding. However, large scale emigration and the maximisation of remittances are in no way an alternative for robust internal and international development policy. Experience shows that sending countries tend to become ever more dependent on labour export in stead of creating more decent jobs, social security and long term perspectives for the people in their home countries. Robust policies towards sustainable development are needed to make migration a truly free choice in stead of an economic necessity.

Finally, ACP states should request EU member states to ratify the UN Convention on Migrants Rights and ratify it themselves.

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<sup>5</sup> A readmission agreement is an instrument through which signatory states commit to readmit into their territory their nationals who were apprehended while residing irregularly within the territory of a foreign state, but also other foreigners who transited through their soil.

<sup>6</sup> Read more about policy coherence between development and migration policies in Concord's report 'Spotlight on Policy Coherence' available here:  
[http://www.concordeurope.org/Files/media/internetdocumentsENG/5\\_Press/1\\_Press\\_releases/00pressreleases2009/C ONCORD\\_PCD-Spotlight-report\\_light.pdf](http://www.concordeurope.org/Files/media/internetdocumentsENG/5_Press/1_Press_releases/00pressreleases2009/C ONCORD_PCD-Spotlight-report_light.pdf) .