

THE REVIEW OF THE COTONOU AGREEMENT DOES THE ACP STAND TO LOOSE AGAIN ?

1. REVIEW OF THE COTONOU AGREEMENT: PRINCIPLES UNDER THREAT ?

The Cotonou Agreement is a partnership agreement between the EU and 77 African, Caribbean and Pacific States. It was signed on 23 June 2000, ratified by the EU member states by 2003, and is valid for a period of 20 years. The agreement is based on 3 pillars: political dialogue, commercial relations and development cooperation. It builds upon the relationship between the EU and the ACP states established since 1958 in the so-called Yaounde and Lomé Agreements, which provided for the establishment of the European Development Fund.

By many this agreement is considered as a model for development cooperation as it stresses the equality of partners and the local ownership of development strategies, by recognising the importance of participation, dialogue and mutual obligations, differentiation and regionalisation. The central objective of the partnership is to reduce and eventually eradicate poverty while contributing to sustainable development. In principle the ACP determine how their societies and economies should develop. Government is no longer the main actor as dialogue, priority setting and monitoring has now been opened up to other actors in society (including civil society and local government). Last but not least, the Cotonou Agreement foresees that co-operation will vary according to the level of development in the country, its needs and performance.

Under the Cotonou Agreement it is envisaged that a **review can take place every five years**. Since April 2004 preparations have been made to renegotiate the Cotonou Agreement. This could dramatically change several provisions and articles in the existing Agreement **by 2005** (possibly February 2005). It is important that civil society actors in different EU and ACP states get involved in raising the various issues that are now on the negotiation table with their respective governments. They should be able to discuss within their own countries and regions the proposals put forward by the different actors involved.

Depending on the scope of the revision, some analysts may argue that the revised agreement requires a new ratification by national and European Parliaments.

2. THE GENERAL CONTEXT OF THE REVIEW

The current review is in itself not a contractual obligation. There are legitimate concerns that a first review in 2004 is premature as the outcome of the cooperation agreements are impossible to evaluate at this juncture. The last ratification of the Cotonou Agreement and – its subsequent implementation – started only in 2003.

To understand the context in which the review is taking place this paper outlines the framework of current reforms in the EU. In combination with proposals put forward for the Cotonou review, we can identify a trend in EU policy to further incorporate aid and other aspects of development co-operation into the commercial and security agenda of the EU. Indeed our analysis suggests that the Union risks reneging on its previous commitments to participation, ownership and partnership.

Since March 2004 **mid term reviews** of the national indicative programmes have been underway in several ACP countries. In its guidelines¹ for the mid term reviews, the European Commission stresses that this process is a joint exercise and should lead to serious discussion on both the national development strategies and their implementation. Performance (political, economical and financial) will be evaluated, with the potential for a reallocation of resources in response to the findings.

Since most of the programmes have only just started, it is unclear precisely on what basis the European Union intends to evaluate. Research suggests that the current generation of Country Strategy Papers are not founded on broad-based participatory national policy-making and dialogue processes involving non-state actors, despite the commitments on these in the Cotonou Agreement. Moreover, the definition of priority sectors for support poses real problems in terms of autonomous self-definition by ACP states. In what way have their choices not been conditioned by the Poverty Reduction Strategies Papers and macro economic structural adjustments?

¹ European Commission, Guidelines for 2004 Mid-Term Reviews under the ACP-EU Partnership Agreement, Final draft, October 2003

The **enlargement of the EU** with 10 new member states will also have an impact on the EU-ACP relationship, because the new member states with different experiences of development and a traditional focus away from the ACP or Latin America.

New approaches may therefore enrich development co-operation policy, however, the poverty reduction focus pushed forward by the current Commission is not yet the main target and objectif within the objectives of their national development policy.

How the foreign policy of new member states will be shaped in light of the EU growing links between aid and security policies? Does the risk exist that aid will be instrumentalised by European diplomacy? These are serious political questions that need to be addressed in the current discussions on the review of the Cotonou Agreement.

The **Constitution of the European Union** puts forward an institutional architecture for the incoming Commission, including a new Foreign Minister for external relations, who will act as Vice-president of the European Commission, and a new Joint External Service; the role and functioning modalities of the Joint External Service are not yet well defined, however his service is likely to impact on EU's partners as the ACP countries. The new Development Commissioner's portfolio is still undefined, The new institutional architecture, not yet defined, could potentially lead to the politicised use of aid and on the priorities for and the volume of official development assistance for all countries, especially the Least Developed Countries and 'poor performers'. So many questions without answer whose challenges are of major importance for the European development co-operation.

The **'budgetisation' of the European Development Fund and the negotiations on the new Financial Perspectives** are also closely linked. The European Commission² proposes integrating the European Development Fund (EDF) into the general EU budget. This initiative in itself appears positive, with the potential wish to lead to further harmonisation and administrative simplification. Yet, given the political realities outlined above, 'budgetisation' poses several problems. If EDF funds are transposed into the general EU budget, they risk being reallocated to short-term policy priorities. The European Parliament, the Joint Parliamentary Assembly and civil society have repeatedly asked for guarantees on the EDF's long-term priorities and a Commission study on the impact of budgetisation for the ACP. The Commission has also proposed rationalising the number of EC financial regulations, many of which finance co-operation in ACP states.

Budgetisation of the EDF also impacts on the level of contributions for each EU member state. Accordingly some are opposed, others support the proposal. These discussions take place in the context of broader financial discussions on the Financial Perspectives 2007 – 2013, in a climate of poor European economic performance and increased pressure for an expansion of EU resource allocation to foreign policy and regional aid in the wake of enlargement.

It is highly questionable whether the review of the Cotonou Agreement should happen prior to the resolution of these institutional and financial issues.

3. WHICH ISSUES ARE ON THE TABLE IN THE REVISION OF THE COTONOU AGREEMENT?

Since April 2004 several meetings have taken place within and between the different negotiating groups in order to identify the issues that will be open for negotiation. The EU says it does not intend to question or alter the fundamental "acquis" of the Cotonou Agreement. However the process seems to be driven by the three following motivations:

"a) concretise some recent commitments or political initiatives undertaken by the EU, notably on international security, b) improve – when necessary – modalities for the implementation of aid and c) harmonise procedures and working methods that organise the relationship between the EU and developing countries."

Although it is said that the *"the proposed review will not question the fundamental "acquis" of the ACP – EU partnership agreementthe instruments of co-operation need renewing and some new political and security issues need to be addressed"*. The ACP position is that the EU's view touches upon the very heart of the Cotonou Agreement.

The main objective of the review will be to **"improve the implementation of the partnership agreement, with a focus on financial cooperation"**. However other crucial aspects have been

² « Vers une pleine intégration de la coopération avec les pays ACP dans le budget de l'UE" (COM(2003)590 »

highlighted such as giving extra discretionary power to the Commission and further support for global initiatives, etc.

In its proposals to review the Agreement the EU is still considering the full integration of instruments of cooperation with ACP countries into the EU budget. Pending a decision, the Commission will make the preparations necessary to pursue both options, integration into the EU budget and a 10th EDF.

The EU has put forward the following issues in its draft negotiating principles (April 2004):

▪ **POLITICAL PROPOSALS**

The objective here will be to ensure compliance with the political commitments expressed by the EU on the fight against terrorism (Seville Presidency Conclusions, 21-22 June 2002), the fight against proliferation of Weapons of Mass Destruction (Council Conclusions of 17 November 2003) and support to the International Criminal Court (Thessaloniki Presidency Conclusions, 19-20 June 2003). Furthermore the preamble should contain a specific reference to the Millennium Development Goals (MDGs).

The EU asks the ACP states to reaffirm the importance of *the fight against terrorism*, in accordance with international conventions and their respective legislation and regulations and to agree to co-operate with a view to prevent and penalize terrorist acts.

Furthermore ACP states are being requested to consider that the proliferation *of weapons of mass destruction* and their means of delivery, both to state and non-state actors, represents one of the most serious threats to international, stability and security. ACP states will be requested to co-operate and to contribute to the countering of the proliferation of weapons of mass destruction and their means of delivery through full compliance with and national implementation of their existing obligations under international disarmament and non-proliferation treaties and agreements and other relevant international obligations. The ACP group does not agree to introduce this provision as an essential element of the agreement, because it might mean that aid can be suspended for not cooperating with the EU. The ACP feel a sort of “European unilateralism” and propose to take into account the position of the ACP group as a whole in the political dialogue (art. 8, art 96/97). The ACP states also request the EU to reaffirm the role of the Joint Parliamentary Assembly in this dialogue.

The EU intends to introduce a specific reference to the **Millenium Development Goals**. It is however not clear if targets for aid deployment in support of the MDGs are foreseen or how the EU intends to measure more effectively the impact of its intervention and support in this regard. Pre-ambular references to the Millennium Development Goals will appear hollow if EU Member States and the Commission fail to improve their own delivery in terms of aid quantity and quality.

The integration of new elements in the Cotonou Agreement needs to take place in a true political dialog with full respect for the participative approach, and without new forms of conditionality. In the first place the needs and demands of the local population need to be taken into account.

▪ **A REDEFINITION OF ROLES**

In several proposals put forward under the revision of the Cotonou Agreement the EU has indicated that it intends to redefine the responsibilities of the National Authorising Officers (NAOs), the Commission and its Delegations.

Although the EU stresses that it wants to uphold the importance of the concept of ownership and participation it is becoming clear that the Commission **intends to work outside the NAO** (National Authorising Officer) **or RAO** (Regional Authorising Officer) **framework**. The Commission has introduced a distinction between the political and strategic functions of these bodies.

A proposal has been put forward that would under certain circumstances (as foreseen in the EDF financial regulation) replace the NAO by the Chief Authorising Officer (Head of the Delegation). Moreover the decision to replace the NAO falls within the competence of the Commission (and not Member States). It is not very clear how in practice this proposal will work and under what circumstances would the NAO be replaced. The Commission's approach towards the NAOs becomes more questionable if one views the creation of global funds, such as the creation of the Water Facility as an opportunity to bypassing the NAO's and thus cutting them out.

A final proposal is to **delegate programme execution to line Ministries or other public bodies**, on the basis of an assessment of capacity and good governance of the Ministries. The question can be raised as to whether this approach will strengthen government capacity or if these proposals will only create further parallel structures (by supporting other public bodies).

Will a redefinition of roles limit the ACP states to define their own development? And will they not become limited in their capacity and autonomy to implement these policies? Do such decisions require consultation and integration of the views of civil society actors?

▪ FLEXIBILITY IN THE ALLOCATION OF RESOURCES

For many ACP countries the full deployment of foreseen funds has proven difficult. In many instances, the use of the 'B' allocation was important in allowing developing countries to cope with humanitarian disasters or loss in export earnings. This system of 'B' envelopes will also be revised. The EU has committed itself to new international initiatives "in order to be able to respond with more flexibility to the needs of the ACP". Therefore the EU has proposed creating a sufficiently large envelope **to back global initiatives** and stresses the adjustment of national, regional and intra – ACP envelopes, including those outside the framework of mid and end-term reviews. These global initiatives merely cover an existing internal problem of quick disbursements of funds. For example, the recent ACP Water Facility launched by the Commission draws from a reserve of 1 billion euro of EDF money that was set-aside to be spend after the Mid-Term Review of the EDF (2004) which would mean more than 10 percent of the total EDF budget for the period 2000-2008. Although the Mid-Term Review is not concluded yet, the European Commission has launched the Facility anyway and has been given approval by the EU-ACP Council of Ministers to start spending a first amount of 250 million euro. The Commission's current approach to the Facility seriously undermines the principles of the Cotonou Agreement (no consultation from the ACP side, especially of its civil society) and thus the much-heralded EU-ACP's partnership relation.

The system of 'B' envelopes will also be revised. At the moment there are proposals on the table to include emergency aid in the corresponding budget instrument (that is in case of budgetisation, otherwise art. 72 will be maintained) and the Flex system (replacing the Stabex Fund) should be merged as to "allow the ACP countries to use them effectively".

It is proposed that part of the process of deconcentration – internal administrative reform of the Commission - will be funded through the EDF. The Commission has also made proposals relating to cases of crisis, conflict or post-conflict. The Commission proposes that responsibility for managing resources should shift from the role of the NAO to the EU.

▪ SUPPORT TO NON STATE ACTORS

There has been some success in bringing Non State Actors (NSAs) into the programming and implementation process of the Cotonou Agreement. The EU intends to further promote the involvement of Non State Actors in the development process.

However, a necessary condition for further NSA involvement seems to be that the provisions regarding eligibility and access to EDF resources for Non State Actors are implemented. The EU stresses the need for direct access to EDF resources through the Commission delegation. A clear distinction should be established now between financial support to Non State Actors and activities of a not-for-profit nature.

So far, very little has been said on how governments and the delegations have been involved in organising an in depth consultation and discussions on the Mid Term Review. It is again a worrying signal that the discussions on the revision of the Cotonou Agreement have taken place without any involvement of Non State Actors.

Can the current review of the Cotonou Agreement and its process of programming, financing and participation take place without proper consultation of civil society actors ?

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The views expressed in this briefing paper only commit the members of the Concord Cotonou Working Group and not the Concord membership as a whole.