ACP-EU COOPERATION AFTER 2020

TOWARDS A NEW PARTNERSHIP?

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Foreword

On 28 February 2014, the Advisory Council on International Affairs (AIV) was asked to produce an advisory report on reviewing the Cotonou Agreement. The request for advice asked whether the current partnership agreement between the European Union (EU) and a group of countries from Africa, the Caribbean and the Pacific Ocean (the ACP group) should be continued after 2020 and, if so, in what form and addressing what issues (see annexe I).

With this request for advice, the Dutch government shows its willingness to make preparations at an early stage for negotiations on a possible successor to the Cotonou Agreement. The AIV welcomes the request for advice, particularly in view of the Dutch Presidency of the EU in the first half of 2016. The expectations of the ACP countries themselves for their future cooperation with the EU and the standpoints of the 'old' and 'new' EU member states will be important starting points for the report. At the time of completion of this report, no official standpoints had yet been made known.

The report was prepared beginning in August 2014 by a joint committee chaired by Professor K.C.J.M. Arts (AIV/Human Rights Committee) and Professor M.E.H. van Reisen (AIV/ Development Cooperation Committee). Other members of the committee were Dr B.S.M. Berendsen (Development Cooperation Committee), Professor J.B. Opschoor (Development Cooperation Committee), J.N.M. Richelle (Development Cooperation Committee) and N.P. van Zutphen (European Integration Committee). The executive secretary was P. de Keizer, assisted by trainees Ms J. Schonewille and R.R. Harding. The committee was assisted in drafting the report by civil service liaison officers Ms M.C. Albert and R.H. van Dijk of the External Affairs Division of the Ministry of Foreign Affairs' European Integration Department. Assistance was also provided by Ms C.B. Hagenaars and G.T. Schulting of the Permanent Representation of the Kingdom of the Netherlands to the European Union in Brussels.

Besides a literature study, interviews were conducted in The Hague and Brussels and by telephone with experts and others directly involved in the issue, including the following high-ranking ACP officials: Secretary-General Hon. A.M. Mumuni, Chef de Cabinet O. Mailafia and Multilateral Trading System Director J. Lodge. The committee also spoke to P. Gomes, who will succeed Mr Mumuni as Secretary-General in March 2015, and Samoan Ambassador F. Pa'o Luteru. At the EU, the committee spoke to K. Rudischhauser, the Commission's Deputy Director-General at the Directorate-General for International Cooperation and Development, and P.J. Craig McQuaide of the Unit for Interinstitutional Relations. In addition, the committee spoke to G. Laporte of the European Centre for Development Policy Management (ECDPM), Professor N.J. Schrijver and representatives of CONCORD, Both Ends and 11.11.11. The committee is deeply grateful to all of them for their valuable insights and contributions.

The AIV adopted this report at its meeting on 13 March 2015.

I Introduction

Relations between the European Union (EU) and the Africa, Caribbean and Pacific (ACP) group of countries date back to 1957. At that time, the establishment of the European Economic Community (EEC), the EU's predecessor, made it necessary to come to an arrangement with what were then overseas territories of four EEC members (Belgium, France, Italy and the Netherlands). This was a major issue in the final phase of the negotiations, even at some moments a point that was crucial to their success. Finally, it was agreed that the EEC members would adopt a joint approach to relations with these overseas countries and territories (OCTs), including funding their development.

The Treaty of Rome establishing the EEC thus included provisions for an association agreement to promote the economic and social development of the OCTs and to secure a solid basis for their mutual economic ties and those with the EEC.[1]

In the years that followed, most of the associated countries became independent sovereign states. Because this meant that they lost their OCT status, a new form of association had to be agreed. This agreement was reached in the Yaoundé (1963-1975) and Lomé (1975-2000) Conventions.

In 1973, the United Kingdom acceded to the EEC and a way had to be found to link the Community to the many countries of the British Commonwealth. A number of associated countries took the initiative to make joint agreements and 22 former British colonies joined the group. The Georgetown Agreement, which effectively established the ACP group of countries, dates from 1975.[2]

The association of the ACP countries with the EU on the basis of these successive agreements therefore originates in the 1957 Treaty of Rome and is embedded in Community law (the EU's *acquis communautaire*).

The partnership between the ACP and the EU was followed up in 2000 with the signing of the Cotonou Agreement. Like the earlier conventions, the Cotonou Agreement has the aim of contributing to poverty reduction and the gradual integration of the ACP countries into the world economy.[3] However, the agreement raised its ambitions by laying a greater and more explicit emphasis on political dialogue. Over the course of time, this would extend beyond human rights – which had already been a focus – to a broader spectrum of issues, including climate change, environment, migration, the International Criminal Court and gender issues.

1 EEC Treaty, 1957, article 131.

2 See: <http://www.caricom.org/jsp/secretariat/legal_instruments/georgetownagreementonacp.jsp?menu=secretariat>.

3 Article 1, Partnership agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000, see: <http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=376>.

When the Cotonou Agreement was signed in 2000, the ACP comprised 77 member states.[4] Two new states joined later,[5] bringing the current total to 79: 48 in Africa (the whole continent except for North Africa), 16 in the Caribbean and 15 in the Pacific region (see annexe IV). Many ACP countries are classified by the United Nations (UN) as 'least developed states'.

The ACP group has observer status at the UN and maintains relations from its base in Brussels with international organisations like the World Bank, the Organisation for Economic and Social Development (OECD) and the World Trade Organization (WTO). Through its wide membership, the ACP includes countries that are also members of a number of regional organisations, including the African Union (AU), the Common Market for Eastern and Southern Africa (COMESA), the Economic Community of West African States (ECOWAS), the Southern African Development Community (SADC), the Caribbean Community (CARICOM), the Caribbean Forum of ACP States, the Pacific Islands Forum and the Pacific Island Countries Trade Agreement (PICTA). The group's secretariat is located in Brussels and it has an office in Geneva for relations with the WTO.

After 2000, the European Union was considerably enlarged, almost doubling its membership from 15 in 2000 to 28 in 2015. After acceding to the Union, the new member states voluntarily committed themselves to the Cotonou Agreement.

The Cotonou Agreement was concluded for a period of 20 years and continues in effect through February 2020. A year and a half before this date (i.e. no later than 1 September 2018), the parties must begin negotiations 'in order to examine what provisions shall subsequently govern their relations'.[6] Until that time, the situation is reviewed every five years to determine whether the Agreement needs to be amended. The first review of the Agreement took place in 2005, followed by the second in 2010. The third opportunity for review in 2015 will probably go unused.

Within the ACP, a process of reflection has been under way for some time about a possible successor to the Agreement after 2020. Fundamental questions have been asked about what ambitions and profile the group wishes to adopt as it moves forward into the next decade, whether it has any added value as alongside the separate regional partnerships, and what its main concerns and priorities should be. To sustain this process, a few ACP ambassadors were asked in November 2010 to come together under the leadership of Ambassador Patrick Gomes of Guyana to consider the group's future.

This Ambassadorial Working Group on the Future Perspectives of the ACP Group initiated a series of consultations, the definitive outcomes of which were shared – internally and confidentially – with the other members of the group in December 2014. In March 2013, an Eminent Persons Group (EPG) was set up to evaluate the functioning of the ACP group

4 Including South Africa, to which only a limited part of the Agreement applies. See Protocol 3 to the Cotonou Agreement (ibid.) which states, among other things, that the provisions of the Agreement relating to development funding, the economy and trade do not apply to South Africa. A separate bilateral agreement has been drawn up with the EU for cooperation in these areas.

5 Cuba in December 2000 and Timor-Leste in May 2003. Cuba is a not yet a party to the Cotonou Agreement, but Timor-Leste is.

6 Cotonou Agreement, article 95 (4).

since it was established in 1975, and to draft proposals for the future structure and course of the organisation. [7] The EPG's findings were not yet known at the time this report was issued.

On the EU side, first informal consultations took place in 2011 and in 2013. It has recently become clear that the European Commission seems to be cautiously working towards a successor to the Cotonou Agreement. This was apparent from the tasks assigned to the Commissioner for International Cooperation and Development, Neven Mimica, when he was appointed in the autumn of 2014, and explicit in his introductory statement to the European Parliament.[8] Commissioner Mimica describes his responsibilities in this respect as follows on his webpage: 'Launching negotiations on a revised Cotonou agreement with the African, Caribbean and Pacific Group of States.'

The expiration of the Cotonou Agreement in 2020 presents an excellent opportunity to review the partnership between the ACP and the EU. The impression that emerges from the first series of consultations on both sides – and which was emphasised in the AIV's discussions with experts – is that relations between the ACP and the EU need to be fundamentally reassessed. It will not be enough to continue on the same footing as in the past, with only a few slight adjustments.

In any event, the year in which this report is issued (2015) will be an important one for reflecting on the future relations between the ACP and the EU. In March, Ambassador Gomes will succeed Muhammad Mumuni as Secretary-General of the ACP. In the coming months, the EU will hold a series of expert conferences to consider issues like strategic cooperation, the post-2015 international sustainability agenda, financing for development, and demographic challenges like urbanisation and mobility.[9] The results of these deliberations will be incorporated in the Green Paper on the future of ACP-EU relations to be drawn up by the European Commission. As mentioned earlier, it is especially important for the Netherlands that preparations are being made in 2015 for the Dutch Presidency of the EU in the first half of next year.

7 The EPG is chaired by former Nigerian President Chief Olusegun Obasanjo. The vice-chairs are Bharrat Jagdeo and Leonel Fernández Reyna, ex-Presidents of Guyana and the Dominican Republic, respectively. Other members are Patricia Francis (Jamaica), former executive director of the International Trade Centre; Daoussa Bichara Cherif, former Minister of Public Works, Transport, Housing and Urbanisation of Chad; Kaliopate Tavola, former Minister of Foreign Affairs of Fiji; Ibrahima Fall of Senegal, former UN Assistant Secretary-General; Peter Gakunu of Kenya, former executive director at the IMF; Sebastião Isata of Angola, former Special Representative and head of the African Union Liaison Office in Guinea-Bissau; Nureldin Satti of Sudan, former Acting Special Representative for the UN Secretary-General in Burundi; Kolone Vaai, former Financial Secretary in Samoa, and Valentine Sendanyoye Rubwabiza, former deputy director-general of the World Trade Organization and currently CEO of the Rwanda Development Board.

8 In his introductory statement to the European Parliament at the end of 2014, Mr Mimica stated that 'the question is not whether ACP countries are still important to the EU or not, but about how to best design our cooperation in the future'. Maastricht, December 2014, p. 2. For all information on this, including the mission letter to Mr Mimica and on his discussions with the European Parliament, see: <http://ec.europa.eu/commission/2014-2019/mimica_en>, accessed on 10 February 2015. These sources also show that EU policy coherence is an important priority for the new European Commission.

9 European Commission, 'Specific Terms of Reference for Project to Stimulate Wider Discussion on Post-Cotonou Issues', December 2014, pp. 1-2.

This report is intended to give an initial impetus to assist the Dutch government in determining its standpoint on future ACP-EU relations. It is possible, in light of the consultations planned for 2015, that its conclusions will have to be adjusted later in the year and that other aspects will have to be considered. If the occasion arises, the AIV will consider offering supplementary advice.

The report is structured as follows. After this introduction, the AIV examines the changing context in which ACP-EU cooperation occurs. It then looks at geopolitical factors, regionalisation, the international agenda on sustainable development and how it is to be financed. Chapter III describes internal institutional developments within both the ACP and the EU, after which chapter IV examines the implementation of the Agreement so far and the results achieved under each of the three main pillars (political dialogue, development aid, and economic cooperation and trade). This chapter also assesses the functioning of the associated institutions. Lastly, chapter V summarises the findings and offers conclusions and recommendations for a possible future form of the partnership after 2020.

II Changing context

Clarifying of the nature of future relations between the ACP and the EU requires taking into account the broader context in which they will play out. Without claiming to provide a complete picture, the AIV examines below changing geopolitical relations, globalisation and regionalisation, the emerging new international agenda for sustainable development and the corresponding sources of funding. To a lesser or greater extent, these are external factors. The changes that have taken place within the ACP and the EU will be examined in the following chapter.

II.1 Changing geopolitical relations

While international relations in the previous century were mainly bipolar in nature, a multipolar global society is increasingly emerging in the 21st century. This places new demands on foreign policy. Take, for example, the economic and political rise of Asia which – as the AIV noted in an advisory report in January 2014 – is of strategic significance and is causing tension in relations among EU member states and with the United States.[10]

There is a common interest in maintaining peace and security in the Asia-Pacific region, and in continued economic growth in the area. There are, however, some not inconsiderable differences between the interests of the EU and the US in the area, not only because of their geographical location (the US is a Pacific power, but Europe is not) and unequal military capabilities, but also because of different views on the best way of dealing with tensions and conflicts.

For many ACP countries, especially in Africa, Europe was traditionally the main, if not the only, cooperation partner. Over the past decade and more, however, leading emerging economies like Brazil, Russia, India, China and South Africa (the BRICS countries) have acquired a distinct presence in both ACP and other developing countries and at the UN. Especially in relation to Africa, there is an impression that the BRICS countries' interest is mainly driven by a desire to exploit the continent's natural resources and gain (and hold on to) access to markets.

This is not surprising: Europe's involvement in Africa is also prompted by strategic interests. It should be noted here that, in the partnership between the ACP and the EU – a long process of trial and error – besides interest in raw materials, factors like the changing international security situation and sustainability have become increasingly central. ACP countries do not fail to emphasise that shared principles of good governance, human rights and democracy are important elements in their relations with the EU and have clear added value.

China's growing influence in Africa is apparent from the many roads, buildings and other infrastructural works it has recently built for universities, hospitals and even the African Union. What African governments have offered in return, besides supplying raw materials, is less clear. Middle Eastern countries, too, have become major investors in Africa.

10 Advisory Council on International Affairs, 'Asia on the Rise: Strategic Significance and Implications', The Hague, advisory report number 86, December 2013, pp. 51-52.

Just how radically international relations have changed was shown after the recent financial crisis, when Angola provided Portugal with financial assistance and highly qualified engineers left Portugal for Angola because employment opportunities were better there.[11] Nairobi is known as 'Silicon Savannah', an 'e-hub' that is driving innovation and attracts multinational companies. Rwanda, also an e-hub, has become one of the world's highest-ranking countries in terms of women's participation in politics. 'Africa Rising' is the new buzzword for international conferences since *Time* magazine put the slogan on its front page.[12] Many ACP countries aim to achieve the status of middle-income country between 2020 and 2030 and to reduce their dependence on foreign aid.

II.2 Globalisation and regionalisation of the economy

Another major geopolitical development is the globalising economy. As markets become increasingly interconnected, it becomes more difficult to reach trade agreements. Only a few decades ago, they were simply aimed at opening up national borders and adjusting import tariffs, but now issues like subsidy and price management, quotas, import certificates, quality requirements, packaging regulations and certification – which may be less transparent – also need to be taken into account.[13]

The increasing interdependence of markets and supply chains worldwide is generating new problems and priorities that should in the first place be addressed globally. Whether the Cotonou Agreement can make an appropriate contribution to these efforts remains to be seen. What is certain is that the poorest countries will benefit from the strongest possible representation to ensure that global trade contributes to international equality and justice.

Linked to globalisation, regional cooperation has become closer and deeper in many regions in recent decades, especially on politically important issues like economic cooperation, trade and migration. That is certainly true of the regions in the ACP group, even though it took some time for the partnerships to reach maturity. Because the political and instrumental ties between ACP countries were weak at first and they were still predominantly oriented towards Europe, it was many years before regional intra-ACP cooperation began to take shape.

In the Caribbean, the Pacific region and West, East and Southern Africa, regional cooperation has become increasingly important. The emergence of the African Union is

11 See for example 'Angola pours money into debt-ridden Portugal', *The Guardian,* 18 November 2011, <http://www.theguardian.com/world/2011/nov/18/angola-boom-debt-riddled-portugal>; 'Portuguese escape austerity and find a new El Dorado in Angola', *The Guardian,* 16 September 2012, <http://www.theguardian.com/world/2012/sep/16/portuguese-exodus-angola-el-dorado>; Lucy Ash, 'Portugal's jobless graduates flee to Africa and Brazil', *BBC News*, Lisbon, <http://www.bbc.com/news/world-14716410>; all accessed on 28 January 2015.

12 See for example <http://www.africa-rising.org>, accessed on 15 January 2015.

13 D. Held and C. Rogers, Global Governance at Risk, Cambridge: Polity, 2013, p. 2. Negotiating on trade agreements may have become more complex, but it has not stopped the world from concluding them, and certainly not at regional level. According to figures from the World Trade Organization, there were 330 regional trade agreements in existence by 2005, and all countries in the world had acceded to at least one of them, with a single exception: Mongolia.

closely related to this development and reflects Africa's desire to raise its global profile. The European Commission and individual EU member states have promoted this process in recent years, actively supporting the building and expansion of the AU's institutions, including the African Commission and the Pan-African Parliament.

At first, this support for the AU aroused some resentment within the ACP group as it was felt to be a competitor. The relative overemphasis on Africa had already been a frequent topic of discussion within the group. In addition, global players tended to prefer to work with the AU, being under the impression that the ACP group had its origins in a privileged relationship with the EU. Relations between the ACP group and the AU are still not always easy, though there is less of a tendency to think in terms of exclusion and more of complementarity and mutual support.

Furthermore, the ACP group presents itself as a global organisation representing a large group of countries on three continents, with the relationship with the EU considered important but no longer necessarily exclusive. The EU, too, is faced with the question of how it can best defend its own interests and what relations with what regional organisations are important in achieving this.[14]

II.3 The emerging international agenda for sustainable development

Crucial discussions are currently underway at global level on the future of international cooperation and new Sustainable Development Goals (SDGs). Attention is also being devoted to the architecture and management structure of multilateral institutions. The discussions are being conducted first and foremost in existing multilateral organisations. The ACP as a group is not a member of these organisations and is thus not always represented.[15]

The international focus on sustainable development is not new. The international community has been concerned with development for more than 60 years. For the past 15 years the Millennium Development Goals (MDGs) have been the main benchmarks for these efforts, with focuses on poverty reduction, food and water security, and health. In addition, the MDGs also focused on several aspects of sustainability, such as biodiversity and climate. The Cotonou Agreement refers specifically to these issues, especially since the Agreement was reviewed in 2005, when it was decided that the MDGs should provide

14 It should be noted here that, within the ACP and certainly the EU, there is a greater variety of positions than can be taken into account in this report. Within the EU, for example, the member states, the Directorate-Generals for Development and for Trade, and the European External Action Service sometimes have different perspectives.

15 ACP countries do have a voice in the G77, for example, where they take a different position from the larger emerging countries. In the discussions on the future international agenda for sustainable development, the adoption by the ACP and the EU of a joint declaration on the SDG negotiations in June 2014 was an important step. This declaration, which focused on a number of issues including peace and security and conflict management, was agreed after the AU and the EU failed to reach a joint standpoint. See: <http://ec.europa.eu/europeaid/news/joint-statement-european-commissioner-development-andris-piebalgs-and-environment-commissione-0_en>, accessed on 15 January 2015.

the framework for development strategies to be elaborated at country level.[16]

The MDGs will only be partly achieved by 2015. Based on the as yet unfulfilled parts of the agenda and the outcomes of the UN Conference on Sustainable Development (Rio+20, 2012), the international community now faces a new and more comprehensive set of challenges in the form of the Sustainable Development Goals. Negotiations on the SDGs are in full swing and the UN is expected to reach a final decision on them in September 2015. For the time being, the SDG package contains 17 goals and 169 associated specific targets, which together form the new agenda on sustainable development.

Poverty reduction remains the starting point of the new agenda, with additional focuses on sustainable development, inclusive growth, employment, reducing inequality, sustainable use of natural resources, combating violence and the abuse and exploitation of children and young people, and a revitalised global partnership with the participation of civil society organisations and other stakeholders. One of the provisional goals focuses specifically on human rights and links it to sustainable development and increasing the accountability of institutions. In addition, the sustainable development agenda includes references to several global public goods, such as food security, energy and the climate system.[17]

II.4 Financing for development: towards a new definition of development aid

Official development assistance (ODA) has been a topic of discussion for some time. The discussion has been conducted against a background of growing doubts about the effectiveness of aid, the emergence of new development actors and donors, and the possible desirability of expanding activities that qualify as ODA.

The OECD has pointed out that, although the relative significance of ODA flows for achieving development objectives may be declining, it is still important in absolute terms. That applies especially in the case of least developed countries (LDCs) and fragile states, which often still receive a relatively small proportion of aid funds.[18] These are countries that generally still lag behind in achieving the MDGs. In addition, fragility increases the chances of a country being seriously affected by uncontrollable crises, as the recent Ebola epidemic in West Africa showed.

In keeping with the outcomes of Busan and the New Deal for fragile states, it should be possible with better coordination and additional resources to set a process of

16 In the Agreement as revised in 2005, the Preamble notes that 'the Millennium Development Goals (...), in particular the eradication of extreme poverty and hunger, as well as the development targets and principles agreed in the United Nations Conferences, provide a clear vision and must underpin ACP-EU cooperation within this Agreement'. Cotonou Agreement, op.cit., p. 16.

17 UN Secretary-General, 'The Road to Dignity by 2030: Ending Poverty, Transforming All Lives and Protecting the Planet', New York: UN, 4 December 2014, and Report of the Open Working Group of the General Assembly on Sustainable Development Goals, UN Doc. A/68/970.

18 Advisory Council on International Affairs, 'Development Cooperation: Beyond a Definition', advisory letter number 25, The Hague, May 2014.

development in motion and embed it in regional forms of support.[19] The fact that 39 of the 48 LDCs are members of the ACP group and are already embedded in regional structures that are part of the ACP could be a significant starting point for this process.[20] Furthermore, the poorest countries are at least as well supported under the Cotonou Agreement as in other development partnerships.

Redefining ODA, the AIV has previously noted, should mean reviewing the concept, not cutting back on development spending.[21] Reliability, ownership and predictability are basic principles of international agreements that cannot simply be jettisoned unilaterally. A change in the ODA definition should be based on the Declarations of Paris, Accra and Busan on aid effectiveness and on the new post-2015 sustainable development agenda.

This will require looking critically at the options for improving the division of tasks and the coordination of aid (for example through joint programming, which is already taking place but not always with equal success) and at innovative forms of financing. A broader flow of funding is required, based on both public flows and private initiatives, in some cases in the form of blending.[22] All of these options will have to be linked to obligations to achieve results in reducing poverty and reaching other agreed goals of international cooperation.

19 See the agreement reached in Busan in 2001, in which the international community made detailed proposals to increase the effectiveness of aid, devoting special attention to greater participation of developing countries, a focus on results, improved cooperation and shared responsibility. One specific part focused on the New Deal for fragile states, aiming to step up efforts on peacebuilding, institution-building, capacity development and transparency. See: <http://www.oecd.org/dac/effectiveness/49650173.pdf>, p. 8, accessed on 22 January 2015.

20 The non-ACP LDCs are Afghanistan, Bangladesh, Bhutan, Cambodia, Laos, Myanmar, Nepal, South Sudan and Yemen. See: <http://www.un.org/en/development/desa/policy/cdp/ldc/ldc_list.pdf>, accessed on 15 January 2015.

21 Advisory Council on International Affairs, 'Development Cooperation: Beyond a Definition', advisory letter number 25, The Hague, May 2014.

22 To give some idea of the scale of demand for support, the UN's Department of Economic and Social Affairs estimates the total extra expenditure required for global sustainable development, including energy, water, biodiversity, and land and food security, at USD 1,900 billion, 2.7% of gross world product. USD 800 billion of this would be needed for the transition to sustainable development in low- and middle-income countries. Perhaps half of this would have to be raised through international funding.

III Internal developments within the EU and the ACP group

III.1 Reviewing the EU's basic approach

Since the conclusion of the Cotonou Agreement in 2000, the EU has undergone a series of far-reaching changes. Especially its enlargement with 13 new member states has left its mark and led to substantial adjustments. The new member states had a different tradition of international cooperation than most of the older member states, and this impelled a rethinking of aid and development cooperation.[23]

The new member states had to familiarise themselves with the commitments under Community law in relation to international cooperation and later adopt them themselves. The Treaty of Lisbon introduced an important change in general EU development cooperation policy by referring directly, in article 208, to the eradication of poverty as its primary objective. The Treaty also maintained the reference to policy coherence – a principle that several member states, including the Netherlands, have in recent decades increasingly raised with those making and implementing the EU's external development policy.

The enlargement to the east also confronted the EU more than before with poverty within its own borders, as it is a considerable problem in a number of new member states. These new priorities were sometimes pursued at the expense of solidarity with countries outside the EU, but also led to a better understanding of the need for a joint effort to combat poverty worldwide and to achieve policy coherence in doing so.

The Eurobarometer shows a relatively stable pattern of support for global poverty reduction among European citizens. A recent report by the European Commission shows that, according to the Eurobarometer, support among the European public for development efforts has even increased. A large majority of 85% believes that developing countries should be helped and 67% feels that the EU should step up its development efforts.[24]

As a consequence of the Treaty of Lisbon, the EU's way of approaching its external relations has changed radically. Less unanimity is required, for example, than in the past. The European External Action Service (EEAS) has been set up to strengthen cooperation on foreign policy in Europe and to assist the High Representative of the Union for Foreign Affairs and Security Policy by acting as Europe's own diplomatic service. The EEAS is meant to ensure that the integration of development cooperation, aid and trade is more firmly anchored in the EU's institutional structure for cooperation with third countries.

23 See for example A. Mold (ed.), *EU Development Policy in a Changing World: Challenges for the 21st Century*, Amsterdam: Amsterdam University Press, 2007.

24 European Commission, 'As European Year for Development Kicks Off, New Figures Show Increased EU Citizens' Support for Development', press release, 12 January 2015. See: <http://europa.eu/rapid/press-release_IP-15-3060_en.htm>, accessed on 15 January 2015. With a total contribution of EUR 57 billion (2013), Europe contributes more than half of ODA, the equivalent of 0.43% of the EU's gross income. See press release <http://europa.eu/rapid/press-release_IP-14-388_en.htm>, accessed on 20 February 2015.

The EU has made separate arrangements and set separate budgets to support its neighbouring countries to the south and the east. These are intended to promote cooperation in a wide range of areas. It has also entered into cooperation relationships with countries in Asia and Latin America. There are several substantive differences between these relations and those with ACP countries: they are not always based on a comprehensive, mutually binding agreement; these countries are scarcely approached at all as a group (a major contrast with the ACP); aid levels are set unilaterally by an EU instrument; and programmes are, in the final instance, approved and monitored by EU institutions. In the ACP-EU partnership, there is a joint institutional framework, as a result of which the ACP countries experience a higher degree of ownership.

In the previous chapter it was noted that the EU has been confronted for some time by new financial and economic competition from the BRICS countries and others, which is becoming increasingly apparent in, for example, Africa. This is forcing the EU to strategically review its position in the world. Its historical ties with the ACP countries can be considered a potential advantage in this respect, if approached correctly.

III.2 Reflection within the ACP on its future course

The ACP group, too, is experiencing new internal developments. The members are not shying away from a process of soul-searching, with fundamental questions being addressed about the group's mission and aims, its identity and political standpoints, and the effectiveness of its governing bodies.

The ACP is aware of the rapid changes at global level and is open to broader international cooperation, not only with the EU but also bilaterally with emerging economies and in South-South partnerships. The group members particularly feel that issues like labour migration, sustainable resource use and climate change need to be addressed at a more global level. The EU can play a major role in this respect, due to mutual interests in tackling these issues and to the expertise it possesses in these policy areas.

The ACP seems to wish to focus less exclusively on Europe, yet see its historical ties with the EU as an important factor in advancing global cooperation in the future. The ACP has not hesitated to look critically at how its own institutions may need to change to pursue these ambitions and or to ask other questions that need to be addressed if they are to be fulfilled. For example, the ACP is currently exploring the possibility of funding its secretariat itself by requiring members to pay contributions and setting up a donor fund.

IV The Cotonou Agreement: results and functioning

This chapter provides a detailed overview of experiences with the partnership between the ACP and the EU under the Cotonou Agreement. It describes the results that have been achieved within the three pillars of the Agreement (political dialogue, development cooperation, and economic cooperation and trade) and expresses a number of reservations about the Agreement's governing bodies. It does not claim to offer a comprehensive evaluation. As far as possible, existing reference material has been used, including publications by the Policy and Operations Evaluation Department (IOB) and the UK Department for International Development (DFID), and annual and other reports from the OECD and the European Court of Auditors.[25]

IV.1 Political dialogue

Political dialogue is one of the main foundations of ACP-EU cooperation, providing ideological direction and inspiration on the basis of shared values. Both structural and ad hoc forms of political dialogue are meant to make the content and meaning of these shared values visible to the participating countries.

Article 9 of the Cotonou Agreement refers to three core values that are its essential elements, namely respect for 'human rights, democratic principles and the rule of law'. Good governance, including combating corruption, has a somewhat weaker status in legal terms, but is a basic principle of the agreement. Article 8 describes the areas on which political dialogue can focus, including the arms trade, excessive military expenditure, narcotics, organised crime, strategic cooperation and ethnic, religious or racial discrimination. These are considered 'specific political issues of mutual concern or of general significance for the attainment of the objectives of this Agreement'.

In practice, a wide variety of political dialogue has developed. It sometimes takes place at bilateral level, between member states, and on specific political issues that concern both countries. However, it is more usual for the EU as a group to engage in dialogue with individual ACP member states, for example on recent political developments that are felt to be of concern, such as a coup d'état, electoral fraud or human rights violations. Political dialogue can also take place between the ACP group and the EU as a whole, on highly politically charged issues like migration or issues under discussion at the UN, such as the international agenda on sustainable development or global public goods.

Articles 96 and 97 of the Agreement provide the legal basis for suspending cooperation in the event that one of the parties believes that essential and fundamental elements of the Agreement are not being respected and that 'regular' structural dialogue is not producing

25 See for example IOB, *The Netherlands and the European Development Fund – Principles and Practices: Evaluation of Dutch Involvement in EU Development Cooperation (1998-2012),* IOB Report No. 375, The Hague: Ministry of Foreign Affairs of the Netherlands, March 2013, especially Annexe 9: The Article 8 Political Dialogue and What Happens when it Fails; J. Bossuyt, C. Rocca, B. Lein, 'Political Dialogue and Human Rights under Article 8 of the Cotonou Agreement', Brussels: European Union, 2014; DFID, *Multilateral Aid Review Update: Driving Reform to Achieve Multilateral Effectiveness*, December 2013; OECD, *European Union: Peer Review 2012*, Paris, 2012; and European Court of Auditors, Special Report, No. 18/2009.

the desired results.[26] To date, this procedure has only been used in a relatively small number of cases, and with predominantly encouraging results whereby the constitutional order was gradually restored.[27]

Political dialogue at individual country level takes place partly behind the scenes and is therefore difficult to assess. As with cooperation with countries in Asia, Latin America and the EU's neighbouring countries, there is a certain sensitivity about discussing matters that are considered internal affairs. In practice, this has occurred during discussions on the suspension of budget support to an ACP country by the EU on the grounds of alleged human rights violations. While the EU wishes to prevent the provisions in the Agreement on human rights, good governance, the constitutional order and corruption from being a dead letter, partner countries quickly associate them with the imposition of 'conditionalities'. This is even more the case if other, non-EU donors (or sometimes EU member states bilaterally) do not impose similar conditions.

There has been criticism of the sometimes limited visibility of the EU in ACP countries and the inadequate political level of both partners in the political dialogue. Even when dialogue has proceeded constructively at country level, the EU has still sometimes been accused of not being sufficiently assertive and failing to sufficiently underline the importance of democratic principles and of civil society organisations.

The dialogue has also sometimes been hampered by unclear signals from the EU. This can be caused by historical ties between specific EU member states and ACP countries, one of the main reasons why articles 96 and 97 (special consultations and the possibility of sanctions) are applied only in very exceptional circumstances. Since the Treaty of Lisbon the political dialogue has been embedded more securely on the EU side and cooperation and coordination between the EU and its member states in third countries has improved substantially. This has made its standpoints clearer and the EU is better able to speak and act on behalf of its member states. This has certainly been the case in fragile countries, where EU member states are increasingly allowing the EU to represent them.

Strikingly, the ACP-EU political dialogue at higher, collective level has hardly got off the ground. The need for other forms of political dialogue – and on other issues than were specifically provided for in the Cotonou Agreement – was once again underlined in a statement by ACP heads of state at a summit in Malabo, Equatorial Guinea, in 2012. They urged that a high-level panel be set up for dialogue, so as to break through the impasse in the negotiations on Economic Partnership Agreements (EPAs; see below in this chapter). This request from the heads of state, which was later submitted again to the president

26 In such cases, it is possible to resort to a unique form of consultation between troikas van ACP and EU members states with the main objective of normalising relations on the basis of a clearly defined package of achievable goals, where possible accompanied by supporting measures aimed at addressing identified problems (e.g. restoration of the constitutional order or the organisation of fair and free elections). As indicated, if necessary the implementation of the Agreement can be suspended wholly or in part in response to observed violations. Although this is, in theory, a mutual procedure, to date it has only been used by the EU to take measures in response to an acute crisis in an individual ACP country.

27 Annexe 9 of the IOB evaluation referred to above lists 15 cases that occurred between 2000 and 2009. In their article 'Political Dialogue and Human Rights under Article 8 of the Cotonou Agreement' op.cit., J. Bossuyt, C. Rocca and B. Lein counted six cases between 2008 and 2013.

of the European Commission by the president of Benin, has never received a positive response.

In another area, when the Agreement was revised in 2010, the EU – with support from the Netherlands – urged that the provisions for the return of failed asylum seekers be expanded and that the article concerned (13) be made more practical. Although that did not lead to changes to the Agreement, it did result in a dialogue on migration, on closer cooperation to address gaps in asylum policy, including readmission and reconduction of failed asylum seekers. In April 2014, there was a seminar in Brussels on how to put cooperation in this area into practice more effectively.

A dialogue on migration has thus been set in motion and experience has been gained that can be built upon in the future. Although there will certainly be matters that should be discussed in political dialogues between the EU and ACP countries individually – or on which the ACP and the EU will need to take a joint stand in international forums – the migration debate will largely be conducted by the whole of the ACP and the EU collectively. It should be noted here that a large number of migrants to Europe come from non-ACP countries.

An interesting component of the political debate takes place at parliamentary level. There is a Joint Parliamentary Assembly (JPA) of representatives of both the ACP countries and the EU. The JPA contributes to the dialogue, particularly on difficult or sensitive issues within the ACP group, between the group and the EU, or within the EU, such as gaps in asylum policy. In March 2014, for example, (immediately prior to the seminar mentioned above) the JPA devoted a separate session to the rights of migrants in both ACP countries and EU member states.[28] Civil society organisations, too, have increasingly used the JPA to put innovation on the agenda. In addition, the JPA has contributed to joint policy formation and to improved knowledge on ACP countries within the European Parliament, which has led to the formation of new parliamentary networks.

In summary, the political dialogue is shaped by a process of trial and error. It is primarily a process of widening and deepening, despite occasional confrontations with taboos, especially in situations where tension runs high. Experience has also taught us that the ACP-EU political dialogue has a strongly formal character. Although the structure established by the Agreement appears reasonably complete, in practice the dialogue sometimes proves difficult for a variety of reasons and is very sensitive to specific circumstances (the interest of member states, how strong governments are, how the European Parliament functions, public opinion and civil society).

In international consultations (for example on climate change), the ACP countries operate almost exclusively through other groups, like the G77, the least developed countries (LDCs), the small island developing states (SIDS) and regional groups. When the ACP and EU do succeed in taking a joint position, with 107 members, they have a numerical majority at the UN and the WTO. There have been a number of good examples of political cooperation between the ACP and the EU at this level. The Joint ACP-EU Declaration on Rio+20[29] and the Joint ACP-EU Declaration on the Development Agenda are examples of

28 ACP-EU Joint Parliamentary Assembly, ACP-EU 101.674/14/fin, March 2014.

29 See: <http://www.acp.int/content/acp-eu-joint-declaration-rio20-declaration-conjointe-sur-rio20>, accessed on 15 January 2015.

joint efforts on sustainable development.[30] They also took a joint position on making the trade in tropical wood sustainable. This was first limited to the ACP but was later recast and geographically expanded as the EU-FAO Forest Law Enforcement, Governance and Trade (FLEGT) Programme. Furthermore, the ACP ultimately gave its crucial support to the proposal to elevate the EU to the status of 'super-observer' at the UN, after the Treaty of Lisbon had given rise to a desire to extend the EU's representation in multilateral forums.

IV.2 Development cooperation

As described in Article 19 of the Cotonou Agreement, the main objectives of the cooperation between the ACP and the EU are poverty reduction and ultimately its eradication, sustainable development, and progressive integration of the ACP countries into the world economy. The potential for achieving these objectives varies from country to country, depending on the specific circumstances. Consequently, each ACP country draws up a policy plan focusing on matters like economic growth, employment and institutional reform.[31]

The Cotonou Agreement promotes the involvement of civil society organisations in preparing country policy plans and aid programmes in partner countries.[32] Civil society organisations from the EU and the ACP were involved in drafting the Agreement itself, notably during the various rounds of consultations on drafting the European Commission's Green Paper. Partly on the basis of article 7, which provides for strengthening the capacity of civil society, a handbook for NGOs has been drawn up and a Civil Society Forum was organised in 2006 with broad participation from the various ACP regions.[33] Based on its experience with the Cotonou Agreement, the European Commission has also endeavoured to promote the involvement of civil society organisations in other aid instruments.

A European Development Fund (EDF) has been set up separately from the regular EU budget to finance ACP-EU development efforts. The name of the fund is actually misleading, as it is not a fixed quantity of money reserved for development and sitting in Brussels waiting to be spent. The EDF is based on a contractual pledge by EU member states to transfer funds at the request of the European Commission when it is actually required to pay for activities approved through EU comitology.[34] In addition, the European

30 See: <http://ec.europa.eu/commission_2010-2014/piebalgs/headlines/news/2014/06/20140620_en.htm>, accessed on 15 January 2015. An earlier attempt to draft a joint statement on the post-2015 agenda with the AU had failed.

31 Cotonou Agreement, article 19 (3).

32 Article 4 of the Agreement states that NGOs will be informed and involved in consultation on cooperation policies, strategies and priorities, especially in areas that concern or directly affect them, and on the political dialogue.

33 Alhaji Muhammad Mumuni, 'The ACP-EU Partnership in a Changing Global Order', presentation to the AIV in The Hague, The Netherlands, 26 September 2014, p. 10.

34 Comitology is EU jargon for a specific kind of decision-making: in some cases, the European Commission shares executive authority with committees of representatives of EU member states. The Commission departments then submit draft implementation plans to one of these 'comitology committees' for advice (see <Regulation (EU) no. 182/2011>).

Investment Bank (EIB) has played a role in supporting development activities in ACP countries since 1963, through a combination of EDF and the bank's own funds. EIB support includes various forms of loans and an investment facility.[35]

The EDF accounts for around half of the development aid provided by EU institutions.[36] In 2013, the eleventh EDF was set at a total amount of EUR 31.5 billion for the usual period of seven years.[37] This consists of grants (EUR 24 billion for national and regional indicative programmes, EUR 3.6 billion for intra-ACP and interregional cooperation and the financing of joint institutions and organs, and EUR 1.1 billion for the investment facility, supplemented by EUR 2.5 billion from the EIB's own funds). Around a fifth of EDF funds are used for sector and general budget support.[38]

The rules and practices of the EDF and the Development Cooperation Instrument (DCI) – which is included in the EU budget and governs EU financial support to non-ACP countries – are now largely the same in material terms. In practice, there is hardly any observable difference between the two aid channels. Usually appeals for financial contributions for the EDF are coordinated with the EU member states' annual budget agreements.

The possibility of incorporating the EDF in the EU's general budget has been considered on several occasions.[39] Originally, this was mainly urged by the European Parliament, to improve the transparency of the EDF's expenditure and programming, and resisted by the member states. Later, the European Commission also expressed its support for the idea. Nevertheless, it has not yet happened. This is partly a consequence of the budget ceiling: integrating the EDF in the DCI would have meant reductions in European financial resources for development cooperation. Given the repeated calls for the EDF to be placed under the EU budget, it can be assumed that this issue will once again be discussed in negotiations on a possible successor to the Cotonou Agreement.

The management of the EDF seems to have improved since 2000, thanks partly to the integration of the entire aid cycle in a single organisation in Brussels (EuropeAid-DEVCO). The formation of the Joint Evaluation Unit has also helped, through a sharper focus on monitoring the quality of aid. There is still, however, room for improvement

35 It also promotes the supply of energy through an Energy Sustainability Facility and activities as part of the EU Raw Materials Initiative, actively encouraging the use of sustainable energy resources. This is in line with the broader vision of development in the Cotonou Agreement, but in practice it clearly also reflects the EU's long-term economic interests. For more information on the EDF and the EIB, see: <http://europa.eu/legislation_summaries/development/overseas_countries_territories/r12102_en.htm> and <http://www.eib.org/projects/regions/acp/funding-and-financial-instruments/index.htm>, respectively.

36 See: <http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/137274.pdf>.

37 See: <http://www.acp.int/fr/node/1991>.

38 In 2010, budget support accounted for 24% of total expenditure; in 2013, this had fallen to 18% (EUR 718 million of a total of EUR 3.9 billion); see, for example, the annual report on activities financed by the eighth, ninth and tenth EDF (2014/C 398/02), Official Journal of the European Union, 12 November 2014.

39 For example in 2008 and 2009, and recently again in 2013.

in aid monitoring and evaluation. Financial controls and internal supervision have now been tightened up at Delegation as well as central level, though European procedures remain cumbersome and time-consuming. The strengthening of EU delegations in ACP countries allowed Brussels to transfer responsibilities to the countries themselves. This has resulted in greater use of the available funds, smaller backlogs of unspent aid, and in many cases to an improvement in the quality of the programmes.

A typical feature of the EDF's management is the central role attributed to National Authorising Officers. NAOs are appointed in each ACP country, with responsibility for all EDF matters. The idea behind this is that the partners are equal, not only in policymaking but also in implementing programmes, and that no aid money is spent without the country's explicit permission. Since internal monitoring mechanisms are not yet adequate in a number of ACP countries, NAOs can play an important role, if sufficiently equipped. Their situations vary from country to country, but in recent years quality has gradually improved.

Awareness of the NAOs vulnerability nonetheless remains of undiminished importance. The NAOs office is, after all, an extra link in the chain, and keeping the available knowledge up to the required level requires a constant and labour-intensive effort. This is made even more difficult by the relatively rapid turnover of staff, on both the ACP and the EU sides. The EU has recently made substantial efforts to harmonise its legislation and make it more transparent, but it is quite complex and sometimes calls for more administrative capacity than is available in ACP countries. This makes implementation and reporting more difficult.

The quality of development cooperation under the Cotonou Agreement is regularly evaluated. The IOB evaluation mentioned above shows that improvements to social and economic infrastructure (roads, schools, clinics, water and sanitation) are in many cases acceptable, but that there are problems with strengthening institutional capacity. In addition, the improvements that are achieved are insufficiently sustainable. EDF support aims to promote the regional and global integration of ACP countries, but results in this area are disappointing or not documented.[40]

DFID's Multilateral Aid Review, also referred to above, concluded that the EDF – together with eight other multilateral institutions – offered 'very good value for money' for the UK's aid funds. Especially the nature of its objectives, the broad-based and comprehensive agreements within the Cotonou Agreement, increasing aid predictability, and its financial accounting were positively assessed. The OECD's 2012 European Union Peer Review was full of praise, especially for the degree of ownership and mutual accountability.

One concern that is sometimes expressed about the EDF is its supposed insufficient focus on poverty. After all, the ACP group contains countries like Botswana, the Dominican Republic and Suriname that are classified as middle-income countries (MICs). Critics suggest that these countries receive a disproportionate share of EDF funds. The figures show that the situation is better than critics suggest: between 2008 and 2013, 93% of EDF funds were spent on least developed and low-income countries. If the EU's new

40 For example, EDF support for regional economic integration in West and East Africa was assessed in 2009 as 'only partially effective', partly due to a lack of complementarity between regional and national development strategies and limited absorption capacity at regional economic organisations. See European Court of Auditors, Special Report, No. 18/2009, pp. 33-34.

legislation – which aims to reduce DCI support for MICs – were also to be applied to the EDF, an additional 5% of the available funds would be expected to be spent on the poorest countries.[41]

IV.3 Economic cooperation and trade

A third and traditionally equally important pillar on which the ACP-EU partnership focuses is economy and trade. In line with the general objectives of the Cotonou Agreement (to eradicate poverty and promote sustainable development and the gradual integration of the ACP countries in the global economy), this pillar contains measures to foster economic diversification, attract foreign investment and increase regional integration on the basis of national and regional development strategies.

Exactly what the post-Lomé ACP-EU trade component would look like was left open in 2000. The parties agreed to flesh out the details through Economic Partnership Agreements (EPAs), in line with agreements and rules established at the WTO and with provisions for special and differential treatment of less developed countries with a relatively high level of vulnerability. The EPAs would, for example, have to devote greater attention to environmental requirements, labour standards and consumer policy, and compensation for possible negative effects of liberalisation.

In practice, however, this proved a tough task: it was much more difficult to conclude the trade agreements than had been expected. Tensions soon emerged at the talks when it became clear that conforming with WTO agreements meant that steps had to be taken quickly to scrap the preferential trade status for ACP countries, as it was considered discriminatory towards non-ACP developing countries. The WTO had given the EU a waiver for its preferential trade arrangements with the ACP group, but that was to expire in 2007. From that date the EU should have adapted its legislation and policies.

A second factor that complicated the EPA negotiations was the EU's decision to conclude trade agreements with individual regions.[42] Partly because of the lack of results in global WTO talks on trade liberalisation, there was increasing support in the EU for a focus on regional agreements. This step met with incomprehension from the ACP group. There was some doubt as to whether everything possible had been done to persuade the WTO to extend the status quo on trade. The mood changed when this proposal to conclude regional and subregional free trade agreements was announced. While the ACP group took the view that the general principles for cooperation on economy and trade should first be established at collective ACP level – geared to the objective of reducing and eradicating poverty – and that regional negotiations should then follow them, this was clearly not shared on the EU side.

With relations already tense, the negotiations on the next point on the agenda – the presence of the ACP in Geneva, the seat of the WTO – took a great deal of time. Eventually, it was agreed that the EU would make a financial contribution to an ACP office

41 Mikaela Gavas, 'Reviewing the Evidence: How Well Does the European Development Fund Perform?', ODI, 31 January 2012, p. 15.

42 It is of course debatable whether it would have been feasible to conclude a single EPA with the ACP group as a whole. Given the pressure of time, the chances were thin. And yet the decision to negotiate with the regions separately seemed to be a unilateral step that also risked undermining the unity of the group.

in the city, after which a start could be made on the actual negotiations on the content of the regional EPAs. With time running short and the final expiry date of the WTO waiver coming dangerously close, emotions ran high and there was much bad blood between the two sides.

In 2007, with the expiry pending of the waiver for preferential trade conditions, the decision was made to conclude interim trade agreements. These agreements were intended to be restricted to goods and could where possible in the longer term be converted to more comprehensive EPAs. Nevertheless, the negotiations were once again time-consuming. The ACP countries felt unwelcome pressure from the EU to address various issues (known as the 'Singapore issues') that not yet been settled at the WTO talks, such as investment, trade in services and competition policy, In addition, ways were sought to include the general provisions in the Cotonou Agreement, for example on human rights and sustainability, more explicitly in the EPAs.[43] This was only partially successful. In fact, on balance, both the interim and the regular EPAs were express a commercial spirit more than the broader development vision of the Cotonou Agreement.

By January 2015, the following trade agreements had been concluded: four comprehensive EPAs with the countries in the Caribbean region (CARIFORUM), West Africa (ECOWAS), Southern Africa (SADC) and East Africa (EAC). The EPAs in the three African regions were negotiated in 2014 and are at various stages of approval. Three interim EPAs also came in to force in Central Africa (Cameroon), Southern and East Africa (Madagascar, Mauritius, the Seychelles and Zimbabwe) and the Pacific region (Fiji and Papua New Guinea).[44]

Besides the EPAs, agreements have been concluded under the EU's Generalised System of Preferences (EU-GSP) for trade with developing countries, including the Everything But Arms initiative that gives LDCs duty-free access to the EU market for all products except arms and armaments . Partly under pressure from WTO members in Latin America that do not qualify for preferences, general arrangements have been made to regulate trade in sugar and bananas. As a result, the traditional trade preferences for ACP countries for these two products have been severely eroded.

In summary, in recent years, the trade talks between the ACP and the EU have focused mainly on negotiating EPAs, with the main focus on developing traditional trade discipline. The EPAs have come to stand more on their own and become more an end in themselves, rather than supporting the broader development objectives of the Agreement. A more fundamental approach to regional development, economic diversification and development of the chains for specific products is lacking. During the EPA negotiations relations between the ACP and the EU came to a head, especially because the EU proved to be one-sidedly concerned with pursuing its own interests and showed little willingness to listen to the ACP's reservations.

As for actual developments in trade flows, figures since 2000 show that they have increased in general terms, but that the significance of this development needs to be qualified. The EU is a major trading partner for the ACP (although it is becoming less

43 J.T. Gathii, 'The Cotonou Agreement and Economic Partnership Agreements', in S. Marks (ed.), *Realizing the Right to Development: Essays in Commemoration of 25 Years of the UN Declaration on the Right to Development*, Geneva: UN Office of the High Commissioner for Human Rights, 2013, pp. 271-273.

44 See: <http://trade.ec.europa.eu/doclib/html/144912.htm>, accessed on 20 February 2015.

so in percentage terms), while the ACP countries' share of the total volume of EU trade is less significant. It is too soon to evaluate the effect of the EPAs in practice, though in some circles the agreements' benefits are already being called into doubt because of the compensation for reduced revenues from import and export duties is expected to be inadequate and the enhanced access to each other's markets is expected to be asymmetrical.[45] Recent figures show that the EU has gone from being a net importer to a net exporter of agricultural products, while the ACP has experienced a reversal in the opposite direction and is now a net importer. Such developments emphasise yet again the importance of coherence and policy coordination.

The question is how the negotiations will progress now that the interim EPAs have to evolve into more comprehensive trade agreements. For the EU, its general trade policy will remain paramount until 2020.[46] That policy aims at promoting and expanding open trade, with special attention to the Singapore issues, access to natural resources and further development of the system of bilateral trade agreements. The perspective that 'trade policy has its own distinct economic logic' is the EU's leitmotiv.[47] The elaboration of this policy for LDCs leaves scope for a new, generously funded promotion of regional integration and flexible completion of the EPA system, tailored to the needs and capacities of the ACP countries. Sensitive matters like services and investment can be included if these countries so choose.[48]

Whatever form the successor to the Cotonou Agreement takes, and even if it should have no successor at all, the AIV recommends that a way be found to preserve and embed the broader perspective of the current Agreement in the further elaboration of the EPAs and ensure that it gains greater currency. This will certainly remain necessary as long as the needs of development are not yet adequately reflected by WTO regulation at global level. Many people also feel that the aid-for-trade component of the Agreement is worth preserving. At the same time, the AIV considers it crucial to maintain the link between trade, development and human rights and perhaps to make it more explicit in the EPAs, given that the underlying comprehensive vision of development is one of the most essential elements of the Cotonou Agreement.

IV. 4 Architecture: form, basic principles and institutions

Compared to the structure of the EU's development cooperation with non-ACP countries, it is striking that relations with the ACP are structured in a formalised way that is unique, not only for the ACP and the EU but for the world as whole. The Agreement is widely considered to be the most comprehensive of its kind. The procedures are strict: the

45 See South Centre, 'Economic Partnership Agreements in Africa: A Benefit-Cost-Analysis', Analytical Note SC/TDP/AN/EPA/29, Geneva, January 2012, which concludes (on page 11) that the 'costs of an EPA are greater than the gains' as a consequence of tariff revenue loss and effects on industrial development and food security and rural livelihoods.

46 European Commission Communication, 'Trade, Growth and World Affairs: Trade Policy as a Core Component of the EU's 2020 Strategy', COM(2010) 612 final, Brussels, 9 November 2010. This policy is expected to be reviewed in September 2015.

47 Ibid., p. 15.

48 European Commission Communication, 'Trade, Growth and Development: Tailoring Trade and Investment Policy for those Countries most in Need', COM(2012) 22 final/2, Brussels, 17 April 2012, section 4.1.4.

original adoption of the Agreement and the process of amending it have been by definition subjected to complex ratification procedures which, as experience has shown, take many years to complete.

There is therefore good reason why the Agreement prescribes that it comes into force after all EU member states and only two-thirds of the ACP partners have ratified it. Waiting until the last state had ratified it would in practice mean that the partnership would grind to a halt for several years. This is illustrated by the second revision of the Agreement, which was completed on schedule in 2010 but is still awaiting full ratification.[49] It is important to note that the ratification procedures are also encountering increasing difficulty in EU member states. The advantage of this formalised partnership is that matters are specified in detail so that the parties know exactly what is expected of them, which enhances predictability and legal certainty.

Various organs are responsible for implementing the Agreement. The highest is the ACP-EU Council of Ministers. The Council comprises representatives of the EU member states, the European Commission and the ACP countries. Its task is to conduct political dialogue, approve multi-annual country strategies and other policy documents, and ensure that consultation mechanisms – like the Development Finance Cooperation Committee (ACP-EC Committee), which regularly evaluates EDF results– function effectively.

The second decision-making body is the joint Committee of Ambassadors, composed of permanent representatives from EU and ACP countries. The Committee assists the Council of Ministers and is in practice responsible for implementing the Agreement.

Third, the Joint Parliamentary Assembly (JPA) mentioned earlier in this chapter is composed of equal numbers of representatives from the European Parliament and ACP parliaments. Article 17 of the Cotonou Agreement provides that the JPA's role includes promoting democratic processes through dialogue and consultation. The JPA meets twice a year, with the chair alternating between the EU and the ACP. It is not authorised to make binding decisions.

As also mentioned above, the ACP group has a secretariat in Brussels and an office in Geneva. The EU pays a little over a third of the costs for the secretariat, while more than half of the contributions come from ACP membership fees.[50] The secretariat's range of tasks is largely based on the provisions of the amended Georgetown Agreement.

Both the ACP and the EU have expressed strong criticisms of the ACP organs' performance, although they emphasise different problems. Both partners feel that the joint Council of Ministers and Committee of Ambassadors have done too little in implementing the Agreement. They are highly formalised and meet quite infrequently. This may be partly due to the fact that communications with the outside world are largely stage-managed in advance and only a few people are actually authorised to conduct them. The absence of ministers on the EU side also strengthens the perception that there is little genuine interest within the EU in political dialogue with the ACP at ministerial level. A troika

49 Thus perhaps jeopardising the third revision of the Agreement, which was planned for 2015.

50 For 2015, the ACP Council of Ministers approved a budget of EUR 15.4 million. According to <http://www.acp.int/content/100th-council-session-marks-milestone-outcomes-acp>, accessed on 6 January 2015, 51.6% of the budget is covered by ACP member states, 39.6% comes from the EDF and 8.8% from a levy on the incomes of ACP staff.

structure, with a limited number of ministers, may offer greater chances of success. The Cotonou Agreement also provides for institutional support for two expertise centres. The Centre for the Development of Enterprise (CDE) in Brussels supports the private sector and entrepreneurship in ACP countries, while the Technical Centre for Agricultural and Rural Cooperation (CTA) in Wageningen promotes agriculture and rural development in ACP countries.

The CDE has experienced recurring problems. Problems have included the legal requirement that the Centre be governed by an Executive Board on which the EU and ACP have parity, that its course was unclear, that it had no genuine counterpart in ACP countries – which meant that it was driven by supply rather than demand – and that its ambitions were incompatible with the limited scale of its budget and staff. The ACP and the EU saw the writing on the wall and recently decided to wind up the CDE.

Perceptions of the CTA in Wageningen are more positive. For example, the Centre offered a useful platform to prepare a joint ACP-EU standpoint for the conferences on aid effectiveness in Busan in 2011 and on environment and sustainable development in Rio in 2012.[51]

IV.5 Overseas countries and territories (OCTs)

Annexe II to the Treaty on the Functioning of the European Union lists the overseas countries and territories (OCTs) associated with the Union under article 198 of the Treaty. These are some 25 non-independent countries and territories that have special relations with European member states, including Greenland (with Denmark), Pitcairn Island, Saint Helena and Ascension Island (with the United Kingdom) and the islands of French Polynesia (with France). The list also includes the six Caribbean islands that are part of the Kingdom of the Netherlands.

The OCTs' association with the EU is based on Union law. The objectives of the association relate to development and trade. To that end, goods originating in the OCTs can in principle be imported into the EU duty-free. Council Decision 2013/755/EU of 25 November 2013 (the OCT Decision) comprises the current rules linking the OCTs to the EU.

Although the OCTs are commonly referred to as a group, in reality they vary widely. Their economic statuses differ and, because of the importance of tourism as a source of income and their geographical locations, the American dollar can have a great influence. For other OCTs, the most important currency may be the New Zealand dollar, the Danish krone or the CFP franc.

There are also similarities among the OCTs: they often have small, even very small populations, and exceptional ecological wealth compared to continental Europe. They are relatively vulnerable to external shocks and generally have a small economic base that relies heavily on service provision. Generally, European environmental legislation is not applied because it would be too difficult and expensive to do so, a questionable argument in view of the rights of the local people. OCTs are heavily dependent on imported goods and energy. Generally speaking they only have limited exports to the EU or to other countries in their regions.

51 Alhaji Muhammad Mumuni, 'The ACP-EU Partnership in a Changing Global Order', presentation to the AIV in The Hague, the Netherlands, 26 September 2014, p. 7. The CTA's operating costs are approximately EUR 17 million a year (CTA, Annual Report 2013).

OCTs are constitutionally linked to a European member state, but are not themselves part of the EU.[52] They therefore have a different status than the 'ultra-peripheral regions' (UPRs) listed in article 355 van the Treaty on the Functioning of the European Union. UPRs are not only constitutionally linked to a member state, they are also integral parts of the EU located outside the European continent. In principle, the UPRs are all bound by the full *acquis* of the Union. Under article 349 of the Treaty, however, specific measures can be adopted to promote the development of the UPRs, including direct support. The reason for this is given as their 'structural social and economic situation', which is compounded by the cumulative effect of their 'remoteness, insularity, small size, difficult topography and climate, [and] economic dependence on a few products'.

From the standpoint of socioeconomic development, the differences between ACP countries, OCTs and UPRs – necessary as they are in legal terms due to varying relationships with the EU – are very relative. Countries in all three categories are, for example, all to be found in the Caribbean, together with other islands that have no ties with the EU. The problems they face are comparable in many respects. In the AIV's opinion, the EU's development policy should be alert for opportunities for promoting economic relations among these states, countries and territories.

The OCTs' inhabitants generally have the nationality of their mother country and therefore enjoy the rights of EU citizens. This also applies to Dutch citizens in the Caribbean parts of the Kingdom of the Netherlands. After the constitutional reforms of 2010, three of the islands (Bonaire, St Eustatius and Saba) became part of the country of the Netherlands, but have so far remained OCTs. One consequence of this is that, without any objective necessity, a wide range of separate arrangements have to be maintained as exceptions to Dutch legislation, which is embedded in the framework of EU law.

In the area of criminal law cooperation, these Caribbean parts of the Netherlands are treated by other EU member states as third countries. This has a number of consequences: for example, European arrest warrants do not apply there and extradition agreements are required. In an advisory report of 17 March 2014, the Council of State noted – in the AIV's opinion, correctly – that the status of Bonaire, St Eustatius and Saba since 10 October 2010, as public bodies within the country of the Netherlands, should prompt a review of their relations with the EU.[53]

On the basis of article 355, paragraph 6 of the Treaty on the Functioning of the EU, on the initiative of the member state concerned, the European Council may, unanimously and after consulting the Commission, decide to change an OCT's relationship to the EU to that of a UPR. This provision was used to change the status of Mayotte in 2014. The change of status can also occur in the reverse direction, as occurred in 2007 when Saint-Barthélémy was separated from the French department of Guadeloupe and thereby ceased to be a UPR.

52 Part Four of the Treaty on the Functioning of the European Union states that the purpose of association with the OCTs is to promote their economic and social development and to establish close economic relations between them and the EU as a whole. Part Four comprises mainly provisions regulating trade and import and export duties. The EU allocates funds to support the OCTs' development in OCTs: EUR 365 million for the 2014-2020 period.

53 Council of State, Advisory Report W02.14.0004/II/K, 17 March 2014.

V Summary, conclusions and recommendations

V.1 Summary

The expiry of the Cotonou Agreement in 2020 offers all parties a natural moment to take a critical look at whether there is a need for a specific successor to the ACP-EU partnership and, if so, what its form and content should be. Although formal negotiations on a successor to Cotonou need not start until 1 October 2018, and this advisory report thus comes at an early stage of the process, there is good reason for both parties to make a thorough strategic analysis of what the partnership under the Cotonou Agreement has achieved, and what goals and interests it could serve in the future.

The ACP countries have been involved in a process of reflection for some time. Based on discussions with experts, the AIV considers it not unreasonable to expect that the ACP group will choose to continue to exist as a collective and as an organisation and will have an interest in continuing its partnership with the EU. The analysis presented in this report offers a number of other arguments in favour of continuing the partnership and for expanding it in new directions.

Although the original Georgetown Agreement saw the ACP primarily in terms of its relationship with the EU, information on the process of reorientation suggests that many within the ACP group no longer see the relationship with the EU as an exclusive – or even necessary – reason for the group's continued existence. A focus on the further development of South-South cooperation is presented as one argument for capitalising on the advantages of the tricontinental nature of the ACP group and developing it further as an instrument to promote mutual trade and economic relations. This is an interesting idea that could enable the group to expand from an export-oriented partner of the EU to an organisation focusing primarily on cooperation among its own members. The ACP's relatively favourable position in maintaining contacts with other actors, such as the BRICS countries, is also seen as a potential starting point for finding ways towards a less one-sided, exclusive and dependent relationship with the EU. This would reflect the strongly increased influence of non-European powers in the ACP region.

Should the ACP, as a group, see no reason for a successor to the Cotonou Agreement, there would be little reason for the EU to work towards a new collective partnership with the ACP group. In that case, it would be advisable for the Netherlands to take steps to ensure that ACP countries that wish to do so – and/or are eligible – are included in other relevant and definitive EU instruments for development cooperation and trade (DCI, EPAs and the European Banking Authority). In the AIV's opinion, the Netherlands should also insist on a good transitional arrangement where appropriate, especially to support the least developed ACP countries and to ensure that the trade support measures linked to the EPAs and currently laid down in the Cotonou Agreement are guaranteed in other ways after 2020.

The EU also needs to consider its own internal situation internally, and that calls for a clearly defined timeline. The EU's position in ACP countries is less self-evident than it used to be. There are those within the EU who suppose that the relationship with the ACP is no longer of strategic importance to the Union. In some member states, a certain degree of cynicism and possible disappointment about missed opportunities and/or lack of results seem to have evoked widespread indifference about future cooperation with the

ACP countries. Some member states believe that it is strategically much more important to work with the EU's surrounding countries than with the ACP, and thus question the exclusive nature of the special EU-ACP relationship.

All this calls for a clear redefinition of Europe's own interests in the partnership. One key question in this connection is whether the relationship with the ACP strengthens the EU's external position in the world. A second relevant question is whether the ACP-EU partnership in its current form best serves the development objectives of the ACP and the EU.

On paper, most of the scenarios for the future of ACP-EU relations are still open: continuing on the same footing, not continuing with a special arrangement for ACP countries, or continuing in some other way. The impression gained from the AIV's various interviews is that many people implicitly assume in advance that the partnership will continue in some way or another. Its long history and achievements clearly carry great weight, including the political credit that this has earned the EU in ACP countries and vice versa.

The results of the Agreement so far can be summarised as follows:

- General: In a broad sense, the many years of experience with the theory and practice of ACP-EU cooperation have been a rich source of knowledge that can be used in shaping partnerships with other developing countries. That is certainly the case in the areas of development aid and political dialogue, where Lomé/Cotonou practice has served as an example for cooperation with other developing countries.

- Political dialogue: Structural and ad hoc political dialogue is an important basis of ACP-EU cooperation. Over the years, considerable experience has been accumulated through a process of experimentation. It is often a matter of steering a way through slow, complex usually confidential processes. That makes it difficult to assess the dialogue's effectiveness and results. It can be concluded with some degree of certainty, however, that the collective dimensions of political dialogue – i.e. at collective ACP and EU level – have not so far lived up to their promise.

  If the parties wish to step up their political cooperation in the future – bilaterally between the regions and to strengthen their positions in multilateral forums – a possible successor to the Cotonou Agreement will have to allow scope for a different structure and form, so that there is a clear place for dialogue at higher level between the ACP and the EU as collectives.

  Within the EU, there appears to be a desire to work more closely with the ACP countries on UN dossiers and in the WTO. Important questions in this connection are whether and how collective political dialogue can be better designed and what is required to achieve that. That needs to be explored further. Given that other partnerships, like the G77, are already active at multilateral level, it is clear that stepping up collective political dialogue only has a chance of success if both the ACP and the EU commit themselves to new objectives in this area and then actively pursue them.

- Development cooperation: it is striking how much support development and poverty reduction efforts continue to enjoy among Europeans. This suggests that the EU should remain a major and reliable partner for the ACP countries, including non-'donor darlings' that need assistance but do not always receive it from other donors.

According to available comparative evaluations, the Cotonou Agreement and the EDF have performed well, sometimes playing a pioneering role. Over the years development assistance for ACP and non-ACP countries (through the EDF and DCI, respectively) have converged in practice, in terms of both content (poverty focus) and procedures (programming). A discussion that has been going on for some time is whether the EDF should be integrated into the DCI and thus be financed through the general EU budget rather than through a separate fund. This modified structure would put an end to the group approach to the ACP countries and mean that the principle of reciprocity would be abandoned, which would weaken ownership by the ACP countries. The AIV believes that alternative proposals for the EDF should be solidly founded on public and preferably independent strength-weakness analysis. Although the AIV is aware that the Netherlands has to date been in favour of funding the EDF through the EU budget, the considerations set out above show that this is a complex issue.

Development cooperation under the Cotonou Agreement is notable for its high degree of reliability and predictability, its reciprocity and mutual responsibility in drafting, implementing and monitoring programmes, its complementarity with other donors' programmes and the level of ownership by recipient governments. Policy coherence for development is promoted by embedding development efforts broadly in political dialogue and in economic cooperation and trade. The ACP-EU partnership is a modern instrument that fits in well with contemporary thinking on an integrated development approach characterised by policy consistency and coherence. The partnership is also well suited to incorporation in the future international agenda for global public goods, which is expected to lay heavy emphasis on the integration of different policy areas, including climate change and environmental policy, gender equality, human rights and good governance, economic and financial development, migration, and peace and security.

- Economic cooperation and trade: In this area, there is still a serious problem of coherence. Too often, EU trade policy continues to be based solely on the logic of trade instead of a broader, combined trade and development perspective. This was one of the main causes of the problems encountered during the process of concluding ACP-EU Economic Partnership Agreements. It was compounded by the fact that ACP countries – deliberately or not – were only included in the EPA negotiation process at a relatively late stage. The development of the current, largely provisional, system of EPAs was literally and figuratively a *tour de force* that produced results that have been far from universally welcomed, and the first indications of the new balance of trade between EU and ACP countries are cause for concern.

  Besides seeking coherence between development and trade objectives and measures, it would be advisable in the future to work more on the EPAs on the basis of clear reciprocity and mutual interests. It is also important to establish a clearer cooperation arrangement for issues of common interest, such as global and regional public goods, regional development and national industrial policy. This is the only way in which economic and trade policy can genuinely help create an enabling environment for sustainable development, in line with the new post-2015 agenda.

  No matter what form the ACP-EU partnership takes after 2020, parts of the old trade agenda will continue to require attention, despite the EPAs. Examples are the financial support under the Cotonou Agreement pledged through the EPAs , honouring the promise of compensation for loss of revenue from import and export duties, greater access to the EU market, and non-tariff trade barriers.

- Governance structure, composition and working methods of institutions: The composition of the ACP group is distinctive in its tricontinental structure and wide diversity in the levels of development of the member states. The group is interesting in that it contains a relatively large number of LDCs, small island states and land-locked countries. The Cotonou Agreement contains articles that devote specific attention to ACP countries that fall into these categories. Most of these countries or groups cannot make a strong showing in international forums, but their membership of the larger ACP group gives them a voice. In addition, it is important for these countries to be embedded as strongly as possible in their own regions. This is one of the main obstacles enlarging the ACP to include LDCs that are not yet members.[54]

  A number of ACP and EU institutions are in need of reform. For ACP institutions, the AIV is looking forward to the report of the ACP Eminent Persons Group and the decisions the ACP will make in response to it. One key question is the financing of ACP organs and the costs of its secretariat. Until now, the EU has covered a substantial part (in effect, about half) of these costs. The AIV believes that it would enhance the ACP group's independence if the member countries paid all the costs of the secretariat.

  The EU should explore ways of enhancing coherence between EU policy and the policies of individual member states, thereby increasing the effectiveness of all efforts. In addition, the exchange of information and coordination between Commission officials responsible for development aid, trade, and diplomatic and political relations also need to be improved.

  The functioning of the joint ACP-EU organs should be critically evaluated. It may not be necessary for representatives of all EU and ACP countries to attend all the regular meetings of the Council of Ministers. Such changes would also have consequences for the composition and tasks of the Committee of Ambassadors, whose mandate should be thoroughly reviewed and be more closely tailored to the new ambitions of a more robust form of international cooperation between the ACP and EU. Although the functioning of the Joint Parliamentary Assembly has been more positively assessed in some quarters, especially more recently, the question also arises whether a more modern approach is not possible and might work better than the JPA, which is relatively large and therefore costly and cumbersome. The Technical Centre for Agricultural and Rural Cooperation (CTA) in Wageningen is widely assessed more positively.

  In short, the time is ripe for a critical analysis of the functioning of all the institutions with a role in the ACP-EU partnership, and for creative thinking about possibly more dynamic and potentially more effective alternatives. Working with civil society organisations is an important way of raising the partnership's effectiveness, and all of these institutions could do this much better and more extensively.

The following external factors and developments also affect future ACP-EU relations:

54 Non-ACP least developed countries (Afghanistan, Bangladesh, Bhutan, Cambodia, Laos, Myanmar, Nepal and Yemen), all of which are in Asia or the Middle East, have few regional or other features in common with members of the ACP group. The position of South Sudan is different, making it the only non-ACP LDC that could logically join the group at this time. Political problems could, however, prevent this for some time to come.

- In the 21st century, we are seeing the emergence of a multipolar international society, in which the economic and political rise of Asia and a number of other powers elsewhere in the world (such as Brazil, South Africa and Russia) are having an impact on the position of the EU and its member states. These new players are clearly raising their profiles in global forums like the UN and as economic partners for the ACP and other developing countries. This means that the EU is no longer necessarily the main – and certainly not the only – partner for the ACP countries, as it once was.

- In respect of the global development agenda, the context is changing. In the course of 2015, evaluations of the outcomes of efforts to achieve the MDGs and the drafting of new goals for the 2015-2030 period will culminate in the adoption of a new set of Sustainable Development Goals. The SDGs will call for a new focus on eradicating poverty and making consumption and production sustainable, and for breathing new life into the global partnership for sustainable development, including financing for development. Climate change, gender and the position of the least developed countries will also be given priority. New areas of attention are inequality between and within countries, combating violence, and improving the position of children and young people.

- Clearly both the EU and the ACP will support the SDG agenda. In a joint declaration, they underlined the importance of the agenda and its content, just as they did when the Rio+20 sustainability agenda was announced. In recent internal discussions on the future, the ACP has explicitly stressed the importance as tasks for the group of addressing global issues and the greening of economic growth jointly with the EU. Mostly, these are issues involving stakes not only for the EU economy, but also for activities in partner countries in the South.

V.2 Conclusions and recommendations

The importance of future ACP-EU relations
During the 40 years of structured international cooperation between the ACP and the EU, formalised in the first Lomé Convention of 1975, a solid relationship has been built up. The parties have reached agreement in this partnership on many important (and often sensitive) issues. Besides access to natural resources – traditionally considered of prime importance – a continuing, showcased and modernised partnership with the ACP offers the EU an excellent opportunity for privileged economic and political relations with nearly 80 developing countries. If this partnership – which may in the past have been too firmly wedded to a focus on development cooperation – could focus more strategically on pursuing shared political goals at the UN, it could strengthen the positions of both the ACP and the EU on the global stage. It is therefore certainly in Europe's short- and long-term interests to give due weight to the historical and strategic importance of its partnership with the ACP countries.

The best way to preserve these gains would seem to be continuing to cooperate with the ACP countries collectively. Regionalisation is an irreversible phenomenon, however, and regional organisations like the African Union are gaining in importance. The AU not only unites ACP countries in Sub-Saharan Africa, but also includes the countries in the northern part of the continent. The EU will have to make the best possible use of the comparative advantages of the AU and the ACP group, simultaneously and on the basis of an open and pluralistic approach.

At global level, decision-making should become more responsive, inclusive, participatory and representative, and the participation of developing countries in global governance

must be strengthened. This is pre-eminently an area in which ACP-EU cooperation could make a contribution, for example, by successfully presenting joint political objectives at the UN in a concrete and constructive manner.

The AIV believes that it is in the spirit of the current Agreement to link any continuation of the ACP-EU partnership explicitly to the SDG agenda, including identifying the common interest in global governance of public goods and the further organisation of a political dialogue on elements of the agenda. There are relatively new opportunities to render natural resources useful for a sustainable economy (including renewable energy from the land and sea, water and industrial policy). In this area, there is potential for more exchange of information on, and possibly even coordination of, positions and activities. With their numerical majority in some international forums, the EU and ACP countries could perhaps have a stronger influence on agenda-setting and decisions at global level.

The structure of the ACP-EU partnership
One of the primary characteristics of ACP-EU cooperation is that, until now, it has been based on formal agreements. The fact that substantive priorities, institutions and procedures have been set down for an extended period in a jointly agreed, legally binding document for has benefitted the partnership's ownership, predictability, reliability and authority. The ACP group and others would probably interpret going back on this as downgrading the partnership and sending a negative message. Furthermore, one of the main achievements of ACP-EU cooperation in the past was precisely its reciprocity and jointly agreed principles, rather than provisions imposed unilaterally by the EU. Modern development aid cannot be based on a relationship of dependence. For the EU, this demands that it makes a greater effort than in the past to inform and consult the ACP countries on policy developments within the Union that affect them.

This means that there is no place in ACP-EU relations for unilateral decisions. The Convention-based nature of the partnership offers a structure that safeguards cooperation between two active and vocal partners, in a way that could not be guaranteed by a political strategy, a policy-based agreement or a change in the Treaty of Lisbon.

The convention-based construction has the disadvantage that it is relatively inflexible, as neither the content nor the implementation procedures can be adapted to new priorities without formal changes to the agreement. In addition, the ratification procedure is becoming increasingly time-consuming, with some countries dragging their heels before finally ratifying the agreement. This problem could be solved by agreeing that, in the future, the partnership would no longer be convention-based.

Taking all the above considerations into account, the AIV has a clear preference for a legally binding document. It believes that the advantages of this basis for the partnership outweigh the disadvantages. The AIV therefore advises the Dutch government to pursue this aim in the negotiations. It should be noted, however, that there are good reasons to look critically at which components of the current Cotonou Agreement will really be necessary after 2020, what may need to be added and how the partnership can be made more efficient and effective. A more compact and streamlined agreement is desirable, focused more clearly and selectively on a number of priorities and with a stronger emphasis on achieving them.

If the choice is made for a formal convention, account should be taken of the likelihood that several contentious issues will be raised in the negotiations that could have a strongly negative influence on the climate of the talks and ACP-EU relations. Examples could be

references to the International Criminal Court (a very sensitive subject within the AU), to lesbian, gay, bisexual, transgender and intersex rights, and to migration, especially readmission requirements. A well-thought-out, participatory and well implemented negotiation and communication strategy is crucial to address such issues without letting them become deal-breakers.

Even if the ACP and the EU should jointly agree to continue to cooperate in another way, and to set down the details in a form other than a convention or other legally binding document, the AIV believes it is important that there continues to be, at least, a binding, overarching instrument in which important shared principles – such as a comprehensive approach to development and the central importance of coherence and human rights – are set down.

It is therefore important for future ACP-EU relations that any follow-up agreement preserve a number of overarching principles, such as coherence between economic cooperation, trade, development aid and political dialogue, and fundamental values in the areas of human rights, the rule of law and good governance, and the development dimension of the EPAs. A new agreement should also preferably offer comparable legal guarantees to the Cotonou Agreement. It must also indicate as concretely as possible how these overarching principles can be put into practice. Human rights practice is already covered in sufficient detail in the Cotonou Agreement, but this is not yet the case for coherence.

Overseas countries and territories
It has frequently been proposed that the distinction between overseas countries and territories (OCTs) and ultra-peripheral regions (UPRs) be abandoned. That would allow OCTs to be brought under European regional policy, and their development could be supported by the EU's regional structural funds. The 2013 OCT Decision contains a number of potential starting points for gradually reducing of the differences.

The AIV recommends supporting this proposal to jettison the distinction between OCTs and UPRs and, in anticipation of this change, supporting those Caribbean countries in the Kingdom that may seek to join arrangements applying to UPRs, or make the transition to UPR status.

The specific role of the Netherlands
The AIV points out that by adopting a constructively critical approach, the Netherlands can make a difference in the discussions on the future of ACP-EU relations after 2020. The Netherlands' reputation in the area of international cooperation and the progressive role it plays in advancing coherence between aid, trade, economic and political cooperation (illustrated by merging trade and aid policies under one minister) all contribute to this potential. The brokering role played by the Netherlands in the difficult negotiations on the Economic Partnership Agreements, which was highly valued by both sides, also provides a solid basis for playing a constructive role in the transition to a post-Cotonou partnership framework.

The Netherlands' position could even be of strategic importance, given that it will hold the Presidency of the Council of the EU in the first half of 2016. This is the period in which the outcomes of the consultations on post-2020 ACP-EU cooperation – and possibly their implications – will become clear. The Netherlands' role as holder of the Presidency, the efforts of Minister for Foreign Trade and Development Cooperation Lilianne Ploumen in the area of ACP-EU trade, and the mandate of Commissioner Mimica could generate synergy for the process. The AIV sees the Dutch Presidency as a significant opportunity to put

specific priorities of Dutch policy for EU development cooperation, such as coherence, on the agenda for the negotiations.

One of the main characteristics of the Cotonou Agreement is the strong substantive link it has made between economic cooperation, trade, development aid and political dialogue. Coherence is also addressed in the post-Lisbon Treaty on the Functioning of the European Union (article 208), in relation to policy areas that affect developing countries, such as agriculture and fisheries, energy policy and climate change. The objective of coherence is to avoid giving with one hand and taking with the other. The comprehensive approach to development advocated in the Cotonou Agreement offers a good framework within which to further pursue policy coherence.

Within the EU, the Netherlands is seen as a pioneer in the area of policy coherence. The quest for coherence is indeed one of the main elements of Dutch development policy, especially now that the portfolios for foreign trade and development cooperation have been brought under a single minister. Now that ACP-EU relations have been somewhat disrupted by the EPA negotiations, it is all the more important that EU trade standpoints are in the future more permeated by the more integrated development rationale expressed by the Cotonou Agreement and the international agenda on sustainable development.

In conclusion, it can be stated that, since the signing of the Cotonou Agreement in 2000, the world has changed radically. It is therefore not self-evident that the ACP-EU partnership should be prolonged. Any decision to this effect must be considered in the light of new challenges and a shifting geopolitical context. Our starting point remains a vision of the EU as a community of values, in which achievements in the fields of human rights, the rule of law and democracy are of paramount importance. Actively promoting peace and security in the world is a cornerstone of its foreign policy. Nevertheless, as a result of new multipolar global relations, the EU's geopolitical influence is declining.

In its partnership with the ACP group, Europe has long believed that the ACP was the sole beneficiary. This is decreasingly the case. It is thus crucial to reconsider the importance of political partnership in the broad sense and take the significance of the EU's ties with the ACP group seriously. The cooperation has a rich past and enormous knowledge has been accumulated.

The AIV therefore recommends unwavering efforts to conclude a follow-up agreement between the EU and the ACP group, with a greater emphasis on political cooperation. Cooperation with the ACP countries is a potentially important means of pursuing geopolitical objectives in the areas of sustainable development and peace and security. The Netherlands should take the lead in further shaping the EU's partnership with the ACP countries.

Annexe I

Request for advice

Professor Jaap de Hoop Scheffer
Chairman of the Advisory Council
on International Affairs
Postbus 20061
2500 EB The Hague

Date: 3 March 2014

Re: Request for advice on review of the Cotonou Agreement

Dear Professor De Hoop Scheffer,

The EU's association with the African, Caribbean and Pacific (ACP) countries dates back to the establishment of the EU and the modification of its member states' relationships with their former colonies. This association was shaped by the Yaoundé Convention (1963), the Lomé Convention (1975) and the Cotonou Agreement (2000). This makes the 'association' of this group of countries with the EU, laid down as early as the Treaty of Rome, a special one.

The partnership agreement between the EU and the ACP countries (the Cotonou Agreement) will expire in 2020. The future of the relationship between the ACP countries and the EU needs to be discussed now in order to have an impact on the upcoming negotiations. The agreement is a unique combination of development cooperation with trade, political cooperation, security and migration – all in a single framework. The European Development Fund (EDF), which the EU uses to finance its development cooperation with the ACP countries, is a product of the Cotonou Agreement, and has largely shaped the EU's foreign relations with the ACP countries. It is an intergovernmental fund that is not part of the EU budget.

The Treaty of Lisbon no longer refers to the ACP countries as a group. Some have seen this as a signal that the link between the EU and the ACP countries is now deemed less important. At the same time, the provisions that gave the ACP countries preferential access to the EU could no longer be maintained, as they did not meet WTO requirements. As a result, the European Commission began negotiating with the separate regions on development-friendly free trade agreements that do meet to WTO requirements: the Economic Partnership Agreements (EPAs). This raises the question of whether development links with ACP countries should be merged with other EU financing instruments like the Development Cooperation Instrument (DCI).

In this connection, the government has the following questions:

1. Should there be a follow-up to the Cotonou Agreement? If so, what form should it take (should it be legally binding or not?), and what topics should it cover?
2. Is there still any reason for a relationship with the ACP countries as a group and, if so, on what basis? Would it be better to reach agreements with the separate regions (Africa, the Caribbean and the Pacific), or instead to aim for an integrated approach within the

EU budget? If separate agreements are preferable, what form should they take? Which elements of the Cotonou Agreement should be retained?

A number of subsidiary questions may then arise:

1. How should cooperation between the EU and the ACP countries be assessed in terms of development cooperation and trade, political cooperation, security and migration? What has the Cotonou Agreement achieved, and how well does it compare with other cooperation models?
2. Are the EU's strategic cooperation goals being promoted in its relations with the ACP countries, for instance in terms of sustainable social, economic and ecological development, renewable energy sources, raw materials, migration, human rights, peacebuilding and the rule of law? How effective is this partnership in comparison with other, partly overlapping regional partnerships (such as the African Union, the Southern African Development Community (SADC), the Common Market for Eastern and Southern Africa (COMESA), the Economic Community of West African States (ECOWAS), etc.)?
3. What influence does the EU have in the ACP countries, and what part are new powers like the BRICS (Brazil, Russia, India, China and South Africa) playing in setting the agenda? What is the ACP countries' role, or potential role, in global governance?
4. To what extent does the partnership's governance structure affect the quality of cooperation?
5. What role should the Netherlands play in negotiations on a possible follow-up to the Cotonou Agreement? This country played a brokering role in the EPA negotiations. Did the EU and the ACP countries value this role?
6. What factors, including the timetable between now and 2020, could facilitate or hamper the decision-making process?
7. To what extent, and in what way, does the signature or non-signature of EPAs affect the future of the Cotonou Agreement?
8. What do the ACP countries think about the review of the agreement, and what opportunities do they see for an improved reciprocal relationship?
9. How would a change in relations with the ACP countries affect the Overseas Countries and Territories (OCTs)?[1]

With a view to the drafting of a possible EU mandate for negotiations, your report should be completed by January 2015.

We look forward to reading your report.

Yours sincerely,

Frans Timmermans
Minister of Foreign Affairs

Lilianne Ploumen
Minister for Foreign Trade and Development Cooperation

1 Council Decision 2013/755/EU of 25 November 2013 (the 'Overseas Association Decision') aims for a reciprocal partnership to support the OCTs' sustainable development (point 5 of the preamble) and establishes a direct link to the EDF (points 32 and 34 of the preamble and articles 75 (a), 77, 78, 85-87, 91 and 93 (4).

List of abbreviations

ACP	Group of 79 countries in Africa, the Caribbean and the Pacific Ocean
AIV	Advisory Council on International Affairs
AU	African Union
BRICS	Brazil, Russia, India, China and South Africa
CARICOM	Caribbean Community
CARIFORUM	Forum of the Caribbean Group of African, Caribbean and Pacific States
CDE	Centre for the Development of Enterprise
COMESA	Common Market for Eastern and Southern Africa
CTA	Technical Centre for Agricultural and Rural Cooperation
DCI	Development Cooperation Instrument
DFID	Department for International Development (UK)
EAC	East African Community
ECOWAS	Economic Community of West African States
EDF	European Development Fund
EEAS	European External Action Service
EEC	European Economic Community
EIB	European Investment Bank
EPA	Economic Partnership Agreement
EPG	Eminent Persons Group
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
FLEGT	Forest Law Enforcement, Governance and Trade
GSP	Generalised Scheme of Preferences
IOB	Policy and Operations Evaluation Department
JPA	Joint Parliamentary Assembly
LDC	Least Developed Country
MDGs	Millennium Development Goals
NAO	National Authorising Officer
NGO	Non-governmental organisation
OCTs	Overseas countries and territories
ODA	Official Development Assistance
OECD	Organisation for Economic Cooperation and Development
PICTA	Pacific Island Countries Trade Agreement
SADC	Southern African Development Community
SDGs	Sustainable Development Goals
SIDS	Small Island Developing States
UN	United Nations
UPR	Ultra-peripheral region
WTO	World Trade Organization

Annexe III

List of persons consulted

Peter Craig-McQuaide	Head, Unit for Interinstitutional Relations
Dr Patrick I. Gomes	Guyanese Ambassador to ACP
Professor Joyeeta Gupta	Vice-chair, Development Cooperation Committee, AIV
Ms Carmen Hagenaars	Permanent Representation of the Netherlands, Brussels
Ms Daniëlle Hirsch	Director, Both ENDS
Professor Ernst Hirsch Ballin	Chair, Human Rights Committee, AIV
Dr Burghard Ilge	Senior Programme Officer, Both ENDS
Geert Laporte	Deputy Director, European Centre for Development Policy Management
Junior Lodge	Multilateral Trading System Director, ACP
Marc Maes	European Trade Policy Officer, 11.11.11
Dr Obadiah Mailafia	Chef de Cabinet, ACP
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ACP member states

Country	Year	Country	Year
Angola	1984	Mali	1963
Antigua and Barbuda	1984	Marshall Islands	2000
Bahamas	1975	Mauritania	1963
Barbados	1975	Mauritius	1975
Belize	1984	Micronesia	2000
Benin	1963	Mozambique	1984
Botswana	1975	Namibia	1995
Burkina Faso	1963	Nauru	2000
Burundi	1963	Niger	1963
Cameroon	1963	Nigeria	1975
Cabo Verde	1979	Palau	2000
Central African Republic	1963	Papua New Guinea	1979
Chad	1963	Rwanda	1963
Comoros	1979	Samoa	1975
Democratic Republic of the Congo	1963	Sao Tome and Principe	1979
Cook Islands	2000	Senegal	1963
Côte d'Ivoire	1963	Seychelles	1979
Cuba	2000	Sierra Leone	1975
Djibouti	1979	Solomon Islands	1979
Dominica	1984	Somalia	1963
Dominican Republic	1979	South Africa	1995
Eritrea	1995	St Kitts and Nevis	1984
Ethiopia	1975	St Lucia	1979
Fiji	1975	St Vincent and the Grenadines	1984
Gabon	1963	Sudan	1975
Ghana	1975	Suriname	1979
Grenada	1975	Swaziland	1975
Guinea	1975	Tanzania	1969
Guinea-Bissau	1975	the Congo	1963
Equatorial Guinea	1990	the Gambia	1975
Guyana	1975	Timor-Leste	2006
Haiti	1990	Togo	1963
Jamaica	1975	Tonga	1975
Kenya	1969	Trinidad and Tobago	1975
Kiribati	1979	Tuvalu	1979
Lesotho	1975	Uganda	1969
Liberia	1975	Vanuatu	1984
Madagascar	1963	Zambia	1975
Malawi	1975	Zimbabwe	1984

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