

**CONCORD Cotonou Working Group
Briefing paper**

The second revision of the Cotonou Partnership Agreement (CPA)

Representatives of EU Member States and of the 77 African, Caribbean and Pacific (ACP) countries had already revised the Agreement in 2005. The negotiations of the second revision ended on the 19th of March 2010 and the revised agreement was formally signed in Ouagadougou, on the 22nd-23rd of June. The EU Member States have already ratified the revised agreement. It should also be ratified by all ACP countries except Sudan and Equatorial Guinea which do not want to ratify because of an amendment introduced by the International Criminal Court.

However, some issues are not fully resolved like migration and economic partnership agreements. EU and ACP states agreed in a joint declaration to continue dialogue on the migration article.

This revision did not aim to bring fundamental changes to the agreement, but rather at updating it so that it is in line with current political and institutional developments, such as the Aid Effectiveness Agenda, the European Consensus on development and the Joint Africa-EU Strategy. However a number of changes in the areas of institutional reform, policy coherence for development, trade and climate change deserve close attention.

First and foremost, the CONCORD Cotonou Working group has serious concerns about the lack of transparency that marked this second revision of the Cotonou Partnership Agreement. Full transparency would have enabled a better involvement of the European Parliament, the EU-ACP JPA, ACP national Parliaments and civil society in the EU and in the ACP countries. This would not only have enhanced legitimacy and democratic participation, but also enabled citizens to hold their governments to account.

A reinforcement of joint institutions and increased role of national parliaments

The revised text includes a number of positive changes towards the reinforcement of the joint ACP-EU institutions and an increased role of national parliaments.

Article 14 states that the joint institutions and the institutional set up under the Economic Partnership Agreements shall endeavour to ensure coherence and complementarity as well as an effective and reciprocal flow of information. Meetings at the level of Heads of States and Governments are also foreseen.

The Joint Parliamentary Assembly also saw a reinforcement of its prerogatives. Article 17 details the role of the JPA in discussing issues in areas of the ACP-EU partnership, such as the Economic Partnership Agreements and Country and regional strategy papers, which shall be transmitted to the JPA by the European Commission.

The revised text also stresses the role of ACP national parliaments and decentralised authorities, at both national and regional level, in the development process. ACP national parliaments are now considered proper actors of cooperation. The text foresees that ACP national parliaments, local and decentralised authorities and Non State Actors "should be provided with capacity building support in order to reinforce the capabilities of these actors, particularly with regards to organisation and representation, and the establishment of consultation mechanisms, including channels of communication and dialogue, and to promote strategic alliances."

Political dialogue

The revised Article 8 on political dialogue reinforces regional integration by demanding the full involvement of relevant ACP regional organizations and the African Union in the dialogue, where appropriate. Regional organizations and the African Union are now considered proper actors of cooperation in the partnership. Also aid effectiveness is seen as a full part of the dialogue as well as climate change. Furthermore, the revision process saw harsh negotiations on the issue of sexual discrimination. The European side wanted to introduce this issue in article 8 on political dialogue but the ACP states opposed strongly and the European proposal was dropped.

Policy Coherence for Development, a weak mechanism

The revised Article 12 on Policy Coherence states that the parties are committed to addressing policy coherence in a targeted, strategic and partnership oriented way, including by strengthening dialogue on the issue. It is now foreseen that the European Commission will inform, in good time, the ACP Secretariat of planned proposals of measures that might affect the interests of ACP states. Under request of ACP States and the ACP Group, consultations shall take place. Following the consultation ACP states can also submit their concerns in writing to the Community as well as proposals for amendments if the Community does not accede to the ACP states' submissions, it shall advise them of the reasons. The revised Article 12 remains unsatisfactory at many levels as it does not confer the responsibility to the EU to ensure that its policies are coherent with development. The EU shall only inform the ACP states of its intentions, while the ACP States and the ACP group will be responsible for raising their concerns. There is no guarantee that the EC will take their concerns into account. In addition, input of the ACP Group is foreseen at policy- making stage alone, and no complaints, or monitoring mechanism is foreseen at the implementation level.

We invite the ACP Group to devise a systematic mechanism for making effective use of Article 12. PCD should become an item in the JPA agenda and the JPA should play a stronger role on PCD.

Climate change, a cross-cutting issue in the agreement

We welcome the fact that climate change has been recognized as a cross-cutting issue in the agreement. A clear link was established between climate, agriculture and food security. Article 32b on climate change also foresees a strengthened support to measures of mitigation and adaptation to the consequences and threats posed by climate change, including through institutional development and capacity building.

Trade

With regard to Title on economic and trade cooperation, the revision removed obsolete articles on the EPA negotiations such as references to past dead lines, while leaving the development principles that must guide the EPA negotiations intact. It has introduced a new monitoring process of the EPA negotiations and implementation under the Joint Ministerial Trade Committee and also consultations on trade matters and the possible impact of EU trade measures on the ACP countries. Other articles on trade and trade related issues (39-52) have remained intact except to introduce references to both national and regional cooperation strategies.

The revised agreement now also says that the Parties “will take all the necessary measures to ensure the conclusion of new WTO compatible EPAs”, but what such EPAs should contain remains open as before and the subject of the negotiations. The WTO in any case does not require that EPAs must be free trade agreements, nor that they should contain the liberalisation of services, investment and government procurement, as the EU has been pushing for, for more than seven years now.

More emphasis on the nexus security and development

The revised agreement underlines the interdependence between security, fragility and development, in line with the 2007 EC Communication on this issue. The Cotonou working group considers that it is relevant to have a joint dialogue on this matter. However, the reinforcement of this issue within the Cotonou Agreement should not lead to an increasing use of development budget to fund security-related issues. Indeed, the Cotonou group fears that EDF may increasingly be allocated to non-development purposes like peace building and conflict prevention operations.

Migration, still unresolved

The revision of Article 13 on Migration was a major stumbling block in the negotiations. The two sides failed to reach an agreement by the extraordinary ACP-EU Council on 19 March 2010. EU and ACP states agreed in a joint declaration to continue dialogue on the migration article. The two sides agreed to continue that dialogue on the basis of the Global Approach to Migrations. The EU Member States are quite determined to amend the article and will insist upon the EC which will lead the dialogue from the EU side. There is resistance from ACP States but also from the EC.

During the revision, the bulk of the disagreement lied on the clause on readmission. 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.

According to the Cotonou Working group, Article 13 should focus 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. Opportunities for 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. Finally, EU and ACP states should ratify the UN Convention on Migrants Rights and ratify it themselves.

Looking at the future

The revision of the CPA will have an important impact on EU and ACP relations and on how the funds of the European Development Fund (EDF) are to be used in the coming five years. The revision broadened the issues dealt in the agreement but the financial envelop remains the same. We therefore urge European and ACP parliamentarians to actively scrutinize the changes agreed upon and their consequences on the use of the EDF. A special follow up based on full information of the ongoing debate on migration will be needed.

European and ACP parliamentarians should also closely scrutinize the debates on the future of the EDF and of the Cotonou Agreement. The EU made no financial commitment during the revision and did not talk of an 11th EDF. There is then a gap between the end of the 10th EDF and the Cotonou agreement for the moment. It may mean that the EDF will be included in the EU budget and aligned with the 2014-2020 EU multiannual financial framework.

The next revision will have to address more structural and institutional issues, such as the future of the Cotonou agreement and the ACP partnership since the agreement will come to an end in 2020. Regional dialogue may become preminent and the EU-Africa strategy may tend to become the new framework of relations between EU and Africa, which questions the future of the ACP group. For the Cotonou working group, the objective is to keep the essential principles of the Cotonou agreement (participation of actors and ownership and equality of partners) at the forefront of negotiations.

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