

# After Cotonou: Towards a new agreement with the African, Caribbean and Pacific states

## OVERVIEW

The partnership agreement between the European Union (EU) and the African, Caribbean, and Pacific (ACP) states (the 'Cotonou Agreement') was due to expire in February 2020. The EU and the then ACP Group of States – which later became the Organisation of the ACP States (OACPS) – started negotiations on a 'post-Cotonou' agreement in September 2018. The EU and the OACPS agreed on the principle of a common foundation complemented by three regional protocols. However, the multi-level negotiations, the coronavirus crisis and difficulties in reaching agreement on sensitive issues, such as migration management and sexual and reproductive health and rights, prevented the new agreement from being finalised by the initial expiry date set in the Cotonou Agreement. It took more than 2 years of negotiations before the text of a renewed partnership agreement was initialled in April 2021, and 2 more years for the EU Member States to resolve dissenting views. On 20 July 2023, the Council eventually gave its greenlight for the agreement to be signed.

The European Parliament succeeded in maintaining the ACP-EU Joint Parliamentary Assembly; three regional parliamentary assemblies will be created in the partnership's future institutional set-up. The future agreement still needs to be signed by the parties, and further legal procedures will be required before it can be provisionally applied or enter fully into force.

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## Partnership Agreement between the European Union and the members of the Organisation of African, Caribbean, and Pacific States

Committee responsible: Development (DEVE)

[2021/2213 \(INI\)](#)

Rapporteur: Tomas Tobé (EPP, Sweden)



## Existing situation

The Cotonou Partnership Agreement was signed on 23 June 2000, by the then 15 Member States of the European Community and then 77 member states of the African, Caribbean and Pacific group of states. Commonly referred to as the [Cotonou Agreement](#), it guides most of the relations between 78 ACP states<sup>1</sup> and the 27 EU Member States; the United Kingdom was bound by the agreement until the end of 2020.<sup>2</sup> The Cotonou Agreement was revised in 2005 and then again in 2010. According to its Article 95, it was due to expire on 29 February 2020. However, it was extended until a new agreement could be concluded or until 31 October 2023 at the latest (see below: Signature and ratification process).

Since 2000, new challenges – such as increased migration flows, climate change, and terrorism – have emerged as priorities in the EU-ACP relationship, while the EU's preferential trade treatment for ACP states has become contrary to World Trade Organization (WTO) rules (see box on 'Economic partnership agreements' below). The economic and political rise of middle-income countries, particularly China, has altered the balance in the field of development cooperation. According to some analysts, the EU has lost some of its influence in that field, as ACP states can now turn to donors with less demanding requirements in terms of human rights and democratic governance.<sup>3</sup> Nevertheless, ACP states remain committed to the partnership with the EU and the predictable, multiannual resources linked to it.

The ACP-EU partnership is unique in many ways, as it is based on a legally binding agreement for 105 states, accounting for one-fifth of the world's population and more than half of the seats at the United Nations General Assembly. The Cotonou Agreement explicitly refers to 'respect for all human rights and fundamental freedoms' and 'democracy based on the rule of law' and provides for appropriate measures in case of violations of these principles (Article 9). It has an elaborate dispute settlement mechanism (Article 96).

The current partnership has an institutional setting consisting of an ACP-EU Council of Ministers, a Committee of Ambassadors, and a [Joint Parliamentary Assembly](#) (JPA) with 78 ACP parliamentarians and 78 Members of the European Parliament. Programmes and projects with ACP states were mostly funded by the European Development Fund (EDF), a multiannual instrument distinct from the EU budget, with [direct contributions](#) from all EU Member States. From 2021, the EU funding for the ACP countries is mainly provided through the [NDICI/Global Europe instrument](#) under the EU's general budget (see Financing). Commitments under the EDF however continue to run and EDF funds will be used until their depletion.

## EU negotiation objectives

Based on the findings of a [public consultation](#) and a [joint evaluation](#) of the Cotonou Agreement, the European Commission and the High Representative published a [joint communication](#) at the end of 2016, outlining their vision for the future of the partnership. They state that it is in the EU's interest to foster the stability, resilience and prosperity of its partners to avoid 'negative spill-over effects on the security and economic prosperity of the EU and its citizens', and to address the root causes of irregular and forced migration. The EU's objectives<sup>4</sup> are grouped into three strategies: forging a political partnership focused on building peaceful, stable, well-governed, prosperous and resilient states and societies; accelerating progress towards the attainment of the Sustainable Development Goals; and building effective alliances in international settings.

The joint communication proposed that the new partnership be based on a chapeau agreement (broadly outlining the principles) – referred to as the 'foundation' – between the EU and all ACP states, complemented with three specific protocols, for Africa, the Caribbean and the Pacific. The regional protocols would take account of the diverging interests of each of the three regions and the EU's strategic interests in each of them. The proposed 'foundation' would cover issues of

common interest and issues that do not require geographical differentiation, such as climate change, human rights, respect for democratic principles, and the rule of law.

## European Parliament's position

The European Parliament was not formally involved in the negotiations, however its consent is needed for the agreement to be concluded ([Article 218\(6\) of the Treaty on the Functioning of the EU \(TFEU\)](#)). The European Parliament followed the progress of the negotiations closely, with its Committee on Development (DEVE) in the lead. The DEVE committee set up a monitoring group that also included the European Co-President of the ACP-EU Joint Parliamentary Assembly, and formulated its views in a series of resolutions. On [14 June 2018](#), it adopted the following recommendations:

- The partnership should focus on the UN 2030 agenda and the fight against poverty. It should emphasise support for sustainable agricultural development to help tackle climate change.
- The chapter on human rights should explicitly list the forms of discrimination that should be combated (such as sexual, ethnic, or religious discriminations) and mention sexual and reproductive rights.
- The political dialogue should be strengthened and have a strong follow-up mechanism.
- The proposed management of legal migration should be more ambitious in support of the decision to attribute importance to the fight against illegal migration.
- National parliaments, local authorities, civil society and the private sector should be more involved in the programming, monitoring and evaluation of the partnership's priorities.
- The new partnership should strengthen the parliamentary dimension. The Joint Parliamentary Assembly should be closely involved in the implementation of the agreement and the regional protocols should provide for annual meetings between Members and members of parliament from the ACP states, with a strong role for the Pan-African Parliament in the EU-Africa protocol.
- Economic partnership agreements should be fully integrated into the new partnership (in a resolution of [4 October 2016](#), Parliament specified they should be subject to monitoring with regard to respect for human rights and social and environmental standards).

## Advisory committees

On 25 May 2016, the European Economic and Social Committee (EESC) adopted its opinion ([green paper](#)) on the future partnership. It recommended that:

- the future partnership embody a 'partnership of equals to jointly solve development challenges such as income inequality, youth unemployment, and climate change';
- the future agreement guarantee the involvement of civil society organisations, notably through a 'structured dialogue and regular consultation with [them]';
- EU development support for ACP countries be placed within the same legal framework as for other third countries, and be equally subject to the European Parliament's scrutiny.

The EESC has an [EU-ACP follow-up committee](#) composed of representatives of [organised civil society](#) (OCS, such as trade unions, employers' and consumers' organisations, chambers of commerce, cooperatives) from the EU and from the ACP states; the former are EESC members, the latter are appointed by international OCS organisations.

## Preparation of the agreement

**On the EU side**, the revision of the partnership was included in the European Commission's annual work programmes between 2015 and 2020, and the completion of the [negotiations](#) was among the priorities of its 2020 work programme. In December 2017, the Commission set out the scenario it envisaged in the [recommendation for a Council decision authorising the opening of negotiations](#). On [22 January 2018](#), the Member States agreed on the Commission's proposal for a chapeau agreement combined with three regional tailored partnerships with Africa, the Caribbean and the Pacific. Migration policy was the main point of disagreement among Member States, and related discussions [delayed the adoption](#) of the [negotiating directives](#) until 21 June 2018.

**On the ACP side**, in an initiative that began at the [Sipopo meeting](#) (Equatorial Guinea, 2012), the heads of state or government committed themselves to remain united as a group and to develop South-South relations. The ACP Group adopted its [negotiating mandate](#) in May 2018. While this negotiating mandate converged with the European Commission's proposals on many points, it contrasted sharply with them on several aspects.

- As regards the form, it did not propose a foundation with regional protocols, but a single agreement with three pillars instead: i) trade, investment, and services; ii) development cooperation, science and technology, and research and innovation; and iii) political dialogue and advocacy.
- As regards the substance, the ACP negotiating mandate called for greater account to be taken of intra-ACP migration and for the future agreement to include the voluntary nature of returns to the country of origin and a ban on using development aid as a means of negotiating border controls.
- As regards funding, the mandate called for a dedicated funding with multiannual allocations – a mechanism similar to the European Development Fund.

In April 2020, with the entry into force of the [revised Georgetown Agreement](#), the ACP Group of States officially became the [Organisation of the ACP States \(OACPS\)](#). The OACPS aims at strengthening cohesion among its members, notably through the establishment of a conflict-resolution mechanism and financial autonomy vis-à-vis the EU through the creation of an endowment fund and other forms of development finance.

## Negotiation process and outcome

Negotiations officially opened on [28 September 2018](#). They were led by Robert Dussey, Togo's Minister of Foreign Affairs, Cooperation and African Integration, representing the 79 ACP states,<sup>5</sup> and by the EU Commissioner in charge of international partnerships (Jutta Urpilainen succeeded Neven Mimica in December 2019). Several rounds of 'technical' negotiations took place and the chief negotiators met on [14 December 2018](#), [4 April 2019](#), [23 May 2019](#), [28 September 2019](#), [14 February 2020](#), [6 July 2020](#) and [3 December 2020](#). They issued communications on areas where political agreement had been reached, but did not make public the details of either agreed or outstanding points.<sup>6</sup> By virtue of a [delegation of powers](#) by the ACP-EU Council of Ministers, the ACP-EU Committee of Ambassadors decided in December 2019 to [extend the provisions](#) of the Cotonou Agreement until end 2020. This made it clear that negotiations would not be concluded by the expiry date laid down in the Cotonou Agreement (Article 95: end of February 2020).

Negotiations at the level of the three **regional components** were officially launched on 4 April 2019. Prior to this, high-level dialogues between negotiators from the EU and [the Pacific](#) (26 February 2019), [the Caribbean](#) (15 April 2019), and [Africa](#) (3 May 2019) had focused on possible priorities for each regional protocol. In February 2020, the chief negotiators declared that they had reached an agreement on 'key chapters of the regional partnerships'.

The COVID-19 outbreak slowed the pace of negotiations, which continued mostly by videoconference. The addition, in May 2020, of [several ACP states to the EU black list](#) on money-

laundering created [tensions](#) between the negotiators. On the EU side, the concurrent negotiations of the new EU multiannual financial framework, on the new relationship with the UK and on a new migration pact – all of which impact the EU-ACP relationship – made it [difficult to find a common position](#). African, Caribbean and Pacific components of the OACPS also had divergent interests preventing them from adopting a unified position in the negotiations on the foundation.

On 3 December 2020, the chief negotiators announced that a [political deal](#) had been reached. They [initialled](#) and made public the [negotiated agreement text](#) on **15 April 2021**.

## Signature and ratification process

**The initialled negotiated agreement is not binding for the parties:** the new agreement still needs to be signed by the parties, and to submit to legal procedures before entering into force or being provisionally applied. To avoid a legal gap, the Cotonou Agreement has been extended several times: it remains valid until the new agreement enters into force, or is provisionally applied, or until [31 October 2023](#) at the latest.

The European Commission transmitted the negotiated agreement, translated into all EU languages, to the Council on 11 June 2021. At the same time, it adopted a [proposal for a Council decision](#) for the signature and the [provisional application](#) of the agreement (see box below). However discussions between EU Member States [delayed](#) this decision. [Hungary](#) only notified on 19 April 2023 its willingness to sign after it had received an assurance that 'an addition to the EU Council decision, [would make] it clear that the Post-Cotonou Agreement has [no impact](#) on national competences in the areas of migration and sexual education'. In May, Poland [allegedly](#) blocked its agreement to leverage its demands over the handling of Ukrainian grain stocks and their competing with Polish grains. The [OACPS](#), the [ACP-EU JPA](#), [European Parliament committees](#) and the [EESC](#) have called urgently for the signature of the agreement several times.

On 13 March 2023, the DEVE committee published a [working document](#) welcoming the new agreement. The rapporteur, Tomas Tobé (DEVE committee chair) called for a strong focus of the partnership to be on strengthening ACP countries' resilience to food and health crises, and on 'implementing properly the humanitarian-development-peace nexus approach'. On migration, he insisted on the need to create legal pathways. He also expressed concern about the risk of not involving civil society enough in the implementation of the agreement and the failure 'to mention explicitly that discrimination could be based on sexual orientation'.

On **20 July 2023**, the Council of the EU adopted a decision authorising the signature of the new agreement. The decision also authorises, before the ratification procedure is concluded, the provisional application of the provisions that are within the remit of the [EU's competences \(Article 217\(5\) TFEU\)](#). Provisional application does not require Parliament's consent, nor its consultation. However, in the past, Parliament has underlined that agreements [must not be provisionally applied](#) without its consent. The OACPS may also apply the agreement provisionally.

As the OACPS-EU agreement is considered an association agreement under [Article 217 TFEU \(because it involves 'reciprocal rights and obligations, common action and special procedure'\)](#), it falls into the category of agreements for which the **European Parliament has to give its consent**. Only once this consent is obtained can the [Council](#) adopt the decision concluding the agreement. The Council's decision will require [unanimity](#) for its adoption.

In parallel, the OACPS and each EU Member State<sup>7</sup> will have to approve and ratify the new agreement in accordance with their own procedures. The provisional application will end when the new agreement fully enters into force, i.e. after the EU and at least two thirds of OACPS members have deposited the instruments expressing their consent to be bound (negotiated agreement, article 98).

## The changes the agreement would bring

The main advantage of the new agreement for the EU is that it will provide a framework avoiding bilateral arrangements with 79 third states. However, according to the [European Centre for Development Policy Management](#), 'the signature's delay and South Africa's decision to leave are negatively affecting the momentum and political interest for the agreement', which risks being deemed less relevant than other frameworks such as those for relations with the [African Union](#) (47 of whose 55 members are part of the OACPS). Several analysts welcome the efforts made by the [negotiators](#), but note that the ratification of the new agreement will be complicated and question whether [effective implementation](#) of the partnership will be possible.

### Structure

#### One foundation and three regional protocols

The new OACPS-EU partnership agreement will have the structure proposed by the EU: one foundation laying down the common principles, with one protocol for each ACP sub-region, focusing on their own priorities (see Table 1). The foundation and protocols will be legally binding on all the parties. There is a provision for accession of new countries, in particular (but not only) new OACPS member states (negotiated agreement, article 102).

#### Institutional set-up

The existing EU-ACP-wide institutions are maintained: there will be an OACPS-EU **Council of Ministers**, an OACPS-EU **Committee of Ambassadors**, an OACPS-EU **Joint Parliamentary Assembly**, and the possibility to organise **heads of state or government summits** (negotiated agreement, article 86).<sup>8</sup> Regionalisation is harnessed by the creation of three regional councils of Ministers and three regional parliamentary assemblies (respectively for the African, Caribbean and Pacific components), in addition to the foundation's overarching institutions. During the negotiations, the main stumbling block to the partnership's institutional set-up was the continuation of the Joint Parliamentary Assembly (see box below).

#### The parliamentary dimension of the future agreement

The European Parliament plays a key role in the institutional framework of the Cotonou Agreement through the work of 78 of its Members who participate in the Joint Parliamentary Assembly alongside 78 parliamentarians from the ACP states. The EU's negotiating mandate did not explicitly mention the JPA. However, the European Parliament warned it would not approve the new agreement if the JPA was not maintained ([resolution of 28 November 2019](#)). The JPA co-presidents and the DEVE chair also delivered strong statements to keep the JPA ([13 December 2019](#), [26 June 2020](#) and [2 December 2020](#)).

On [9 December 2020](#), Commissioner Jutta Urpilainen informed the Parliament that its demand would be met. Article 90 of the negotiated agreement therefore **provides for retention of the JPA**: as a permanent body of the partnership with a consultative role, meeting once a year, and with the right to self-organisation (including for instance deciding on its rules of procedures and setting up a permanent secretariat). Three new joint **regional parliamentary assemblies** ([Africa-EU](#), [Caribbean-EU](#), [Pacific-EU](#)) are granted similar powers.

The future agreement requires the new JPA, which will be made up of members of the three regional parliamentary assemblies, to adopt 'its rules of procedure within 6 months of the entry into force of this Agreement' (negotiated agreement, article 90). To this effect, a drafting committee, led by the Bureau of the current JPA, has prepared rules of procedure for the future four joint assemblies. The current JPA [adopted the four sets of rules of procedure](#) on 28 June 2023.

Table 1 – Simplified outline of the regional protocols initialled by the chief negotiators<sup>9</sup>

Regional protocols		
EU-Africa	EU-Caribbean	EU-Pacific
<p>As a legal framework for EU-sub-Saharan Africa relations, it is meant to go 'hand in hand' with the proposed <a href="#">Comprehensive Strategy with Africa</a>. To this end, it will assign a greater role to dialogue with the African Union and take account of relations with the countries of North Africa, the outermost regions of the EU (ORs) and the overseas countries and territories (OCTs).</p>	<p>It will build on the Joint <a href="#">Caribbean– EU strategy</a> and work towards strengthening the links with ORs and OCTs in the region. It will take due account of the situation of Haiti, the only 'least developed country in the Caribbean'.<sup>a</sup></p>	<p>It will systematise existing relations and work towards strengthening the links with ORs and OCTs in the region.</p>
<p>Key areas of cooperation<sup>a</sup> (<i>main differences are highlighted in italics</i>)</p>		
<ul style="list-style-type: none"> <li>• Inclusive, sustainable economic growth and development, (...) <i>improving, human capital and skills, the investment climate, intellectual property, the blue economy and the extractive industries and processing.</i></li> <li>• Human and social development, (...) <i>greater emphasis on addressing inequalities and social cohesion,[and on] decent work. Further advancement of women and children's rights, cultural values and knowledge, and assistance to people with disabilities.</i></li> <li>• Environment and natural resource management, <i>focusing on improved land management, retention and restoration of biodiversity and ecosystems, improved ocean governance and emphasis on the circular economy.</i></li> <li>• Peace and security, <i>as a central issue to ensure other mutual priorities flourish.</i></li> <li>• Human rights, democracy and governance, <i>particularly gender equality, rule of law, justice and financial governance.</i></li> <li>• Migration and mobility is a key issue, <i>with greater emphasis than in the past. (..) Balanced, comprehensive and coherent approach (...) in line with international law, including international human rights law.</i></li> </ul>	<ul style="list-style-type: none"> <li>• <i>Fighting against the devastating effects of climate change (...) with a special attention to the (...) small island states.</i></li> <li>• Advancing economic transformation and diversification (...) <i>focusing on key sectors such as the blue economy and connectivity, as well as new sources of growth.</i></li> <li>• <i>Promoting comprehensive citizen security strategies, (...) governance, including financial governance</i></li> <li>• Increasing investment in human and social development.</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Protect[ing] the oceans and seas from various threats including climate change, ocean acidification and coral bleaching, over-exploitation, and illegal, unreported and unregulated fishing.</i></li> <li>• Improving environmental and climate resilience, while pursuing the sustainable management of natural resources.</li> <li>• Building democratic, peaceful and rights-based societies and making progress in gender equality and financial governance.</li> <li>• Bolstering investment and private sector development for sustainable economic growth.</li> <li>• <i>Strengthening ocean governance and the conservation and sustainable management of living marine resources.</i></li> <li>• Investing in human and social development, with special attention to the promotion of youth and to women's and girls' economic, social and political empowerment.</li> <li>• <i>Sensitive to the serious threat posed by climate change and the significant risk incurred by small island developing states, the EU and OACPS' Pacific countries reaffirm their objective to each achieve carbon neutrality by 2050.</i></li> </ul>

Sources of quotations: [Negotiated Agreement text initialled by EU and OACPS chief negotiators](#), 15 April 2021; except: a) European Commission, [Q&A](#), December 2020 and b) [EU negotiating directives](#), June 2018.

## Sustainable Development Goals and multilateralism

As specified in both negotiating mandates, the future agreement explicitly affirms the signatories' willingness to achieve the UN [Sustainable Development Goals](#) (SDGs). The aim is to maintain the features of the Cotonou Agreement that already reflect the spirit of the SDGs, for instance its focus on human development and the fight against climate change and on strengthening cooperation in international forums. This commitment to multilateralism from both sides is in the spirit of [SDG 17](#), which calls for strong international cooperation, based on shared principles and values, to achieve the SDGs. The parties have committed to the ratification, accession, implementation and domestication of 'relevant international treaties and conventions' (negotiated agreement, article 78). Some of the relevant international treaties are listed throughout the negotiated agreement.

SDG 17 also calls for greater participation of civil society and local authorities in partnerships. This [participation](#) is acknowledged in article 5 of the negotiated agreement. However, the institutional framework does not provide for a body similar to an economic and social committee (just as there is none for 'Cotonou').

### Priority areas

The future agreement will be based on six key priorities: **human rights, democracy and governance; peace and security; human and social development; inclusive, sustainable economic growth and development; environmental sustainability and climate change; and migration and mobility.** Sexual and reproductive health and rights, and migration were [reportedly](#) among the issues where finding agreement between the negotiators was the most difficult.

### Human rights, democracy and governance

*'... respect for human rights, democratic principles and the rule of law shall ... constitute an essential element of this Agreement' (article 9(7)).*

While the parties will commit 'to promote, protect and fulfil all human rights be they civil, political, economic, social or cultural', some ACP states were reluctant to see the foundation agreement mention [sexual orientation and gender identity \(LGBTI rights\)](#) – an issue on which there are also [differences](#) among EU Member States. As a matter of compromise, the parties will commit to the implementation of existing international agreements – notably the [International Conference on Population and Development Programme of Action](#) on sexual and reproductive health and rights, the [Beijing Platform](#) on gender equality and their follow-up (negotiated agreement, article 36). The wording however falls short of the EU negotiators' ambitions. The new agreement will detail the mechanism to address failure to comply with the respect of those principles (article 101). This mechanism favours partnership dialogues and consultations within the OACPS-EU Council of Ministers, possibly with the advice of a Special Joint Committee, made up of an equal number of EU and OACPS representatives, before any party takes 'measures proportionate to the failure to fulfil'.

The abolition of the death penalty is a [pre-requisite](#) for EU membership; however, the [death penalty](#) is still in force in all English-speaking countries of the Caribbean and about half of African countries, and a few have carried out executions in recent years. The signatories will not commit to the abolition of the death penalty, but call on the countries where it is still applied to 'adhere to due process and internationally agreed minimum standards' (negotiated agreement, article 9), which is the bottom line of the EU [guidelines on the death penalty](#) in its relations with third countries – it can however still be considered a positive step, as the death penalty is not mentioned in the Cotonou Agreement.

At the time of signing the Cotonou Agreement, EU and ACP states were determined to 'fight against international crime in accordance with international law, giving due regard to the Rome Statute [of the International Criminal Court (ICC)]. Since then, [African states have questioned the impartiality of the ICC](#) and [Burundi](#) has withdrawn. However the situation was eventually appeased after several states [opposed](#) an African Union (AU) resolution for a [collective withdrawal](#). This allowed the



negotiators to strike a provision (article 19) 'encourag[ing the Parties] to ratify and implement the Rome Statute of the International Criminal Court and related instruments'. The cooperation with the ICC will be 'consistent with the principle of complementarity' with regional criminal courts, such as the [African Criminal Court](#) when it becomes operational.

## Peace and security

Negotiations on peace and security aspects were reportedly concluded smoothly. The provisions reflect other frameworks and agreements, mainly with [Africa](#), where the EU is a major player in the area of security. In this domain, expenditure with military and defence implications can now be funded for all three ACP sub-regions, thanks to the broadening of the African Peace Facility into the [European Peace Facility](#) (EPF). While the bulk of EPF spending to date has been used to support Ukraine, in recent months the Council has nevertheless adopted EPF-funded support for [Mauritania](#), [Niger](#), [Somalia](#), [Mozambique](#), [Ghana](#) and the [Democratic Republic of the Congo](#).

## Human and social development

The provisions covering education, health, sanitation, food security and social cohesion (negotiated agreement, title II) take up the mutual commitments to development cooperation between the EU and ACP countries. The coronavirus pandemic makes the need for concrete results more pressing, notably in the area of universal health coverage. Access to sexual and reproductive health services and information will be promoted – without further details, as the parties have varying views on this concept.<sup>10</sup> Article 39 on cultural heritage evokes 'measures to prevent and combat the illicit import, export and transfer of ownership of cultural property' but does not explicitly provide for the restitution of works of art taken during the colonial era, as some African countries requested.

## Inclusive, sustainable economic growth and development

The negotiators paid particular attention to the wording of the sections on trade. In the Cotonou Agreement, the provisions for WTO-compatible arrangements favoured the conclusion of economic partnership agreements (EPAs, see box below). However, some ACP states, mostly in Africa, have serious [reservations](#) about the EPAs, fearing they could hinder their industrial development, and have been reluctant to allow any mention of them in the post-Cotonou agreement. Eventually, the negotiated agreement (article 50) acknowledges 'the importance of concluding trade arrangements' – i.e. not necessarily EPAs. As for the existing EPAs, their signatories will reaffirm their commitment to fully implement them and foster the accession of new members.

### Economic partnership agreements (EPAs): Fostering regionalisation

Under the Lomé IV (1990-1999) Agreement, the ACP states enjoyed preferential tariff treatment for trade with the European Community. This was, in fact, a derogation from the General Agreement on Tariffs and Trade (GATT): according to the 'most-favoured-nation' principle, the preferential treatment accorded to ACP states should have been extended to other countries with a similar level of development. That is why the Cotonou Agreement included a provision for the negotiation of [Economic Partnership Agreements](#) (EPAs) in accordance with WTO rules. EPAs are negotiated at three sub-regional levels – Caribbean, Pacific, and five groupings of African countries – and each EPA has [specific trade clauses](#), not all of which are in force. ACP states were not able to fulfil their [commitment](#) to conclude a framework negotiating agreement among themselves. The EU's strategy to negotiate directly with regional sub-entities prevailed, thus raising the concern that differentiated trade agreements led to the fragmentation of the ACP-EU partnership. Since then the AU has been implementing the [African Continental Free Trade Area](#) (AfCFTA). In the [European Commission's view](#), this represents an opportunity for the EPAs to evolve towards a [continent-to-continent free trade area](#).

Currently, EPAs contain provisions placing them under the framework of the Cotonou Agreement: a violation of one of the Cotonou Agreement's 'essential elements' of human rights, democratic principles and the rule of law could lead to the suspension of the EPA's trade preferences for the

country concerned.<sup>11</sup> However, [legal discussions](#) have arisen about the validity of such clauses and the mechanism for recourse after the expiry of the Cotonou Agreement. To secure the interpretation, article 50(6) of the negotiated agreement reads:

*'The Parties to the respective Economic Partnership Agreements agree that the references contained therein to the provisions on appropriate measures in the Cotonou Agreement are understood as references to the corresponding provision in this Agreement.'*

## Environmental sustainability and climate change

This title has also been a quick win in the negotiations, as EU and ACP countries have long shared [common concerns and objectives](#) in these matters. In the negotiated agreement, the provisions on environmental sustainability and climate change span eight articles of the negotiated agreement, much more detailed than in the Cotonou Agreement – where they mostly lie in Articles 32 on the environment and natural resources, and Article 32A on climate change (added in the revised version of 2010). In addition, the environment, sustainable management of natural resources and climate change are key areas of cooperation in all three regional protocols, which detail specific challenges, such as the preservation of marine biodiversity in the Pacific.

## Migration and mobility

Article 13 of the Cotonou Agreement provides for dialogue and cooperation in the matters of both legal and illegal migration, including return and readmission, but does not clearly provide for enforcement and sanctions. Title VI of the future OACPS-EU agreement will go far beyond Cotonou in this matter. This title provides for 'a comprehensive, coherent, pragmatic and balanced approach, in full respect of international law, including international human rights law and, when applicable, international refugee law and international humanitarian law' but does not explicitly mention the UN Global Compacts [on migration](#) and [on refugees](#).

The parties commit to fair treatment and non-discrimination of **legal migrants** and 'shall pursue efforts to adopt effective integration policies' towards them (article 64). The negotiated agreement mentions cooperation to reduce the transaction costs of remittances, the need to facilitate circular migration, and the 'relevance' of South-South migration, but is not very detailed in this regard. The Africa protocol, title VI, includes further commitments on facilitating legal migration and mobility, encouraging diaspora investment and remittances, and supporting intra-African cooperation on migration. Provisions on legal migration were [contested](#) by some EU Member States, notably [Hungary](#) – even after the negotiated agreement was initialled, thus hindering the Council signature (see above: Signature and ratification process).

With regard to **irregular migration**, the OACPS negotiating terms envisaged that returns should be carried out on a voluntary basis. The EU, to the contrary, wished to introduce a more binding legal obligation to re-admit irregular migrants. The EU was successful in this regard, as the negotiated agreement – in line with the [new EU migration pact](#) and the [new EU strategy on voluntary return and reintegration](#) – underlines the right of any EU or OACPS country to return any irregularly staying third-country national to their country of origin, and the obligation for any EU or OACPS country to accept the return and readmission of their nationals. However, the negotiated agreement does not address the return of irregular migrants to a country of which they are [not nationals](#), even when they had departed from that country (transit country), this will therefore have to be addressed by specific readmission agreements. Annex 1 on return and readmission processes specifically details the means to ascertain the nationality of irregular migrants; it also limits the possibilities for returning unaccompanied minors, in respect of the best interests of the child. The negotiated text provides for a notification procedure before 'proportionate measures' address a failure to comply with the provisions on return and readmission. The parties will also commit to strengthening cooperation in border management and the fight against the trafficking of migrants. The Africa protocol, title VI, repeats the commitments of the general part of the agreement.

## Financing

The financing of the future partnership was not officially part of the negotiation framework. The OACPS-EU agreement will not feature a financial protocol, contrary to its predecessor, but rather a declaration whereby 'the EU undertakes to communicate, at the earliest opportunity' the amounts of aid. The EU will also commit to contributing to the implementing costs of the agreement. The **European Development Fund (EDF)**, which was outside the EU budget, funded the bulk of development cooperation in the ACP-EU partnership. In the 2021-2027 multiannual financial framework, development assistance for ACP countries and the partnership generally is no longer provided by the EDF, but instead by a new instrument, [NDICI/Global Europe](#), under the general budget of the EU – with some off-budget spending remaining, such as the European Peace Facility (for the military support, see above: Peace and security). ACP countries will benefit from all three pillars of the new instrument (geographical, thematic, rapid response). A 'cushion' provided for in NDICI/Global Europe will include, as far as possible, the [flexibilities of the EDF](#), such as allowing unspent sums to be rolled over from one year to the next, instead of returning them to the general budget. The OACPS however expressed concern that the 'budgetisation' of the EDF risks diluting – essentially for the Caribbean and Pacific countries, as they are respectively subsumed within the geographical components, 'Americas and Caribbean', and 'Asia and Pacific' – the [funds](#) previously earmarked for the ACP. In the future, it is expected that other sources, such as '[innovative financing](#)' (including, for instance, blending, micro-finance and public-private partnerships), will contribute more extensively to the funding. In addition, the OACPS is willing to establish its own source of [funding](#).

## Stakeholder views<sup>12</sup>

### EU civil society and private sector

In [reaction](#) to the negotiated agreement, [Concord](#), the **European confederation of relief and development non-governmental organisations (NGOs)**, has welcomed the emphasis put on gender equality, human development and environmental sustainability, and recommends they are harnessed by 'operational structures and [mechanisms for civil society participation](#)'. It however regrets that EU interests are prominent as concerns the economic provisions – although it hails as an improvement the final wording on trade and EPAs – and the provisions on migration. The **European Trade Union Confederation (ETUC)** and the **International Trade Union Confederation (ITUC)** issued a [common position](#) before the negotiations opened. They argued that the new partnership must promote [decent work](#), freedom of association and the reduction of pay gaps. The confederations called for the renegotiation of the economic partnership agreements, including the introduction of binding labour law provisions based on the ratification and effective implementation of International Labour Organization conventions. [BusinessEurope](#), an umbrella organisation of **European business and employers' associations**, considered the Cotonou Agreement incapable of ensuring the economic development of the ACP states and of strengthening the presence of EU companies in these markets. The association would like to see stronger involvement of the [private sector](#) in the partnership and greater use of EU funds for direct aid to the private sector, rather than budgetary support.

### EUROPEAN PARLIAMENT SUPPORTING ANALYSIS

European Parliament, [Legislative Train Schedule](#), EPRS, updated monthly.

### OTHER SOURCES

European Commission, [Proposal for a Council Decision](#) [on the signing and provisional application of the OACPS-EU Partnership Agreement] (COM(2021) 312).

[Negotiated Agreement text initialled by the EU and OACPS chief negotiators on 15 April 2021](#).

Council of the European Union, [Negotiating directives](#), 21 June 2018.

ACP Council of Ministers, [ACP negotiating mandate](#), 30 May 2018.

## ENDNOTES

- <sup>1</sup> The Cotonou Agreement is part of the body of EU law incorporated by the new EU Member States. Three OACPS member states are not bound by the agreement – Cuba, which has not signed it, and Sudan and Equatorial Guinea, which have not signed the 2010 revision. All OACPS member states have been involved in the negotiations for the future agreement. South Africa decided to leave the OACPS as of 2 September 2022 and will not participate in the future agreement. On 10 December 2022, the Maldives became a full member of the OACPS.
- <sup>2</sup> Since 1 February 2020, the UK is no longer an EU Member State and as of 1 January 2021 it can conclude agreements with individual ACP states or the OACPS as a bloc. The UK's departure has financial implications too, given the country's contribution amounted to nearly 15 % of the European Development Fund.
- <sup>3</sup> Some analyses have come to more nuanced conclusions. See, in particular: F. Akum and D.M. Tull, [Strategic competition and cooperation in Africa](#), Megatrends Africa Policy Brief, February 2023.
- <sup>4</sup> For a detailed analysis, see the [previous editions of this briefing](#).
- <sup>5</sup> Cuba was part of the 'post-Cotonou' negotiations.
- <sup>6</sup> According to Len Ishmael ([KAS, April 2021](#)), the EU negotiators would have liked to conclude the negotiations before the new Commission took office in November 2019, however the ACP side wished to take more time to find an agreement on outstanding issues.
- <sup>7</sup> Post Cotonou will be a 'mixed agreement', as some of its provisions fall outside the EU's exclusive competences – 'If the subject matter of an agreement does not fall under the exclusive competence of the EU, EU countries also have to sign the agreement' (Eur-Lex, [Summaries of EU legislation](#)). This mixed nature stems from the division of competences as defined in the Treaties and [divergent interpretations](#) have arisen between the institutions. In any event the decision on the mixed nature, to the extent it relates to the competences shared between the Member States and the Union, belongs to the Council.
- <sup>8</sup> This validates the existence and coordination role of the OACPS, despite pressure for increased regionalisation both from the EU side (see box on the EPAs) and regional entities – in particular, the [African Union](#) wanted the partnership with Africa to be 'separated from the ACP context', but was not successful in this pursuit.
- <sup>9</sup> For a detailed outline of the EU negotiating mandate, see the [fourth edition of this briefing](#) (in French).
- <sup>10</sup> Hungary, Poland and several ACP states are signatories of the [Geneva Consensus Declaration](#) (2020), where they commit to 'Improve and secure access to health and development gains for women, including sexual and reproductive health, (...) without including abortion'.
- <sup>11</sup> Although this is not straightforward in all EPAs: see [Assessment of the implementation of the human rights clause in international and sectoral agreements](#), in-depth analysis requested by the DROI Subcommittee, European Parliament, May 2023.
- <sup>12</sup> This section aims to [provide](#) a flavour of the debate and is not intended to give an exhaustive account of all different views on the agreement. Additional information can be found in related publications listed under 'European Parliament supporting analysis' and 'other sources'.

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