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REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT

(First Session)

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REPORT OF THE 61<sup>st</sup> SESSION OF THE OACPS PARLIAMENTARY ASSEMBLY AND THE 42<sup>nd</sup> SESSION OF THE ACP-EU JOINT PARLIAMENTARY ASSEMBLY

MAPUTO, MOZAMBIQUE

25<sup>th</sup> October to 2<sup>nd</sup> November, 2022

*Rt. Hon. Speaker  
You may approve for tabling.  
2022  
22/02/23*

Clerks Chambers  
Parliament Buildings  
NAIROBI

November, 2022

*Approved.  
[Signature]  
23/02/2023  
DSS*



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## ABBREVIATIONS

<b>ACP:</b>	African, Caribbean and Pacific
<b>AML/CFT:</b>	Anti-Money Laundering/Combating the Financing of Terrorism
<b>ASALs:</b>	Arid and Semi-Arid Lands
<b>EAC:</b>	East African Community
<b>EC:</b>	European Commission
<b>EC:</b>	European Council
<b>EDF:</b>	European Development Fund
<b>EP:</b>	European Parliament
<b>EPAs:</b>	Economic Partnership Agreements
<b>EU:</b>	European Union
<b>JPA:</b>	Joint Parliamentary Assembly
<b>NDICI:</b>	Neighbourhood Development and International Cooperation Instrument
<b>OACPS:</b>	Organization of African, Caribbean and Pacific States
<b>OACPS-EU JPA:</b>	Organization of African, Caribbean and Pacific States – European Union Joint Parliamentary Assembly
<b>OACPS-PA:</b>	Organization of African, Caribbean and Pacific States – Parliamentary Assembly
<b>SADC:</b>	Southern African Development Community
<b>SDGs:</b>	Sustainable Development Goals

## **PREFACE**

**Mr. Speaker Sir,**

**The 61<sup>st</sup> Session of the Organisation of African, Caribbean and Pacific States (OACPS) Parliamentary Assembly and the 42<sup>nd</sup> Session of the OACPS-EU Joint Parliamentary Assembly** took place in Maputo, Mozambique from 25<sup>th</sup> October to 2<sup>nd</sup> November 2022. This was the second physical meeting of the Joint Parliamentary Assembly to take place following lifting of Covid-19 related restrictions enabling resumption of travel.

**Mr. Speaker Sir,**

The Kenya delegation to this meeting comprised the following -

- i) The Hon. Gladys Boss, MP – Deputy Speaker and Leader of Delegation;
- ii) The Hon. (Dr.) Lilian Gogo, MP;
- iii) The Hon. Martin Wanyonyi, MP;
- iv) Senator Tabitha Mutinda, MP;
- v) Mr. Lawrence Amolo – Delegation Secretary (Senate);
- vi) Ms. Wanjiru Ndindiri – Delegation Secretary (National Assembly);
- vii) Mr. Joe Okong'o – Media Relations Officer.

The delegation was also supported at the meeting by officials from the Ministry of Foreign Affairs as follows:

- (i) Amb. Paul K. Ndung'u – High Commissioner, High Commission of Kenya in Mozambique;
- (ii) Amb. Fredrick Matwang'a – Director, Economic Affairs & Commercial Diplomacy;
- (iii) Ms. Dorcas Bungei – First Counselor, High Commission of Kenya in Mozambique;
- (iv) Mr. Evans Maturu – Minister/Consul General, Kenya Embassy Brussels; and
- (v) Ms. Halima Saadia Ahmed – Third Secretary Officer.

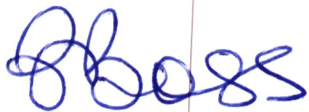
**Mr. Speaker Sir,**

In line with the previous meetings, the JPA was preceded by meetings of the three Standing Committees on Political Affairs; Economic Development, Trade and Finance and Social Affairs and the Environment. During these meetings, reports on core issues were presented and deliberated on. These included topics such as: *Enhancing cooperation on maritime security and promoting the rule of law on the oceans; EU list of non-cooperative tax jurisdictions and the list of third countries with deficiencies in their systems to counter anti-money laundering (AML) and counter-terrorism financing (CTF); and Strengthening parliamentary solidarity and political will for road safety in member countries of the OACPS and the EU, including safe infrastructure.* The reports were discussed by the Joint Assembly, and a vote for adoption of the reports will be conducted at the next JPA in June 2023.

**Mr. Speaker Sir,**

The delegation is grateful to the Speakers of the two Houses for nominating them to represent the Parliament of the Republic of Kenya and facilitating participation in liaison with the offices of the Clerks of the two Houses.

It is now my pleasant duty, on behalf of the delegation, to present and commend this report to the House for noting.



.....  
**THE HON. GLADYS J. BOSS, CBS, MP**

**DEPUTY SPEAKER AND LEADER OF THE DELEGATION**

DATE: .....

21st Feb 2022

**REPORT OF THE PROCEEDINGS OF THE OACPS AND JPA COMMITTEES,  
OACPS PARLIAMENTARY ASSEMBLY AND OACPS-EU JOINT  
PARLIAMENTARY ASSEMBLY FROM 25<sup>TH</sup> OCTOBER TO 2<sup>ND</sup> NOVEMBER  
2022 IN MAPUTO, MOZAMBIQUE**

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**INTRODUCTION**

1. The OACPS-EU Joint Parliamentary Assembly (formerly referred to as ACP-EU Joint Parliamentary Assembly) is one of the organs of joint institutions established under the Cotonou Agreement.
2. The Assembly was created out of a common desire to bring together the representatives of the African, Caribbean and Pacific states that had signed the Cotonou Agreement and representatives of the European Parliament.
3. The ACP-EU therefore comprises of more than 320 MPs from the 79 Organization of African, Caribbean & Pacific States and Members of the European Parliament, drawn from the 27 member states of the European Union.
4. The main objectives of the partnership are sustainable development and eradication of poverty within its member states. The JPA has its headquarters in Brussels, Belgium.
5. The JPA currently meets four times every year; twice in Brussels and twice in one of the ACP and EU countries on a rotational basis.

**New OACPS – EU Partnership Agreement**

6. The current partnership framework, the Cotonou Agreement, was adopted in 2000 to replace the 1975 Lomé Convention and was to run for a 20-year period, expiring in February 2020. However, due to a delay in negotiations for the new post-Cotonou Agreement, the provisions of the current agreement were extended to June 2023.

7. At present, the renewed partnership agreement between the European Union (EU) and the African, Caribbean and Pacific (ACP) States was initialled in April 2021. It is yet to be signed by the all the parties, and will require other legal procedures, including ratification by the Member States, before entering fully into force.
8. The Cotonou Agreement was initially due to expire in February 2020. However, its provisions have been extended until the new partnership agreement between the EU and the ACP countries enters into force.
9. The Cotonou Agreement aimed to reduce and eventually eradicate poverty and contribute to the gradual integration of the ACP states into the world economy. It was based on three pillars –
  - a) *development cooperation*
  - b) *economic and trade cooperation*
  - c) *political dimension*
10. The new partnership agreement will serve as the new legal framework for EU relations with **79 African, Caribbean and Pacific (ACP) states**.
11. The agreement aims to strengthen the capacity of the EU and the ACP countries to address global challenges together. It lays down common principles and covers the following **priority areas**:
  - a) *democracy and human rights*
  - b) *sustainable economic growth and development*
  - c) *climate change*
  - d) *human and social development*
  - e) *peace and security*
  - f) *migration and mobility*

12. The agreement will include a **common foundation** at ACP-EU level combined with three **regional protocols** for Africa, the Caribbean and the Pacific with a focus on the regions' specific needs. It is based on **three pillars** –
  - a) *development cooperation*
  - b) *economic and trade cooperation*
  - c) *political dimension*
13. Once the new agreement is in place, the OACPS-EU JPA will **meet once every year** in Brussels, and once in each of the three Regional blocs (Africa, Caribbean and the Pacific).
14. The new agreement was initialled on 15<sup>th</sup> April 2021. The deadline for signing of the agreement is set for June 2023, which is also when the extension of the Cotonou Agreement is set to expire. The place for its signing of the agreement is Samoa though this will be subject to internal consultations within the JPA.

#### **Composition and working methods**

15. The representatives of the 79 ACP states, who under the Cotonou Agreement must be members of Parliament, meet their European Parliament counterparts drawn from the 27 member states of the EU in a plenary session for one week twice a year, bringing together more than 320 MPs. The Joint Parliamentary Assembly meets alternately in an ACP country and an EU country. The institution is governed by common, democratic rules.
16. Participation of non-Parliamentarians is also allowed on condition that there is written concurrence from the relevant national authorities.
17. Two Co-Presidents who are elected by the Assembly direct the work. Twenty-four vice-presidents (12 European and 12 ACP) who are also elected by the Assembly constitute the Bureau of the Joint Parliamentary Assembly, together with the two Co-Presidents. The Bureau meets several times a year in order to ensure the continuity of the work of the Joint Parliamentary Assembly and to prepare new

initiatives aimed notably at reinforcing and improving cooperation. It also considers topical political questions and adopts positions on all human rights cases.

18. Three Standing Committees have been established to draw up substantive proposals, which are then voted on by the Joint Parliamentary Assembly. These Committees, which began their work in March 2003, are-
  - a) the Committee on Political Affairs;
  - b) the Committee on Economic Development, Finance and Trade; and
  - c) the Committee on Social Affairs and the Environment.
  
19. Prior to the Joint Parliamentary Assembly (JPA), the ACP committees hold meetings. These are followed by a meeting of the OACPS Parliamentary Assembly (OACPS-PA), then by the Joint ACP-EU committee meetings, and finally the OACPS-EU Joint Parliamentary Assembly.
  
20. The Assembly regularly undertakes exploratory or fact-finding missions in member states. The members of the Joint Parliamentary Assembly are thus in direct contact with the situation on the ground in various developing countries which are signatories to the Cotonou Agreement.
  
21. The impact of the work of the Joint Parliamentary Assembly goes well beyond economic considerations and embraces the fundamental objectives of the development of mankind and the establishment of peaceful relations between the nations and the world. The ACP-EU Joint Parliamentary Assembly is a democratic parliamentary institution, which aims to promote and defend democratic processes in order to guarantee the right of each people to choose their own development objectives and decide on how to attain them.

### **Initiatives by the Joint Parliamentary Assembly**

22. The Joint Parliamentary Assembly has made an active contribution towards implementing and reinforcing successive ACP-EU Conventions and has put forward numerous proposals, including –
- a) the upgrading of the role of women in the development process;
  - b) the integration of environment policy in development projects;
  - c) promotion of trade as a tool for development, particularly by way of the Economic Partnership Agreements foreseen in the Cotonou Agreement;
  - d) the drawing up of rural development programmes and micro-projects tailored to the needs of specific communities; and,
  - e) the promotion of regional, political and commercial cooperation.

### **The Economic Partnership Agreements (EPAs)**

23. From 2002, the European Union and individual and regional economic communities (groups of countries) that together make up the ACP group of states have been negotiating “free trade” Economic Partnership Agreements (EPAs). The general framework for negotiating EPAs is found in the Cotonou Agreement.
24. The overall objectives of EPAs are to ensure sustainable development of ACP countries, their smooth and gradual integration into the global economy and eradication of poverty. Specifically, EPAs aim at promoting sustained growth; increasing the production and supply capacity; fostering the structural transformation and diversification of the ACP economies and providing support for regional integration by being "tailor-made" to suit specific regional circumstances.
25. Some other key features of the EPAs include the following: they are WTO-compatible agreements, but go beyond conventional free-trade agreements, focusing on ACP development, taking account of their socio-economic circumstances and including co-operation and assistance to help ACP countries benefit from the agreements; they open up EU markets fully and immediately, but allow ACP countries long transition periods to open up partially to EU imports while providing protection for sensitive

sectors; they create joint institutions that monitor the implementation of the agreements and address trade issues in a cooperative way; and, they are also designed to be drivers of change that will help kick-start reform and contribute to good economic governance.

26. Kenya, along with other EAC Partner States initialled the framework EPA Agreement on 27th November 2007. This was followed by negotiations towards a comprehensive EPA, which was initialled by the EU and EAC Partner States on 14<sup>th</sup> October, 2014.
27. In general, Kenya and the EAC have been keen to conclude an EPA Agreement that addresses the concerns of the region, bring industrial and general development, and lead to poverty reduction. The agreement should also not lead to displacement of Kenya products in the EAC markets by EU products. At present, Kenya has signed and ratified, while Rwanda has signed and not ratified and are awaiting the other EAC states to finalize the signing and possible ratification of the the EU-EAC EPA. The EPA was approved for ratification the National Assembly of Kenya in September 2016.
28. Noting that there has been inordinate delay by the rest of the EAC member states, the 21<sup>st</sup> Ordinary Summit of the EAC Heads of State resolved that members that are willing to implement the EU-EAC EPAs can negotiate with the EU to do so using the principle of variable geometry. This principle allows Partner States in an integration bloc to implement integration projects or activities at different paces, thus enabling other states to join at a later date. Currently, Kenya is negotiating the implementation of the EPAs under the principle of variable geometry.

### **The European Development Fund (EDF)**

29. The European Development Fund (EDF) has been the main instrument for channelling funds for development cooperation by the EU to the ACP States. The 1957 Treaty of Rome made provision for its creation with a view to granting

technical and financial assistance, initially to African countries which at that time were still colonized, and with which some EU Member States had historical links.

30. The eleventh EDF ran from the year 2014 to 2020, with a budget of EUR 31.5 billion set aside for this particular period. It was divided into grants, national and regional indicative programmes; intra-ACP and inter-regional cooperation; the investment facility managed by the European Investment Bank; and for the European Investment Bank loans to be used to promote the public sector in ACP states.
31. However, following the conclusion of negotiations of the post-Cotonou agreement, a new funding instrument has now been put into place. It is known as the Neighbourhood Development and International Cooperation Instrument (NDICI) or Global Europe Instrument, which took effect from June 2021. Projects that qualify for disbursement from the fund will be classified under three pillars: geographic, thematic and rapid response, that is, those relating to humanitarian, disaster risk and effects of climate change.

## **MEETINGS OF THE STANDING COMMITTEES**

32. The OACPS Committee Meetings took place separately from Wednesday, 26<sup>th</sup> October to Thursday, 27<sup>th</sup> October 2022, to discuss and agree on common positions on the agenda items scheduled for discussion by the OACPS-EU Joint Committees. Subsequently, the JPA Committees met on Sunday, 30<sup>th</sup> October 2022, and discussed several matters as follows -

### **Committee on Political Affairs**

33. The Committee adopted its agenda as presented in **Annex 1** and proceeded to approve the Minutes of the previous meeting held on Tuesday, 29<sup>th</sup> March 2022 in Strasbourg, France. The subsequent joint OACPS-EU Committee meeting was held on Sunday, 30<sup>th</sup> October 2022, and was chaired by Hon. Assarid Ag Imbarcaouane (Mali) and Mr. A. Agius Saliba (EU).
34. The meeting exchanged views on following topics: *Enhancing Cooperation on Maritime Security and Promoting the rule of law on the Oceans* and the Political Situation in Members of the OACPS.

35. A presentation of the draft report of the Committee on the topic *Enhancing cooperation on maritime security and promoting the rule of law on the oceans* was undertaken by Kenya, which is a member of this Committee. The Hon. Gladys Boss, CBS, MP, Deputy Speaker and Leader of the Delegation therefore made an intervention on this matter. The Deputy Speaker was the co-rapporteur on this report, alongside her counterpart from the EU Parliament, Mr. Juan Fernando Lopez Aguilar. There was also an exchange of views with Ms. Pooja Bissoonauthsing, Lead of the Legal Pillar of the Western Indian Ocean Team, UN Office on Drugs and Crime (UNODC) – Global Maritime Crime Programme on this topic.
36. Hon. Boss highlighted the complex and dynamic nature of maritime security, which can greatly affect national security. She stated that 70% of the world's surface is ocean and two-thirds of the world's waters is high seas. Additionally, more than three billion people, mostly in developing countries, depend on the oceans and seas for their daily social and cultural life, and indeed, for their livelihoods. It was pointed out that maritime security is under threat due to a number of challenges, namely, contested boundaries and navigation routes that do not conform to international law, depletion of natural resources including illegal, unreported and unregulated fishing (IUU), armed attacks and crimes at sea such as piracy, robbery and terrorist acts, among many others.
37. There was need to promote the sustainable use and productivity and resilience of the ocean and its ecosystems by the OACPS, in line with the OACPS Strategic Plan for Fisheries and Aquaculture, 2030, which would enable the implementation of commitments under the 2030 Agenda for Sustainable Development, particularly, SDG 14 on Life Below Water.
38. The need to identify the gaps in capacity and centre on strengthening local mechanisms in dealing with maritime security was highlighted. This would be best done by ameliorating the vulnerabilities, through formulation of pragmatic policies and strategies that engender bilateral, regional and multilateral engagement as key in maritime governance.

39. Hon. Boss further enumerated Kenya's efforts to address these matters, for instance, through establishment of a Ministry of Mining, the Blue Economy and Maritime Affairs and establishment of the Kenya Coast Guard Service, to deal with issues of maritime security.
40. The maritime expert, Ms. Bissoonauthsing, highlighted the challenges in evidence collection, chain of evidence and jurisdiction relating crime on the high seas (maritime crimes). She noted that there was need to review maritime laws to address the current climate and come up with approaches for dealing with the issues that were multi-pronged and multi-dimensional.
41. Members of the Committee were called upon to enrich the draft report so as to ensure the many legal issues raised in this matter of ocean governance were addressed through multilateral cooperation and joint collaboration and that recommendations could be made on how to update the law of the sea.
42. Under the agenda on the Political Situation in OACP States, the Hon. Boss also gave an update on the political situation in Kenya, given that this was the first attendance of the meetings by the country following the August 2022 General Elections. She reported that the process was peaceful before, during and after the elections; and that for the first time, election results were transmitted electronically. She also highlighted the ongoing process of establishment of the Cabinet and select committees in Parliament.
43. With regard to the political situation in Members of the OACPS, the Committee also received updates from Togo, Djibouti, Cote d'Ivoire, Burundi, Zambia, Tchad, Uganda, Tanzania, Guinea Bissau, Democratic Republic of Congo, Suriname, Guinee, Liberia, Vanuatu and Cameroun.
44. An issue that was also raised as Members addressed this item was the humanitarian situation in Haiti. The meeting noted the ongoing grave situation in Haiti and called for support from the international community as well as the OACPS to begin to

engage on the political and humanitarian situation in Haiti. It was proposed the assembly consider a resolution or exchange on the situation in Haiti.

45. The Committee was also informed that the OACPS is now a fully-fledged institution akin to the Council of Ministers and it is therefore expected to fully finance its activities like the other institutions.
46. During the Joint OACPS-EU Committee meeting on Sunday, 30<sup>th</sup> October 2022, Members also had a virtual presentation and held an exchange of views on the topic of “*State of peace and security in the world*” from H.E. Ambassador Martin Kimani, Permanent Representative of the Republic of Kenya to the United Nations, New York.
47. Amb. Kimani stated that many nations in the world were struggling under the weight of conflict and terrorism. He encouraged all states to embrace multilateralism and renew their commitment to the principles of the UN Charter regarding resolution of conflict. Further, nations and regions facing conflicts should link their internal efforts for peace and security to global efforts. A copy of Amb. Kimani’s statement is attached as **Annex 2**.

### **Committee on Economic Development, Finance and Trade**

48. The OACPS Committee met on Wednesday, 26<sup>th</sup> October 2022 and adopted its agenda without amendments as attached in **Annex 3**. The Committee approved the Summary Record of its previous meeting held in March 2022 in Strasbourg, France. Subsequently, the OACPS-EU Joint Committee met on Sunday, 30<sup>th</sup> October 2022.
49. The OACPS-EU Committee considered its draft report on *EU list of non-cooperative tax jurisdictions and the list of third countries regarding anti-money laundering and counter-terrorism financing (AML/CFT)*. The co-rapporteurs, Edmund Hinkson (Barbados) and Alessandra Basso (EU) made their remarks on the subject, in addition to an exchange of views with David Hotte, the EU AML/CFT Global Facility Team Leader.
50. It was observed that money laundering activities support activities such as terrorism, drug trafficking and illegal human trafficking, among others. The resolutions sought in the report

therefore aim to reduce this vice. There is need to look at whether cryptocurrencies and low-cost money transfer systems also play any role in money laundering activities.

51. It was further noted that there is need to ensure that profits generated in a country remain there and are not moved elsewhere through tax evasion and avoidance. It was also highlighted that countries are placed on the EU list of non-cooperative jurisdictions (also known as the 'Blacklist'), which is published as an annex to conclusions adopted by the Economic and Financial Affairs (Ecofin) Council, is not to name and shame countries, but to encourage positive changes in their tax legislation and practices, through cooperation.
52. The Committee also held an exchange of views with Carlos da Maia, World Bank Mozambique Economist, on the impact of the energy crisis in the EU and ACP countries.

### **Committee on Social Affairs and the Environment**

53. The Committee adopted its agenda as shown in **Annex 4** and proceeded to approve the Summary Record of the previous meeting held in March 2022 in Strasbourg, France. Subsequently, the OACPS-EU Joint Committee met on Sunday, 30<sup>th</sup> October 2022.
54. The OACPS-EU Joint Committee considered its draft report on *Strengthening parliamentary solidarity and political will for road safety in member countries of the OACPS and the EU, including safe infrastructure*.
55. The co-rapporteurs, Unity Dow (Botswana) and Duris Nicholsonová (EU) presented their draft report on the subject, in addition to an exchange of views with Jean Todt, UN Special Envoy for Road Safety, Nneka Henry, Head of the United Nations Road Safety Fund, and Elena Sentieri, Urban Policies and Sustainable Human Settlements Sector Coordinator at the UN-Habitat, Mozambique.
56. In her presentation, the co-rapporteur, Ms. Unity Dow (Botswana) indicated that road traffic injuries remain the leading cause of death worldwide, particularly among children and young people aged 5-29. It is estimated that road accidents account for 1.35 million deaths and around 50 million injuries per year.

57. It was observed that Members of the OACPS face common road safety challenges, including the importation of unsafe second-hand vehicles; insufficient training and inappropriate behaviour of road users such as texting while driving, driving under the influence of drugs or alcohol, non-use of seat belts, non-use of helmets by motorcyclists, and low enforcement of traffic rules.
58. Other Committee Members shared their experiences and called for multidimensional and holistic approaches to address the issue of road safety. Emphasis was placed on the need to ensure domestication and enforcement of laws and raising public awareness. Members also called for Parliamentary networking to facilitate regional cooperation on road safety. They further called for access to finance that would facilitate infrastructure development that was critical in reducing road accidents. The Members also called for the introduction of body cameras that would play a crucial role in reducing corruption which was seen as an aspect that contributes to reducing road safety. Members further called for the establishment of an OACPS-EU JPA parliamentary dialogue.
59. Further, the Committee also held discussions on the topic "*Access to water in the context of worldwide drought and climate change*" with Carlos Manuel dos Santos Serra, Director of the Environmental Education Cooperative "Repensar".
60. Members shared their countries' experiences on policies being implemented to facilitate access to water. Members further called for the review of policies on Land Settlement practices, licensing for tapping underground water and distribution of Portable Water. Members also called for equitable distribution of water especially in the rural areas.

## **61<sup>ST</sup> SESSION OF THE OACPS PARLIAMENTARY ASSEMBLY**

### **Special Session of the OACPS Parliamentary Assembly**

61. A Special Session of the OACPS Parliamentary Assembly was held on Tuesday, 25<sup>th</sup> October 2022, primarily to brief the representatives of OACP states on the preparations for the upcoming 10<sup>th</sup> Summit of the OACPS Heads of State and Government, scheduled from 6<sup>th</sup> to 10<sup>th</sup> December 2022 in Luanda, Angola.

62. Amb. Jose Guerreiro Alves Primo spoke on behalf of H.E. Mr. Antonio Tete, Minister of External Relations of the Republic of Angola. He took the Assembly through the draft programme for the summit, as well as a review of the meeting documentation and branding. It was highlighted that there would be several business-related side events, fora relating to women, youth and the diaspora, and presentations on financing of Micro, Small and Medium Enterprises (SMEs).
63. Members welcomed the summit, and expressed their desire for the outcome of the Summit to build on efforts to increase trade among OACP states, establish bilateral partnerships and enhance private sector engagement.
64. OACP states were encouraged to urgently sensitize their national leadership on the importance of attending this Summit, and to advocate for the involvement of OACPS regions in the summit, as well as for inclusion of women, youth and diaspora in the delegations attending the summit.
65. The Kenyan delegation thanked the OACP states for their support during the term of Kenya's current Presidency of the OACPS Summit of Heads of State, which comes to an end in December 2022. The delegation also pledged the country's support for the incoming President of the Summit, Angola, and the ongoing preparations for the 10<sup>th</sup> Summit of Heads of State. Kenya's milestones achieved during its presidency were highlighted as follows-
- a. Establishment and operationalization of the OACPS Endowment and Trust Fund;
  - b. Revision of the Georgetown Agreement towards making OACPS an international organization;
  - c. Hosting of the first ever intercessional Summit of OACPS Heads of State and Government; and
  - d. Conclusion of negotiations for the EU- OACPS new partnership agreement (post Cotonou Agreement), among many others.

### **Regular Session of the OACPS Parliamentary Assembly**

66. The 61<sup>st</sup> Session of the OACPS took place on Friday, 28<sup>th</sup> October 2022. The agenda was as shown in **Annex 5**. The meeting considered the draft Summary Record of the 60<sup>th</sup> Session of the OACPS Parliamentary Assembly held in April 2022 in Strasbourg, France.
67. The Meeting also held an exchange of views on the reports by the Chairpersons from the three Standing Committees.
68. The Parliamentary Assembly was also informed that the deadline for signing of the new post-Cotonou Agreement had been set for June 2023. The Assembly also heard that there was a delay in signing of the new Agreement by the European Union due to an internal issue with one country, Hungary. It was stated that consultations were ongoing and it was hoped they would be concluded by then in the EU and also OACPS nations to enable finalization of this process in time.
69. The Assembly noted that there was need for provision of information and orientation for Members of Parliament attending the OACPS meetings for the first time, to enable them to understand the workings and procedures of the Assembly.
70. The Assembly was further encouraged to follow-up with their states in keeping their contributions up-to-date, as it had been noted with concern that there were currently 14 countries which were in arrears. Payment of the outstanding balances would ensure that the OACPS financial situation was strong, and this would ultimately support the OACPS secretariat in its work and fund initiatives to increase visibility and outreach by the institution.

### **42<sup>ND</sup> SESSSION OF THE OACPS-EU JOINT PARLIAMENTARY ASSEMBLY**

71. The 42<sup>nd</sup> Session of the OACPS-EU Joint Parliamentary Assembly was held from Monday, 31<sup>st</sup> October to Wednesday, 2<sup>nd</sup> November 2022 at the Joachim Chissano

Conference Centre. The agenda was as attached in **Annex 6**. The meeting was co-chaired by the OACPS-EU Co-Presidents, Peter Kenilorea Jr (Solomon Islands) and Carlos Zorrinho (EU).

72. The session was officially opened on Monday, 31<sup>st</sup> October 2022 by H.E. Filipe Jacinto Nyusi, President of the Republic of Mozambique, following remarks by the distinguished guests listed below-

- (i) H.E. Esperança Laurinda Francisco Nhiuane Bias, Speaker of the Assembly of the Republic of Mozambique;
- (ii) Carlos Zorrinho, Co-President of the Joint Parliamentary Assembly;
- (iii) Peter Kenilorea Jr., Co-President of the Joint Parliamentary Assembly;
- (iv) H.E. Ana Rita Geremias Sithole, Head of the National Group at OACPS-EU;  
and
- (v) H.E. Eneas da Conceição Comiche, Mayor of Maputo.

73. The plenary held robust discussions on a number of topics, including the following-

- (i) Democracy and demography;
- (ii) Consequences of the Russian war in Ukraine on food supplies in OACPS countries and beyond;
- (iii) Draft Rules of Procedure for the Assemblies under the post-Cotonou Agreement;
- (iv) The fight against terrorism in sub-Saharan Africa;
- (v) Global challenges of climate change cooperation for adaptation and mitigation in the wake of COP 27;
- (vi) Ensuring market access for OACPS Commodity producing countries through enhancing sustainable consumption and production patterns;

- (vii) A new framework to address biodiversity crisis; leveraging ACP-EU partnership in shaping the new framework to halt the loss of biodiversity and promote its sustainable use and conservation in the wake of COP 15; and
- (viii) A mechanism for stakeholders' consultation and engagement under the post-Cotonou Agreement.

74. The Members of the JPA also heard responses to oral questions posed to the OACPS and EU Councils, respectively, by Dr. Amery Browne, Minister of Foreign and CARICOM Affairs (Trinidad and Tobago), President-in-Office of the OACPS Council and Mr. Tomas Ulicny, Special Envoy to the Minister of Foreign Affairs of the Czech Republic, President-in-Office of the EU Council.

75. The ACP-EU JPA also voted on and adopted the following:

- (i) A Resolution on the global challenges of climate change cooperation for adaptation and mitigation in the wake of COP 27; and
- (ii) A Resolution on ensuring market access for OACPS commodity-producing countries by enhancing sustainable consumption and production patterns.

The final text of these resolutions is attached as **Annex 7**.

#### **Other activities of the OACPS-EU JPA**

76. Members of the JPA also participated in other events on the sidelines of the plenary sessions held on Saturday, 29<sup>th</sup> October 2022 as follows-

- (i) The Women's Forum: which tackled the topic of Early Child Marriages and Gender-Based Violence – achievement of SDG 5;
- (ii) The Youth Forum: which dealt with the use of ICT in addressing the problem of human trafficking with special focus on the youth; and

- (iii) Two workshops dealing with disaster risk management and management of COVID-19, both of which included visits to projects in the field.

### **Date and Place of the 43<sup>rd</sup> Session of the Joint Parliamentary Assembly**

77. The Assembly was informed that the 43<sup>rd</sup> Session of the Joint Parliamentary Assembly is scheduled to take place in **June 2023** in Sweden.

### **OTHER IMPORTANT MATTERS FOR CONSIDERATION**

78. Parliamentary diplomacy is an important aspect of the work of the House, and assists the country fulfilling its international obligations and enhancing Parliament's role in international relations, cooperation and participation. As such, it is important for delegations of Members travelling abroad to have an interest in and give input on matters affecting our country and the region.
79. In the course of the debates in both the OACPS and the joint OACPS-EU programmes in Maputo, a number of important issues arose, that require further scrutiny and follow-up.

#### **(a) Climate Change and ICJ advisory**

The Republic of Vanuatu held an event on the side lines of the ACP-EU Joint Parliamentary Assembly to provide information and garner support from parliamentarians in attendance on certain action the country was proposing to take with regard to climate change.

The country was seeking to have the United Nations General Assembly adopt a resolution that would enable them to engage the United Nation's International Court of Justice (ICJ) to obtain an advisory on the responsibility of the global North with regard to climate change. It was highlighted that the ICJ was the only principal organ of the UN that had not yet been given an opportunity to help

address the climate crisis. According to Vanuatu's website on the ICJ initiative, a coalition of more than 80 nations with more continuing to join, was calling for this non-binding Advisory Opinion to gain clarity on how existing International Laws can be applied to strengthen action on climate change, protect people and the environment in line with the Paris Agreement, thus protecting the rights of present and future generations against the adverse effects of climate change.

So far, Vanuatu is leading a group of nations on the drafting of a question to ask the Court, including, African states of such as Sierra Leone, Mozambique, Morocco, and Uganda, among other nations. Vanuatu plans to table the ICJ climate Resolution during the current 77th session of the UN General Assembly, and is therefore is calling upon all member states to support it.

It was highlighted that developed nations had not met the limits agreed upon regarding reduction in emissions of greenhouse gases. This has led to an increase in global temperatures by over 2°Celsius yet countries that signed the Paris Agreement undertook to limit global warming to below that amount. The effect of this has been adverse impacts on biodiversity and global ecosystems, the advent of extreme weather events such as tropical cyclones, sea-level rise and related socio-economic consequences such as population displacement and possible loss of territory.

Vanuatu was therefore seeking the support of all UN member states to vote in favour of the climate change ICJ Resolution at the UN General Assembly in the coming months. Vanuatu further encouraged Members to speak to their governments and garner their support as well as at the UN and also at the COP 27 meeting in Egypt. A copy of the said draft resolution and the explanatory memorandum is attached as **Annex 8**.

This matter is of importance to Kenya given that Climate change has contributed to resource-based conflicts in ASALs in Kenya in the recent past, especially where the socio-cultural activities like nomadism are still practiced. Unpredictable weather, longer drought periods, less rain and increased desertification witnessed

in various parts of the region culminate into a bigger strain on the already scarce resources.

Further, Kenya just like many other governments in the world having legislation dedicated to the protection of the environment, experiences challenges implementing the climate change law. Ultimately, to overcome the challenges of climate change, we must rethink the way policies are formulated and carried out to resonate well with the people and local situation as well as orienting national program.

From the phrase, “think global and act local” we must build on indigenous information, scientific information and advancements that make us better managers of the environment as climate change actors. There is need to simplify the issue of climate change, for example, carbon markets and climate financing. These should be understood beyond the specialists and academia. This shall ensure that all stakeholders participate actively and our strength shall be an added advantage in meeting set goals.

As a House, we must also play our part in communicating these issues to our people in a manner they understand, so as to leverage on community efforts in climate change mitigation and adaptation measures.

#### **(b) Withdrawal of South Africa from the OACPS**

It was reported to the OACPS Parliamentary Assembly that in September 2022, the Republic of South Africa wrote to the OACPS secretariat indicating its intention to withdraw from the Organization of African, Caribbean and Pacific States (OACPS). No reasons had been indicated by the country, save for stating their need to redeploy their cooperation efforts on foreign policy and make changes to their development policy.

The OACPS Parliamentary Assembly deliberated at length on this issue and resolved to send a delegation of OACPS members representing all the regions to the Parliament of the Republic of South Africa for a fact-finding mission to engage their

colleagues on this matter. Once the mission was undertaken, a report would be made to the plenary through the OACPS Bureau.

**(c) State of Play on the post-Cotonou Agreement**

As mentioned elsewhere in this report, following two years of negotiations, consensus was reached on the text of the agreement, and it was initialled in April 2021. However, multi-level negotiations, the coronavirus crisis and difficulties in reaching agreement on sensitive issues such as migration management and sexual and reproductive health and rights, prevented the agreement from being finalized by the initial expiry date.

The ACP-EU Joint Parliamentary Assembly was retained in the new Agreement and in addition, three regional parliamentary assemblies have been created in the future partnership. At present, the new agreement requires to be signed by the parties and further legal action undertaken, including ratification, so that it enters fully into force. A brief on the progress of this matter is attached as **Annex 9**.

In this respect, the delegation from the Republic of Malawi raised concerns on the areas listed below-

- i. Significant Governance Structure and Funding changes: introduction of three new regional protocols instead of one ACP block thus weakening bargaining power; lack of Committees in the new parliamentary structure which impacts on oversight; and lack of clarity on the change of European funding instruments with a move from the European Development Fund (EDF) to the Neighbourhood, Development and International Cooperation Instrument (NDICI).
- ii. Controversial Treaty Provisions: referring to the apparent inclusion of new items on human rights relating to sexual and reproductive health and rights yet the Cotonou Agreement was based on trade matters.

Malawi stipulated that there was urgent need for these matters to be canvassed in all national Parliaments before the Heads of States/Government proceeded to

sign the final Agreement. A copy of the documentation relating to his submission is attached as **Annex 10**.

## **CONCLUSION**

80. This report was a summary of the issues discussed at the recently concluded session of the ACP-EU Joint Parliamentary Assembly, many of which are very relevant to our existing situations. It is hoped that the subjects covered will generate rich and meaningful debate and spur ideas that will help us resolve issues of international and national concern, such as climate change adaptation and mitigation, for our people from a local context.

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**END**

## ANNEXES

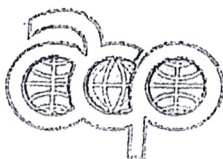
- Annex 1 - Agenda for the Committee on Political Affairs
- Annex 2 - Statement made by H.E. Amb. Martin Kimani, Permanent Representative of the Republic of Kenya to the United Nations – New York
- Annex 3 - Agenda of the Committee on Economic Development, Finance & Trade
- Annex 4 - Agenda of the Committee on Social Affairs and the Environment
- Annex 5 - Agenda of the Regular Session of the OACPS Parliamentary Assembly
- Annex 6 - Agenda of the 42<sup>nd</sup> Session of the OACPS-EU Joint Parliamentary Assembly
- Annex 7 - Final text of two resolutions adopted at the JPA
- Annex 8 - Draft ICJ resolution by Vanuatu to the UN and the explanatory Memorandum
- Annex 9 - A brief on the new post-Cotonou Agreement
- Annex 10 - Malawi submission on the post-Cotonou agreement

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# ANNEX 1

Organisation of  
African, Caribbean and  
Pacific States (OACPS)



Organisation des États  
d'Afrique, des Caraïbes et  
du Pacifique (OEACP)

REFERENCE ACP/23/052/22  
PAHD Dept: JPA/DWS/bm

Brussels, 14 October 2022

**OACPS PARLIAMENTARY ASSEMBLY**  
**MEETING OF THE COMMITTEE ON POLITICAL AFFAIRS<sup>1</sup>**

**WEDNESDAY, 26 OCTOBER 2022**

**10:00 - 13:00**

**JOACHIM CHISSANO INTERNATIONAL  
CONFERENCE CENTER, MAPUTO, MOZAMBIQUE**

**DRAFT AGENDA**

1. Adoption of the draft agenda [ACP/23/052/22].
2. Statement from the Chair.
3. Summary Record of the previous meeting [ACP/23/053/22].
  - Adoption; and
  - Matters arising.
4. Consideration of items on the agenda for the meeting of the Committee on Political Affairs of the ACP-EU Joint Parliamentary Assembly to be held on Sunday 30 October 2022.
5. The political situation in members of the OACPS.
6. Any other business.

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<sup>1</sup> Members:

Central Africa: Democratic Republic of Congo (Chair), Chad, Sao Tomé & Principe  
West Africa: Mali (2<sup>nd</sup> Vice-Chair), Côte d'Ivoire, Burkina Faso, Liberia, Togo, Benin  
Pacific: Fiji, Nauru, Tuvalu, Timor Leste  
Caribbean: Haiti, Guyana, Jamaica, St. Vincent and the Grenadines  
East Africa: Ethiopia, Djibouti, Uganda, Burundi, Kenya  
Southern Africa: Zimbabwe, Zambia, Lesotho



ACP-EU JOINT PARLIAMENTARY ASSEMBLY  
ASSEMBLÉE PARLEMENTAIRE PARITAIRE ACP-UE

*Committee on Political Affairs*

ACP\_OJ(2022)1030\_01

## DRAFT AGENDA

### Meeting

Sunday 30 October 2022, 9.00-12.00

Maputo (Mozambique)

Room Plenary hall

1. **Adoption of agenda** OJ – AP103.278v01-00
2. **Co-Chairs' announcements**
3. **Enhancing cooperation on maritime security and promoting the rule of law on the oceans**  
Co-rapporteurs: Gladys Jepkosgei Boss (Kenya) and Juan Fernando López Aguilar (European Parliament)
  - Presentation of draft report DR – AP103.281v01-00
  - Exchange of views with expert(s)
4. **State of peace and security in the world**
  - Exchange of views with H.E. Ambassador Martin Kimani, Permanent Representative of the Republic of Kenya to the United Nations
5. **Political dialogue under Article 8 of the Cotonou Agreement - State of play and outlook**
6. **Any other business**
7. **Date and place of next meeting**

Organisation of  
African, Caribbean and  
Pacific States (OACPS)



Organisation des États  
d'Afrique, des Caraïbes et  
du Pacifique (OEACP)

REFERENCE

ACP/23/056/22  
PAHD Dept : JPA/DWS/bm

Brussels, 14 October 2022

## OACPS PARLIAMENTARY ASSEMBLY

MEETING OF THE COMMITTEE ON SOCIAL AFFAIRS AND THE ENVIRONMENT<sup>1</sup>

THURSDAY, 27 OCTOBER 2022

10:00 - 13:00

INTERNATIONAL CONFERENCE CENTRE  
JOACHIM CHISSANO, MAPUTO (MOZAMBIQUE)

### DRAFT AGENDA

1. Adoption of the draft agenda [ACP/23/056/22]
2. Statement from the Chair.
3. Summary Record of the previous meeting [ACP/23/057/22].
  - Adoption; and
  - Matters arising.
4. Consideration of items on the agenda for the meeting of the Committee on Political Affairs of the ACP-EU Joint Parliamentary Assembly to be held on Sunday 30 October 2022.
5. Any other business.

<sup>1</sup> Members:

Pacific: Papua New Guinea, The Federated States of Micronesia, Niue, Palau, Tuvalu  
Caribbean (CHAIR): Antigua & Barbuda, Dominican Republic, Belize, Dominica, Grenada, the Bahamas, Cuba  
Southern Africa: Malawi, Botswana, Mozambique  
Central Africa: Central African Republic, Cameroon  
East Africa: Eritrea (1<sup>st</sup> Vice-President), Somalia, Rwanda, Sudan  
West Africa: Gambia, Niger, Mauritania, Sierra Leone, Ghana

# ANNEX 4



ACP-EU JOINT PARLIAMENTARY ASSEMBLY  
ASSEMBLEE PARLEMENTAIRE PARITAIRE ACP-UE

*Committee on Social Affairs and the Environment*

ACP\_OJ(2022)1030\_01

## DRAFT AGENDA

Meeting

Sunday 30 October 2022, 13.00-16.00

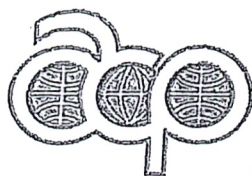
Maputo (Mozambique)

Room 4+5

1. **Adoption of agenda** OJ – AP103.280v01-00
2. **Co-Chairs' announcements**
3. **Strengthening parliamentary solidarity and political will for road safety in member countries of the OACPS and the EU, including safe infrastructure**  
Co-rapporteurs: Unity Dow (Republic of Botswana) and Duris Nicholsonová
  - Presentation of draft report DR – AP103.283v01-00
  - Exchange of views with Jean Todt, UN Special Envoy for Road Safety, and Nneka Henry, Head of the United Nations Road Safety Fund
4. **Access to water in the context of worldwide drought and climate change**
  - Exchange of views with Carlos Manuel dos Santos Serra, Director of the Environmental Education Cooperative "Repensar"
5. **Any other business**
6. **Date and place of next meeting**

# ANNEX 5

Organisation of  
African, Caribbean and  
Pacific States (OACPS)



Organisation des États  
d'Afrique, des Caraïbes et  
du Pacifique (OEACP)

WN

REFERENCE

ACP/23/060/22  
PAHD Dept: JPA [DWS/bm]

Brussels, 14 October 2022

## 61<sup>st</sup> SESSION OF THE OACPS PARLIAMENTARY ASSEMBLY

FRIDAY, 28 OCTOBER 2022

09:00HRS TO 13:00HRS

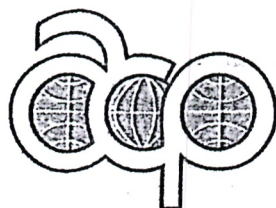
JOACHIM CHISSANO CONFERENCE CENTER

### DRAFT AGENDA

- 
1. Welcome Remarks by the President
  2. Adoption of the agenda [ACP/23/060/22]
  3. Accreditation of Non-Parliamentary Representatives
  4. Communication from the President
  5. Communication from the OACPS Secretary-General, H.E. Mr. Georges Rebelo Pinto Chikoti.
  6. Draft Summary Record of the 60<sup>th</sup> Session of the OACPS Parliamentary Assembly [ACP/23/061/22]:
    - i. Approval; and
    - ii. Matters arising.
  7. Exchange of views on the reports of:
    - i. Committee on Political Affairs;
    - ii. Committee on Economic Development, Finance and Trade; and
    - iii. Committee on Social Affairs and the Environment.
  8. Consideration of items on the Agenda and the Programme for the 42<sup>nd</sup> Session of the ACP-EU Joint Parliamentary Assembly from 29 October – 2 November 2022 [AP103.057v01-00]
  9. Communication from the Bureau of the ACP-EU Joint Parliamentary Assembly.
  10. Any other business.



Groupe des Etats d'Afrique  
des Caraïbes et du Pacifique  
(Groupe ACP)



African, Caribbean and  
Pacific Group of States  
(ACP Group)

Ref. ACP/23/068/22  
PAHD Dept. [DWS/bm]

Maputo, 1 November 2022

**RESUMPTION OF THE 61<sup>ST</sup> SESSION OF THE  
OACPS PARLIAMENTARY ASSEMBLY**

**WEDNESDAY, 2 NOVEMBER 2022 FROM 07:45 TO 08:45**

**MAPUTO (MOZAMBIQUE)**

**ROOM PLENARY**

**DRAFT AGENDA**

- 
1. Adoption of the agenda [ACP/23/068/22]
  2. Communication from the President
  3. Voting positions on Urgent Motion for the Resolutions on the:
    - “Global challenges of climate change cooperation for adaptation and mitigation in the wake of COP 27” ; and
    - “Ensuring market access for OACPS Commodity producing countries through enhancing sustainable consumption and production patterns.”

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# **ANNEX 6**





ACP-EU JOINT PARLIAMENTARY ASSEMBLY  
ASSEMBLEE PARLEMENTAIRE PARITAIRE ACP-UE

*Plenary session*

30.10.2022

## **42<sup>nd</sup> SESSION**

**29 October - 2 November 2022**

**Maputo (Mozambique)**

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### **AGENDA**

**and WORK PROGRAMME**

Website of the ACP-EU Joint Parliamentary Assembly:  
[www.europarl.europa.eu/acp/en/home](http://www.europarl.europa.eu/acp/en/home)

1. **Deadline for tabling questions to the Council and Commission**
  - Wednesday 31 August at noon
2. **Deadline for tabling urgent motions for resolution**
  - Tuesday 27 September at noon
3. **Deadline for tabling compromise motions for resolution**
  - Monday 31 October 3 p.m.
4. **Deadline for tabling amendments**
  - to the four sets of Rules of Procedure
    - Thursday 8 September at noon
  - to compromise resolutions and other urgent motions for resolution to be put to the vote
    - Tuesday 1 November at noon
5. **Requests relating to voting methods (votes on separate parts of the text, by secret ballot, by separate houses)**
  - Wednesday 2 November at 10 a.m. in writing
6. **Limitation of speaking time** (cf. Article 15(2) of the Rules of Procedure)
  - 5 minutes for introductory statements
  - 3 minutes for speakers in debates (unless speaking time is allocated differently on the basis of a division of the total time available)
  - 2 minutes for winding up

## **MONDAY 31 OCTOBER**

8.00 a.m. to 10.00 a.m.

**Conciliation meetings on urgent motions for resolution**

11.00 a.m.

**Formal opening sitting of the 42<sup>nd</sup> Session of the Joint Parliamentary Assembly**

List of speakers:

- H.E. Ana Rita Geremias Sithole, Head of the National Group at OACP-EU–  
H.E. Eneas da Conceição Comiche, Mayor of Maputo
- Peter Kenilorea Jr., Co-President of the Joint Parliamentary Assembly
- Carlos Zorrinho, Co-President of the Joint Parliamentary Assembly
- H.E. Esperança Laurinda Francisco Nhuané Bias, Speaker of the Assembly of the Republic of Mozambique
- H.E. Filipe Jacinto Nyusi, President of the Republic of Mozambique

**Followed by group photo**

1.45 p.m. to 2.45 p.m.

**Meeting of the EP Members with the EU Delegation**

3.00 p.m. to 7.00 p.m.

**Sitting of the Joint Parliamentary Assembly**

**Constituent meeting of the Joint Parliamentary Assembly and accreditation of non-parliamentary representatives**

1. **Adoption of agenda**
2. **Approval of the minutes** of the last sittings of the 41<sup>st</sup> session of the Joint Parliamentary Assembly
3. **Co-Presidents' Announcements** including decisions taken at the Bureau meeting of 30 October 2022
4. **Statement by Dubravka Šuica**, Vice-President of the European Commission with responsibility for Democracy and Demography
5. **Debate with Dubravka Šuica**, Vice-President of the European Commission with responsibility for Democracy and Demography – **catch-the-eye**
6. **Question Time to the Commission**
7. **Action taken by the Commission** on the resolutions adopted at the 41<sup>st</sup> session of the Joint Parliamentary Assembly

8. **Consequences of the Russian war in Ukraine on food supplies in OACPS countries and beyond**  
Keynote debate 1 (without resolution)  
Speaker: Hernani Coelho Da Silva, representative of the Food and Agriculture Organisation of the United Nations in Mozambique

## TUESDAY 1 NOVEMBER

9.00 a.m. to 1.00 p.m.

9. **Draft Rules of Procedure for the Assemblies under the post-Cotonou Agreement**  
Exchange of views on the four draft texts submitted by the JPA Drafting Committee
10. **The fight against terrorism in sub-Saharan Africa**  
Keynote debate 2 (without resolution)  
Speaker: (tbc)
11. **Urgent topic No 1: Global challenges of climate change cooperation for adaptation and mitigation in the wake of COP 27**

3.00 p.m. to 7.00 p.m.

12. **Urgent topic No 2: Ensuring market access for OACPS Commodity producing countries through enhancing sustainable consumption and production patterns**
13. **A new framework to address biodiversity crisis: Leveraging ACP-EU Partnership in shaping the new framework to halt the loss of biodiversity and promote its sustainable use and conservation in the wake of COP 15**  
Keynote debate 3 (without resolution)  
Speaker: Dr. Balakrishna Pisupati, Head of Biodiversity, Land and Governance Programme, Division of Environmental Law and Convention, UNEP Nairobi, Kenya
14. **Report of the economic and social partners**  
Presentation by the ACP Follow-up Committee, European Economic and Social Committee

## WEDNESDAY 2 NOVEMBER

9.00 a.m. to 1.00 p.m.

15. **Statement by Dr Amery Browne**, Minister of Foreign and CARICOM Affairs (Trinidad and Tobago), President-in-Office of the OACPS Council
16. **Statement by Tomáš Uličný**, Special Envoy to the Minister of Foreign Affairs of the Czech Republic, President-in-Office of the EU Council
17. **Question Time to the Council**

18. **Debate with the Council** – catch-the-eye
19. **A mechanism for Stakeholders' consultation and engagement under the post-Cotonou Agreement**  
Exchange of views with Alessandro Bozzini, Project Coordinator of the Open and Innovative Government Division at the OECD
20. **Vote** on the urgent motions for resolution
21. **Vote** on four draft Rules of Procedure (ACP-EU JPA, Africa-EU PA, Caribbean-EU PA, Pacific-EU PA)

3.00 p.m. to 7.00 p.m.

22. **Summary reports from the workshops**
23. **Summary report of the Women's Forum**
24. **Summary report of the Youth Forum**
25. **Any other business**
26. **Date and place** of the 43<sup>rd</sup> Session of the Joint Parliamentary Assembly



# ANNEX 7

# ACP-EU JOINT PARLIAMENTARY ASSEMBLY

ACP-EU 103.291/22/fin.

## RESOLUTION<sup>1</sup>

### **on ensuring market access for OACPS commodity-producing countries by enhancing sustainable consumption and production patterns**

*The ACP-EU Joint Parliamentary Assembly,*

- meeting in Maputo (Mozambique) from 29 October to 2 November 2022,
- having regard to the UN 2030 Agenda for Sustainable Development and the Sustainable Development Goals, notably SDG 1 on poverty, SDG 8 on decent work and economic growth, SDG 12 on sustainable consumption and production patterns and SDG 13 on climate action,
- having regard to the agreement adopted at the 21st Conference of the Parties to the UNFCCC (COP21) in Paris on 12 December 2015 (the Paris Agreement), and the principle of common but differentiated responsibilities embedded therein, which acknowledges that while climate change is a universal problem that all countries must address, the efforts of individual countries in fighting climate change must be guided by their capacities,
- having regard to the declaration adopted by the Heads of State and Government of the Member States of the African Union and EU on 18 February 2022 entitled ‘Sixth European Union – African Union Summit: A Joint Vision for 2030’,
- having regard to the role of the World Trade Organization (WTO), namely that of regulating and facilitating international trade by establishing, revising and enforcing the rules governing international trade,
- having regard to the 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 20002 (hereinafter ‘the Cotonou Agreement’), to the subsequent revisions to the agreement adopted in 2005 and 2010, and to the Post Cotonou agreement initialled by the EU and OACPS chief negotiators on 15 April 2021,
- having regard to the economic partnership agreements (EPAs) concluded between the regions and countries of the OACPS and the European Union,

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<sup>1</sup> Adopted by the ACP-EU Joint Parliamentary Assembly on 2 November 2022 in Maputo (Mozambique). This is a provisional version that will undergo linguistic verification.

<sup>2</sup> OJ L 317, 15.12.2000, p. 3.

- having regard to the EU’s Generalised Scheme of Preferences (GSP), which comprises the following three arrangements for least-developed countries (LDCs): the standard GSP, GSP+ and everything but arms (EBA),
  - having regard to the European Green Deal, which aims to make Europe the first climate-neutral continent by 2050 and some of its deliverables,
  - having regard to the Commission impact assessments of 14 July 2021 on the proposal for a regulation of the European Parliament and of the Council establishing a Carbon Border Adjustment Mechanism (SWD(2021)0643), of 17 November 2021 on minimising the risk of deforestation and forest degradation associated with products placed on the EU market (SWD(2021)0326), and of 23 February 2022 on the proposal for a directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence (SWD(2022)0042),
  - having regard to the 1998 ILO Declaration on Fundamental Principles and Rights at Work and its follow-up<sup>3</sup>,
  - having regard to the 2017 ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy<sup>4</sup>,
  - having regard to the 114<sup>th</sup> Session of the OACPS Council of Ministers held on 8 and 9 June 2022, in particular the adoption of the decision on preferential access for OACPS agricultural products on the EU market and the resolution on commodities and value chain issues,
  - having regard to the European Parliament resolution of 23 June 2022 on the implementation and delivery of the Sustainable Development Goals (SDGs)<sup>5</sup>,
  - having regard to Article 18(2) of its Rules of Procedure,
- A. whereas the Sustainable Development Goals (SDGs) of the 2030 Agenda for Sustainable Development – adopted by world leaders in September 2015 – officially came into force on 1 January 2016; including SDG 12 on sustainable production and consumption patterns;
- B. whereas for the second year in a row, the world is not making progress on the UN Sustainable Development Goals (SDGs); whereas the least-developed countries (LDCs) have been particularly hard hit by the impact of COVID-19 because of their vulnerability to external shocks; whereas according to one estimate, as of early 2021, economic uncertainty and the shortfall in pandemic-related recovery spending in developing countries increased the gap in the spending required to meet the SDGs by 50 % to USD 3.7 trillion;
- C. whereas the ACP-EU Joint Parliamentary Assembly underlines the resolution of the UN General Assembly from 2 March 2022, takes notes of the EP’s position and acknowledges

<sup>3</sup> <https://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm>.

<sup>4</sup> [https://www.ilo.org/wcmsp5/groups/public/---ed\\_emp/---emp\\_ent/---multi/documents/publication/wcms\\_094386.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_094386.pdf).

<sup>5</sup> [Texts adopted, P9\\_TA\(2022\)0263](#).

that the war in Ukraine has exacerbated poverty, food insecurity and access to affordable energy; whereas the climate and biodiversity crises are amplifying the impact of this crisis:

- D. whereas OACPS countries have limited and difficult access to global markets; whereas ensuring market access for OACPS commodity-producing countries by enhancing sustainable consumption and production patterns is an important contribution to achieving SDG 12 as well as SDGs 1, 2 and 8, among other objectives;
  - E. whereas the EU and its Member States are a major trading partner for OACPS countries, representing more than 21 % of their global trade; whereas the EU and its Member States are Africa's most important trading partner and whereas the value of trade between the two increased in 2021 to EUR 288 billion; whereas interregional trade accounts for just 14.4 % of total continental trade in Africa; whereas the EU is the Caribbean region's second-biggest trading partner behind the United States; whereas the EU is the Pacific region's third-biggest trading partner behind China and Australia;
  - F. whereas the production of raw materials accounts for a substantial part of the economy in OACPS countries; whereas the diversification of value chains within OACPS countries is instrumental in generating sustainable production patterns by potentially reducing transport emissions, creating jobs and supporting the local economy;
  - G. whereas high social, environmental and food safety standards are instrumental to achieving the SDGs, particularly with regard to social and environmental aspects;
  - H. whereas on 14 July 2021, the European Commission adopted a proposal for a new Carbon Border Adjustment Mechanism (CBAM), which will seek to adjust the price of certain imported products by the amount of CO<sub>2</sub> emissions embedded within them so as to equalise the cost of carbon between EU-produced goods and comparable imports; whereas this means that OACPS exporters of these products to the EU could face a carbon levy depending on the amount of emissions embedded within their goods;
  - I. whereas on 17 November 2021, the Commission adopted a proposal for a regulation on deforestation-free products, which seeks to reduce deforestation caused by the EU's imports and consumption of certain agricultural goods by ensuring that goods and products sold on or exported from the EU market do not contribute to deforestation and forest degradation; whereas operators will have to make sure that only free products enter the EU market;
  - J. whereas on 23 February 2022, the Commission adopted a proposal for a Directive on Corporate Sustainability Due Diligence, which aims to foster sustainable and responsible corporate behaviour throughout global value chains;
1. Expresses concern over the lack of progress with regard to the achievement of SDG 12; Stresses the urgent need to give renewed political impetus to achieving the SDGs in order to account for the impact of COVID-19 and the global consequences of the war in Ukraine; Recalls that the Addis Ababa Action Agenda on financing for development highlighted the need to mobilise more domestic resources to achieve the SDGs;
  2. Recalls that one of the lessons learnt from the COVID-19 pandemic is that undiversified and resource-based economies are the most vulnerable to global price shocks; Recalls that

while one of the main objectives for OACPS countries is to climb the global value chain through economic diversification, commodity dependence remains one of the main development challenges;

3. Underlines that the Post-Cotonou Agreement will not change trading arrangements between the EU and OACPS countries, whose partnership will continue to be based on separate trade agreements and instruments, notably the regional EPAs and the Generalised Scheme of Preferences;
4. Calls on the EU to acknowledge the difficulties encountered by OACPS countries in relation to the economic partnership agreements and the diversification of their economies, industrialisation and the promotion of intra-regional trade; stresses that the key role of EPAs should be to promote long-term, sustainable development, reduce poverty and boost regional integration; to this purpose, insists, where and if needed to reform, to accompany those trading arrangements with OACPS countries with capacity-building as well as technical assistance, with the view to enable to finalise and implement those arrangements effectively;
5. Notes that the European Green Deal and farm to fork strategy present both opportunities, and considerable challenges, namely for OACPS producers, who will be forced to modify their production and supply systems with a view to complying with the new EU legislation with the risk of causing at least in the short term serious disruption to their exports to the EU thereby further aggravating their already deteriorating terms of trade with the EU;
6. Is deeply concerned that the market access obtained under EPAs, GSP, GSP+ and EBA is becoming increasingly more restrictive and stringent in view of the new directives and regulations on sustainability emanating from the European Green Deal and farm to fork strategy;
7. Is concerned that the new EU legislation may result in challenging technical barriers to trade and/or non-tariff barriers for OACPS exporters and that compliance with these new rules may place a considerable economic burden on OACPS farmers, leading to increased poverty thereby seriously undermining the capacity and prospects of most members of the OACPS to attain the SDGs;
8. Highlights the risks of due diligence mechanism and costly traceability and geolocation requirements, which could increase costs and have negative social and economic consequences for developing countries;
9. Is concerned that if exporters do not invest in the systems needed to measure, monitor, report and verify such emissions, as required by the CBAM, they may be subjected to punitive default values, resulting in higher carbon taxes on imports that may lead to further erosion of market access preferences obtained under EPAs, EBA, GSP and GSP+;
10. Calls on the EU to ensure greater alignment between the EU's trade liberalisation policy and social and environmental policies and to ensure that its regulations and directives do not negatively affect OACPS exports, and are compatible with WTO rules;
11. Calls on the Commission to take account of the adverse impact of climate-related trade restrictions on OACPS countries, notably on the special and vulnerable situation of LDCs

and small island developing states, and to take appropriate action to mitigate them, such as climate funding, insurance, technology transfer and capacity-building, in line with the principle of common but differentiated responsibilities; calls equally on the EU and OACPS countries to support the removal of barriers to the promotion of climate-friendly technologies in developing countries at the World Trade Organization (WTO);

12. Calls on the EU to provide dedicated accompanying measures in the form of technical and financial support to producers, exporters and national authorities in OACPS countries so as to make the necessary industrial and trade adjustment and allow them to domesticate and comply with the new market access requirements; in particular, recalls that enhanced social and environmental conditionality to benefit from preferential trade preferences in the remit of EU's Generalised Scheme of Preferences should be embedded within the technical and financial assistance projects under the NDICI Global Europe instrument;
13. Calls on the EU to ensure that the costs of compliance are not transferred to producers, but instead shared fairly among actors in the supply chains, in accordance with their respective capacities;
14. Calls on the EU to ensure that stakeholders receive adequate assistance, time and a fair remuneration so that their commodities and products can comply with the new market access rules such as traceability and geolocation requirements;
15. Calls on the EU to develop a comprehensive EU strategic framework on partnerships, devoting specific new attention to the needs of smallholders to enable them to transition towards sustainable farming and forestry practices;
16. Calls on the EU to conduct a needs-based assessment in close cooperation with producer countries, local civil society organisations and producer representatives in order to identify and understand existing compliance gaps and decide on the collective action needed to bridge them and also assess the potential of sugarcane plant to sequestrate, prevent soil erosion prevention and the contributions to preserve the environment;
17. Calls on the EU to draw upon the lessons learnt and best practices from the cocoa sector, where the EU engaged in a partnership with Côte d'Ivoire and Ghana to link the price increase (living income differential<sup>6</sup>) to further action on deforestation and child labour;
18. Calls on the EU and its Member States to support the scientific and technological capacities of developing countries, including agro-ecology and nature-based solutions for sustainable production and consumption in line with the first target of SDG 12; Stresses the importance of supporting leapfrogging in the process of value chain diversification and industrialisation in OACPS countries underlines, in this context, the structural challenges faced by OACPS countries in terms of the mobilisation of domestic resources linked to, inter alia, illicit financial flows, unsustainable debt burdens, unfair trade agreements and tax abuse by multinationals; on this line, calls on the EU to scale up its cooperation, including on tax matters with OACPS countries in order to enhance their mobilisation of public resources;
19. Insists that sustainable consumption and production must take account of the entire value

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<sup>6</sup> In 2019, the governments of Côte d'Ivoire and Ghana introduced a premium on the export price of cocoa for the 2020/2021 season, known as the living income differential, of USD 400 per tonne.

chain of goods and services; calls on the EU and OACPS countries to actively work within the WTO in order to promote multilateral rules for the sustainable management of global value chains, based on the UN Guiding Principles on Business and Human Rights;

20. Stresses the importance of the strategic role of the EU's Global Gateway in deepening relations with developing countries based on respect for environmental and labour standards and anti-corruption standards;
21. Instructs its Co-Presidents to forward this resolution to the ACP-EU Council, the European Commission; and the Council of the EU, the Secretary General of the United Nations, the African Union and the governments and parliaments of the EU Member States.

# ACP-EU JOINT PARLIAMENTARY ASSEMBLY

ACP-EU 103.289/22/fin.

## RESOLUTION<sup>1</sup>

**on the global challenges of climate change cooperation for adaptation and mitigation in the wake of COP 27**

*The ACP-EU Joint Parliamentary Assembly,*

- meeting in Maputo (Mozambique) from 29 October to 2 November 2022,
- having regard to the Partnership Agreement between the EU and the Organisation of African, Caribbean and Pacific States (the Cotonou Agreement),
- having regard to the United Nations Framework Convention on Climate Change (UNFCCC),
- having regard to the 2030 Agenda for Sustainable Development, adopted by the UN General Assembly on 25 September 2015 and, in particular, to Sustainable Development Goal (SDG) 13 on climate action,
- having regard to the agreement adopted at the 21st Conference of Parties to the UNFCCC (COP 21) in Paris on 12 December 2015 (the Paris Agreement),
- having regard to the joint declaration of 24 September 2019 by the African, Caribbean and Pacific Group of States and the European Union on the 2030 Agenda and the Sustainable Development Goals (SDGs) implementation,
- having regard to the European Green Deal initiative which was launched by the Commission in December 2019 (COM(2019)0640),
- having regard to its communique of 27 October 2021 on climate action for COP 26 (ACP),
- having regard to the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) of 2007,
- having regard to the ACP-EU Joint Parliamentary Assembly Resolution of 3 April 2022 on enhancing the resilience of small island developing states against climate change and natural disasters,
- having regard to the African Continental Free Trade Area (AfCFTA), established by the

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<sup>1</sup> Adopted by the ACP-EU Joint Parliamentary Assembly on 2 November 2022 in Maputo (Mozambique). This is a provisional version that will undergo linguistic verification.

African Continental Free Trade Agreement signed in 2018,

- having regard to the special reports of the Intergovernmental Panel on Climate Change (IPCC), and in particular its sixth assessment report and synthesis report thereon,
  - having regard to the final declaration of the sixth European Union- African Union Summit of 17-18 February 2022, entitled “Joint vision for 2030”,
  - having regard to European Parliament resolution of 20 October 2022 on the 2022 UN Climate Change Conference in Sharm El-Sheikh, Egypt (COP27),
  - having regard to Article 18(2) of its Rules of Procedure,
- A. whereas on 11 October 2021, the OACPS and the EU expressed deep concern over the Sixth Assessment Report of the IPCC, which found that human activities are responsible for most of the current global warming; whereas global warming of 1.5 °C will already increase the risks to human health, food and water security, livelihoods and human security;
- B. whereas limiting global warming to 1.5 °C as opposed to 2 °C would lower the impacts on biodiversity and global ecosystems on land and in coastal areas; whereas it would slow down ocean warming and acidification, reducing the risks for marine bio-diversity and ecosystems;
- C. whereas the UN Environment Programme’s Emissions Gap Report 2021 finds that despite more ambitious climate pledges in the last year, new national climate pledges combined with other mitigation measures put the world on track for a global temperature rise of 2.7 °C, far beyond the Paris Agreement goal of limiting global warming to well below 2 °C and pursuing 1.5 °C;
- D. whereas both the EU and ACP are fighting climate change; whereas art. 9 of the Paris Agreement enshrines the right to climate finance for developing countries; whereas over the period 2014-2019, the EU mobilised approximately EUR 3.4 billion to support climate adaptation in Africa; whereas many developing countries have conditional NDCs; whereas their realisation depends on financial support; whereas the Adaptation Fund was set up under the Kyoto Protocol in 2001, but has been severely underfunded since its establishment; whereas there is no finance under the UNFCCC to address Loss and Damage;
- E. whereas climate change threatens to reverse 50 years of progress in development and poverty reduction and, according to the World Bank, could force between 32 and 132 million people into extreme poverty by 2030; whereas developing countries are now facing a dire economic situation aggravated by the COVID-19 pandemic, the associated “debt pandemic” and the adverse effects of the war in Ukraine, among others;
- F. whereas the war in Ukraine and the energy shortages it has caused should be seen as an incentive to prioritise investments in decarbonisation, energy efficiency, renewable energy and sustainable technologies and to develop a socioeconomic model that is compatible with planetary boundaries;

- G. whereas in the Caribbean and the Pacific, small island states are already experiencing increases in temperature, a larger proportion of the most intense tropical cyclones, storm surges, droughts, changing precipitation patterns, sea-level rise, coral bleaching and the effects of invasive species; whereas climate change has a disproportionate impact on developing countries, notably Least Developed Countries (LDCs) and Small Island Developing States (SIDS), their economies and their fiscal stability, although they contribute little to the greenhouse gas emissions in the atmosphere that cause climate change;
- H. whereas there are interlinkages between the global challenges of biodiversity loss, climate change and environmental degradation; whereas biodiversity plays a crucial role in enabling humans to combat and adapt to global warming and increase their level of resilience; whereas by restoring degraded ecosystems and sustainably use and conserve the earth's land, freshwater and ocean habitats, society can benefit from nature's capacity to absorb and store carbon, and that we can accelerate progress towards sustainable development; whereas this requires adequate finance and political support;
- I. whereas the joint communication of the European Commission and of the EEAS of 9 March 2020 "Towards a comprehensive Strategy with Africa" the new EU-Africa strategy proposed a partnership with Africa to maximise the benefits of the green transition and minimise threats to the environment in full compliance with the Paris Agreement; whereas the final declaration of the sixth European Union - African Union Summit of 17-18 February 2022, entitled 'Joint Vision for 2030', highlights the EU commitment to support Africa in its transition to foster just and sustainable pathways towards climate neutrality;
1. Reiterates its commitment to build on joint efforts in support of ambitious climate action during the forthcoming UN climate change conference (COP 27) in Sharm El-Sheikh, Egypt; stresses that this conference will take place on the continent most vulnerable to the adverse impacts of climate change; recognises that the COP 27 will provide unique momentum for Africa to boost climate negotiations in key areas for the continent and other developing regions, including sustainable climate finance, climate change mitigation and adaptation, and loss and damage;
  2. Recalls that climate change and biodiversity loss are among the most pressing challenges facing humanity and that all governments worldwide must do their best to combat them without delay; expresses its deepest sympathy for and solidarity with the victims of the devastating impacts of climate and salutes the dedication of rescue workers; underlines that international cooperation, the involvement of non-state actors, solidarity and coherent action underpinned by science and technology and an unwavering commitment to ramping up ambition are necessary to fulfil our collective responsibility of limiting global warming and preventing biodiversity loss, and thus safeguard the entire planet and the well-being of all;
  3. Expresses grave concern at the findings of the UN Environment Programme's Emissions Gap Report 2021 and deplores that the numerous scientific alarm bells over climate change have largely been ignored so far; stresses that the world needs to halve annual greenhouse gas emissions in the next eight years to keep global warming below 1.5 °C;

4. Highlights that it is vitally important that COP 27 focus on the effective implementation of the Paris Agreement and deliver substantive progress on priority issues; urges the EU and ACP countries to take genuine and meaningful action in line with the UN recommendations adopted in the successive IPCC Reports, including by cooperating on mitigation and adaptation ambition, and to fully update their NDCs with a raised climate ambition where necessary to align with emission pathways for keep global warming below 1.5%;
5. Acknowledges the importance of gradual phasing out of and transition from fossil fuels to renewable energy; stresses that achieving the 1.5 °C target requires the drastic scaling up of renewable energy and supporting a global just transition;
6. Highlights that the EU and its Member States are the largest providers of public climate finance; recalls the clear distinction between official development assistance and climate finance and calls for the reinforcement of development and humanitarian aid policies to help developing countries adapt to climate change; regrets that the current pledges of developed countries still fall far short of their collective goal of USD 100 billion per year and urges them to meet this goal; welcomes, therefore, the fact that by 2025, a new collective quantified goal on climate finance will be set, starting from a floor of USD 100 billion per year and taking into account the needs and priorities of developing countries; calls for targeted support to partner countries in accessing climate finance from international sources, such as the Green Climate Fund and the Adaptation Fund, and for collaboration with multilateral development banks, financial institutions and the private sector; recalls its support for prioritising grants-based finance, in particular for LDCs and SIDS, and climate finance for adaptation as well as loss and damage;
7. Stresses the importance of operationalising the global goal on adaptation and of mobilising major new funds for adaptation in developing countries; regrets that the Adaptation Fund set up under the Kyoto Protocol in 2001 has been severely underfunded since its establishment, and welcomes the new financial pledges made at the COP 26 in Glasgow to this Fund as well as to the Least Developed Countries Fund (LDCF); notes that the bulk of finance focuses on mitigation, while only 20% of the current climate finance targets adaptation; strongly supports the call for developed nations to at least double their collective provision of adaptation finance from 2019 levels by 2025, in line with the Glasgow Climate Pact, and to provide a delivery plan at COP27; calls to secure an adaptation finance decision and finance facility that guarantees scaled-up dedicated finance for adaptation; and for the Global Goal on Adaptation, a cornerstone of the Paris Agreement, to inform the Global Stocktake (GST);
8. Welcomes the creation of a new Glasgow Dialogue on loss and damage funding arrangements; recalls that Article 8 of the Paris Agreement states that the Parties should take a cooperative approach to loss and damage associated with the adverse effects of climate change; calls on the participants to discuss the financing arrangements of activities to avert, minimise and address loss and damage, bringing adequate, new and additional support for the most vulnerable countries; in this regard, calls on the EU to support the adoption of a finance facility for loss and damage, as well as sub-goals for adaptation; affirms that the Union should finance least developed countries' and other vulnerable countries' efforts towards the de-carbonisation of their manufacturing industries with an annual amount corresponding at least to the level of revenues generated

by the sale of Carbon Border Adjustment Mechanism (CBAM) certificates;

9. Stresses that the current UNFCCC decision-making process does not fully allow for the participation of developing countries; welcomes the decision made during the COP 26 to involve non-party stakeholders in several streams of work launched in Glasgow; calls on the COP 27 Presidency to conduct the COP in an inclusive way and to explore additional ways and allocate additional resources to ensure effective and meaningful participation of developing countries; additionally, calls on the UN Secretary-General to hold countries and non-state actors accountable by developing a robust accountability system for commitments made outside of the UNFCCC process;
10. Emphasises that Africa and small island states have a number of adaptation and climate-resilient development options, including agricultural and livelihood diversification, setting up early-warning systems, integrating climate adaptation into social protection programmes, improving climate literacy and setting up climate information services, and developing robust legislative frameworks; recalls that indigenous and local knowledge are a major resource for adapting to climate change; calls on the EU and climate change contributors to step up their support for local community solutions to manage climate change;
11. Stresses the importance of a human rights approach in climate action, including the integration of the human rights dimension in the NDCs, and the need for climate justice;
12. Calls on the EU and its Member States and OACPS countries to adopt the UN General Assembly Resolution at its 77<sup>th</sup> Session, for an Advisory Opinion from the International Court of Justice on the obligations of States, under international law, to protect the rights of people and individuals of the present and future generations against the adverse effects of climate change;
13. Emphasises that climate diplomacy goes hand-in-hand with the full implementation of the principle of policy coherence for development, as enshrined in Article 208 of the Treaty on the Functioning of the European Union, meaning that the EU has to ensure consistency between its development, trade and investment, agriculture, fisheries, energy, climate policies, migration, etc.;
14. Stresses that women may act as effective and active agents and promoters of adaptation and mitigation efforts; emphasises the importance of increasing women's participation, particularly in ACP countries, in high-level climate-related decision-making positions at national, regional and local levels; calls in this context for greater integration of women in the process of finding solutions to adapting to climate change, fostering adaptation and mitigation strategies and national green transformation plans, and having greater access to climate finance;
15. Highlights the value of supporting initiatives such as the European Green Deal and the AfCFTA in meeting Africa's needs; points that increasing technology transfer to developing countries is a critical component of the Paris Agreement and stresses the need for the deployment and transfer of climate-related technologies in African countries to allow them to harness the AfCFTA to achieve climate objectives on top of invigorating intra-African trade, leading to economic gains across the continent;
16. Recalls that Africa remains the continent most plagued by energy poverty and calls on

policymakers to sustain progress on the green transition and expanding energy access as a central pillar of cooperation between the EU and the African Union, notably through investments in small-scale, off-grid and decentralised renewable energy projects, in spite of the socio-economic impacts of the COVID-19 pandemic and the disruption it has caused to political and economic processes related to the regional partnership;

17. Is alarmed that climate change will exacerbate water stress and aggravate food insecurity and water-related challenges; calls for coordinated and coherent water management and for long-term drought prevention and coping measures; insists that EU funding for sustainable agriculture and ACP investments are in line with Agenda 2030, the Paris Agreement and the Convention on Biological Diversity; stresses the importance of improving food resilience in order to face the increasing variability of yields by developing food stockpiling facilities to limit extreme food price volatility as mentioned in SDG 2;
18. Deplores the fact that global rates of deforestation have shown little improvement in recent years; urges the Parties to fulfil their promise to halt and reverse forest loss and land degradation by 2030; believes that nature-based solutions and ecosystem-based approaches are key tools for supporting climate change mitigation and adaptation;
19. Stresses that early warning systems are critical to effective adaptation, but are not available to a large part of the world's population; supports the World Meteorological Organisation's early warning services initiative and hopes that it will be implemented swiftly in order to save lives and habitats;
20. Instructs its Co-Presidents to forward this resolution to the ACP-EU Council of Ministers, the European Commission, the Council of the European Union, the Vice-President of the Commission/High representative of the Union for Foreign Affairs and Security Policy, the Secretary-General of the United Nations, the Presidency of COP 27 and the UNFCCC secretariat.

# ANNEX 8

Appendix

**DRAFT RESOLUTION**  
**(integrating developments as of 28/02/2022)**

**Seventy-seventh session**  
Agenda item XX

**XX/XXX Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change**

*The General Assembly,*

*Recalling* its resolutions [ --- ] and other resolutions and decisions relating to the protection of the global climate for present and future generations of humankind,

*Recalling also* the importance of the Charter of the United Nations, the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, the United Nations Convention on the Law of the Sea and the relevant principles and obligations of customary international law to regulate the conduct of States over time in relation to activities that contribute to climate change,

*Recalling further* the United Nations Framework Convention on Climate Change, the Kyoto Protocol and the Paris Agreement adopted under the Convention, as expressions of the determination to address decisively the threat posed by climate change and noting with concern the significant gap between the aggregate effect of States' current mitigation pledges and the emission reductions required to limit the adverse effects of climate change,

*Reaffirming* that climate change is an unprecedented challenge of civilizational proportions, and our response to it will define us as a civilization,

*Noting with great alarm* that emissions of greenhouse gases continue to rise despite the fact that all countries, particularly developing countries and small island developing States, are vulnerable to the adverse effects of climate change and are already experiencing an increase in such effects, including persistent drought and extreme weather events, land degradation, sea level rise, coastal erosion, ocean acidification, the retreat of mountain glaciers, further threatening food security, water availability and livelihoods, and efforts to eradicate poverty in all its forms and dimensions and achieve sustainable development,

*Reaffirming* that all peoples have an inalienable right to the exercise of their sovereignty and to be able to live in their national territory,

*Acknowledging* that action on climate change is an immediate and urgent priority for all States in order to protect those most vulnerable to the adverse effects of climate change,

*Recognizing* that, in undertaking its work, the United Nations should promote the protection of the global climate for the well-being of present and future generations of humankind,

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*Noting with utmost concern* the scientific consensus, expressed inter alia in the reports of the Intergovernmental Panel on Climate Change, that

- (i) anthropogenic emissions of greenhouse gases are unequivocally the dominant cause of the global warming observed since the mid-20<sup>th</sup> century,
- (ii) global warming has already exceeded 1°C, and the resulting scale of changes in the climate system are unprecedented over many centuries to many thousands of years,
- (iii) climate and weather extremes and their adverse impacts on people and nature will continue to increase with every additional increment of rising temperatures,
- (iv) global sea level has risen faster since 1900 than over any preceding century in at least the last 3000 years, driven by human influence, and it will continue to rise over the 21st century,
- (v) the risks associated with such sea level rise are exacerbated for small islands, low-lying coastal areas and deltas, with resulting damage and adaptation costs of several percentage points of gross domestic product,
- (vi) human-induced climate change, including more frequent and intense extreme events, has caused widespread adverse impacts and related losses and damages to nature and people, beyond natural climate variability, and across sectors and regions the most vulnerable people and systems are observed to be disproportionately affected,
- (vii) without urgent and significant increase in mitigation efforts beyond those in place today, warming by the end of the 21st century will lead to severe, wide-spread and irreversible impacts globally, and it will slow down economic growth, make poverty reduction more difficult, further erode food security, and prolong existing and create new poverty traps,
- (viii) countries must urgently increase the level of ambition and action in relation to climate change mitigation, adaptation and finance in this critical decade to address the gaps in the implementation of the goals of the Paris Agreement,

*Acknowledging* that climate change has already caused and will increasingly cause loss and damage and that, as temperatures rise, impacts from climate and weather extremes, as well as slow onset events, will pose an ever-greater social, economic and environmental threat;

*Emphasizing* the urgency of scaling up action and support, including finance, capacity building and technology transfer, to enhance adaptive capacity and to implement approaches for averting, minimizing and addressing loss and damage associated with the adverse effects of climate change in developing countries that are particularly vulnerable to these effects;

*Noting with deep regret* that the goal of developed countries under the Paris Agreement to mobilize jointly USD 100 billion per year by 2020 in the context of meaningful mitigation actions and transparency on implementation has not yet been met, and that the current provision of climate finance for adaptation remains insufficient to respond to worsening climate change impacts in developing countries;

*Decides*, in accordance with Article 96 of the Charter of the United Nations, to request the International Court of Justice, pursuant to Article 65 of the Statute of the Court, to render an advisory opinion on the following question:

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*Having regard to* the obligations of States under the relevant treaties, including the Charter of the United Nations, the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, the United Nations Framework Convention on Climate Change, the Paris Agreement, and the United Nations Convention on the Law of the Sea, and under general international law, including the duty of due diligence, the principle of prevention of significant harm to the environment, and the duty to protect and preserve the marine environment,

What are the legal consequences under the above-mentioned obligations for States which, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to:

- (1) Small island developing States and other States which, due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change?
- (2) Peoples and individuals of the present and future generations affected by the adverse effects of climate change?

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## UNGA ICJ Resolution Explanatory Memorandum

### Background

1. Climate change, driven by anthropogenic emissions of greenhouse gases, is the defining challenge of our times, and one of the most challenging in human history. Scientific reports have with ever-increasing certainty attributed climate change to anthropogenic emissions.

In its Sixth Assessment Report, published in 2021, the Intergovernmental Panel on Climate Change (IPCC) concluded, on the basis of a comprehensive review of the available scientific evidence, that:

*"It is unequivocal that human influence has warmed the atmosphere, ocean and land. Widespread and rapid changes in the atmosphere, ocean, cryosphere and biosphere have occurred,<sup>1</sup>" and "[t]he scale of recent changes across the climate system as a whole - and the present state of many aspects of the climate system - are unprecedented over many centuries to many thousands of years."<sup>2</sup>*

2. In 2018 and 2019, the IPCC published three special reports<sup>3</sup> alerting the international community to the dire consequences that failure to take urgent and ambitious action to tackle climate change will have on humanity and the global environment.

3. The impact on small island developing nations is particularly acute due to their great exposure to extreme weather events, such as tropical cyclones, and slow onset events, such as sea-level rise, and the ensuing socio-economic consequences, including population displacement and possibly the loss of territory.

4. There is now wide scientific consensus that many changes due to past and future greenhouse gas emissions are irreversible for centuries to millennia. Unless ambitious action is taken urgently to tackle climate change, its harmful consequences may become catastrophic. The IPCC's Special Report on 1.5°C found that to reach a pathway with no or limited overshoot of 1.5°C, global net anthropogenic CO<sub>2</sub> emissions would need to decline by about 45% from 2010 levels by 2030 and reach net zero around 2050.<sup>4</sup>

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<sup>1</sup> <https://www.ipcc.ch/report/ar6/wg1/> IPCC Climate change 2021. The Physical Science Basis, Summary for Policy Makers, at A.1

<sup>2</sup> <https://www.ipcc.ch/report/ar6/wg1/> IPCC Climate change 2021. The Physical Science Basis, Summary for Policy Makers, at A.2

<sup>3</sup> <https://www.ipcc.ch/sr15/> An IPCC special report on the impacts of global warming of 1.5 °C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty(2018). IPCC, Climate Change and Land. An IPCC Special Report on climate change, desertification, land degradation, sustainable land management, food security, and greenhouse gas fluxes in terrestrial ecosystems (2019); IPCC, Special Report on the Ocean and Cryosphere in a Changing Climate (2019).

<sup>4</sup> <https://www.ipcc.ch/report/sr15/summary-for-policymakers/> IPCC, Global Warming of 1.5 C, Summary for Policymakers, C.1

5. The International community has developed a global legal framework to organise action on this important challenge based on the United Nations Framework Convention on Climate Change (UNFCCC)<sup>5</sup> and its related agreements, the Kyoto Protocol<sup>6</sup> and the Paris Agreement<sup>7</sup>. Under the terms of the Paris Agreement, States have to communicate their nationally-determined contributions as part of the collective effort to tackle climate change.

6. However, there is still a significant gap between the pledges made so far by States in their nationally-determined contributions and the level of ambition necessary to remain "well below 2 degrees Celsius" above pre-industrial times and even more so to keep the "1.5 degrees Celsius" target within reach, as envisioned in the Paris Agreement.<sup>8</sup> Current pledges, if fully implemented, will lead to GHG emissions of 13.7% above 2010 levels by 2030,<sup>9</sup> and put the world on track to well over 2°C.<sup>10</sup>

7. It is therefore particularly important that, in meeting the requirement under the Paris Agreement to communicate their updated nationally-determined contributions, Member States manifest their highest level of ambition, reflecting their common but differentiated responsibilities and respective capabilities in light of their different national circumstances, as evidence of their due diligence in observing their obligations under international law.

#### The benefit of an advisory opinion

8. The General Assembly of the United Nations has taken a leading role in guiding the international response against climate change. Reference can be made to its resolutions 43/53 of 6 December 1988, 54/222 of 22 December 1999, 62/86 of 10 December 2007, 63/32 of 26 November 2008, 64/73 of 7 December 2009, 65/159 of 20 December 2010, 66/200 of 22 December 2011, 67/210 of 21 December 2012, 68/212 of 20 December 2013, 69/220 of 19 December 2014, 70/205 of 22 December 2015, 71/228 of 21 December 2016, 72/219 of 20 December 2017, 73/232 of 20

<sup>5</sup> <https://unfccc.int/resource/docs/convkp/conveng.pdf> United Nations Framework Convention on Climate Change, 9 May 1992, 1771 UNTS 107 ('UNFCCC')

<sup>6</sup> [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=XXVII-7-a&chapter=27&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-7-a&chapter=27&clang=en) Kyoto Protocol to the United Nations Framework Convention on Climate Change, 11 December 1997, 2302 UNTS 148

<sup>7</sup> <https://unfccc.int/resource/docs/2015/cop21/eng/10.pdf> Paris Agreement, 12 December 2015 (as contained in the report of the Conference of the Parties on its twenty-first session, FCCC/CP/2015/10/Add.1)

<sup>8</sup> <https://www.unep.org/resources/emissions-gap-report-2021> UN Environment, Emissions Gap Report 2021 (26 October 2021) and UNFCCC, NDCs Synthesis Report (17 September 2021, updated 25 October 2021).

<sup>9</sup> UNFCCC, NDC Synthesis Report (17 September 2021, updated 25 October 2021, and 4 November 2021, the last available at: <https://unfccc.int/news/cop26-update-to-the-ndc-synthesis-report>)

<sup>10</sup> <https://www.unep.org/resources/emissions-gap-report-2021> UN Environment Gap Report 2021 (26 October 2021)

December 2018, 74/219 of 19 December 2019 and 75/217 of 21 December 2020, as well as to other resolutions and decisions relating to the protection of the global climate for present and future generations of humankind.

9. In addition, on 25 September 2015, the General Assembly adopted resolution 70/1 entitled "Transforming our world: the 2030 Agenda for Sustainable Development", which includes a set of 17 Sustainable Development Goals (SDGs). SDG 13 is specifically aimed to "[t]ake urgent action to combat climate change and its impacts".

10. Given the profound ramifications of climate change on the human, economic, social, cultural and environmental dimensions of international cooperation, the work of the General Assembly in the area of climate change would greatly benefit from authoritative advice on the legal implications of climate change encompassing the UNFCCC and its related agreements as well as, more generally, a wider body of norms from both treaty and customary international law relevant to climate change.

11. Members of the United Nations would also benefit from such advice at the present moment in history, given the need to urgently take ambitious measures to curb emissions of greenhouse gases within the narrow window of opportunity that remains to avert catastrophic climate change.

An opinion of the International Court of Justice would:

- (i) clarify the rights and obligations of Member States in connection with climate change, thereby facilitating international cooperation in this area;
- (ii) encourage them to reflect their highest possible level of ambition, in keeping with their common but differentiated responsibilities and respective capabilities in light of their different national circumstances, in preparing their nationally-determined contributions under the Paris Agreement and in providing support for climate action;
- (iii) further encourage Member States' to enhance the credibility, accountability and fairness of their short-term contributions and align these with their long-term net zero GHG emissions goals.

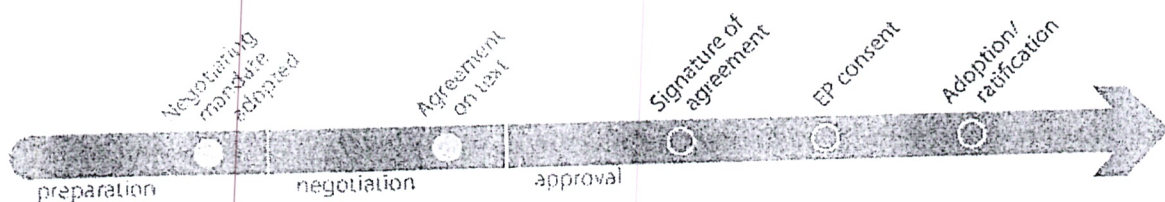
# ANNEX 9

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

## OVERVIEW

After two years of negotiations, the text of a renewed partnership agreement between the European Union (EU) and the African, Caribbean, and Pacific (ACP) states was initialled in April 2021. The current partnership agreement ('Cotonou') was due to expire in February 2020. The then ACP Group of States – which later became the Organisation of the ACP States (OACPS) – and the EU started negotiations on a 'post-Cotonou' agreement in September 2018. The EU and the OACPS agreed on the principle of a common foundation complemented by three regional protocols. The multi-level negotiations, the coronavirus crisis and difficulties in reaching agreement on sensitive issues, such as migration management and sexual and reproductive health and rights, prevented the new agreement from being finalised by the initial expiry date set in the Cotonou Agreement. Thus, to avoid a legal vacuum in relations, the provisions of that agreement were extended until the end of 2021. The European Parliament insisted on maintaining the ACP-EU joint parliamentary assembly and was successful in this endeavour; in addition, three regional parliamentary assemblies will be created in the future institutional set-up of the partnership. The new agreement still needs to be signed by the parties, and further legal procedures will be required before it can be provisionally applied or enter fully into force.

*Seventh edition. To view earlier editions of this briefing, please see the [EPRS blog](#).*



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

Committee responsible: Development (DEVE)  
Rapporteur: To be appointed  
2021/0145 (NLE)

## Existing situation

The Cotonou Partnership Agreement (CPA) was signed on 23 June 2000 by the then 15 Member States of the European Community and then 77 member states of the African, Caribbean and Pacific group of states. Commonly referred to as the Cotonou Agreement, the CPA guides most of the relations between 78 ACP states<sup>1</sup> and the 27 EU Member States; the United Kingdom was bound by the agreement until the end of 2020.<sup>2</sup> The Cotonou Agreement was revised in 2005 and then again in 2010. According to its Article 95, it was due to expire on 29 February 2020. However, it was extended until a new agreement is concluded or until 30 November 2021 at the latest – see 'Negotiation process' below.

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

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

The current partnership has an institutional setting consisting of an ACP-EU Council of Ministers, a Committee of Ambassadors, and a Joint Parliamentary Assembly (JPA) with 78 ACP parliamentarians and 78 Members of the European Parliament. Programmes and projects with ACP states were mostly funded by the European Development Fund (EDF), a multiannual instrument distinct from the EU budget, with direct contributions from all EU Member States (€30.5 billion for 2014-2020 – 11th EDF). As from 2021, the EU funding for the ACP countries is mainly provided through the NDICI / Global Europe instrument under the EU's general budget. Commitments under the EDF will however keep on running and EDF funds will be used until their depletion.

## EU negotiation objectives

Based on the findings of a public consultation and a joint evaluation of the Cotonou Agreement, the European Commission and the High Representative published a joint communication at the end of 2016 outlining their vision for the future of the partnership. They state that it is in the EU's interest to foster the stability, resilience and prosperity of its partners in order to avoid 'negative spill-over effects on the security and economic prosperity of the EU and its citizens', and in order to address the root causes of irregular and forced migration. The EU's objectives<sup>4</sup> are grouped into three strategies:

- 1 Forging a political partnership focused on building peaceful, stable, well-governed, prosperous and resilient states and societies.
- 2 Accelerating progress towards the attainment of the Sustainable Development Goals.
- 3 Building effective alliances in international settings with a view to driving global action forward.

The joint communication proposed that the new partnership be based on a chapeau agreement – referred to as the 'foundation' – between the EU and all ACP states, complemented with three specific protocols, for Africa, the Caribbean and the Pacific. The regional protocols would take

account of the diverging interests of each of the three regions and the EU's strategic interests in each of them. The proposed 'foundation' would cover issues of common interest and issues that do not require geographical differentiation, such as climate change, human rights, respect for democratic principles, and the rule of law.

## European Parliament position

The European Parliament was not formally involved in the negotiations, however its consent is needed for the agreement to be concluded (Article 218(6) of the Treaty on the Functioning of the EU (TFEU)). The European Parliament closely followed the progress of the negotiations, with its Development Committee (DEVE) in the lead. DEVE set up a Monitoring Group that also included the European Co-President of the ACP-EU Joint Parliamentary Assembly, and formulated its views in a series of resolutions. On 14 June 2018 notably,<sup>5</sup> it adopted the following recommendations:

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

## Preparation of the agreement

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

**On the ACP side**, in an initiative that began at the Sipopo meeting (Equatorial Guinea, 2012), the heads of state or government committed themselves to remain united as a group and to develop South-South relations. The ACP Group adopted its negotiating mandate in May 2018, expressing its request for dedicated funding with multiannual allocations – a mechanism similar to the current EDF. While this negotiating mandate converged with the European Commission's proposals on many points, it contrasted sharply with them on two aspects. For instance, as regards the form, it did not propose a foundation with regional protocols but a single agreement with three pillars: i) trade, investment, and services; ii) development cooperation, science and technology, and research and innovation; and iii) political dialogue and advocacy. As regards the substance – migration management in particular – the ACP negotiating mandate called for greater account to be taken of intra-ACP migration and for the future agreement to include the voluntary nature of

returns to the country of origin and a ban on using development aid as a means of negotiating border controls. In April 2020, with the entry into force of the revised Georgetown Agreement, the ACP Group of States officially became the Organisation of the ACP States (OACPS). The OACPS intends to strengthen cohesion among its members, notably through the establishment of a conflict-resolution mechanism and financial autonomy vis-à-vis the EU through the creation of an endowment fund and other forms of development finance.

## Negotiation process

Negotiations officially opened on 28 September 2018. They were led by Robert Dussey, Togo's Minister of Foreign Affairs, Cooperation and African Integration, representing the 79 ACP states,<sup>6</sup> and by the Commissioner for International Cooperation and Development, Neven Mimica, representing the EU. Jutta Urpilainen, Commissioner for International Partnerships in the new Commission presided by Ursula von der Leyen, succeeded from Neven Mimica in December 2019.

Several rounds of 'technical' negotiations took place and the chief negotiators met on 14 December 2018, 4 April 2019, 23 May 2019, 28 September 2019, 14 February 2020, 6 July 2020 and 3 December 2020. They issued communications on areas where political agreement had been reached but did not make public the details of either agreed or outstanding points.<sup>7</sup> The EU negotiators would have liked to conclude the negotiations before the new Commission took office in November 2019, however the ACP side wished to take more time to find an agreement on outstanding issues.<sup>8</sup> By virtue of a delegation of powers given in May 2019 by the ACP-EU Council of Ministers, the ACP-EU Committee of Ambassadors decided in December 2019 to extend the provisions of the Cotonou Agreement until 31 December 2020. This made it clear that negotiations would not be concluded by the expiry date laid down in the Cotonou Agreement (Article 95: end of February 2020).

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

The coronavirus outbreak slowed down the pace of negotiations, which continued mostly by videoconference. The addition in May 2020 of several ACP states to the EU black list on money laundering created tensions between the negotiators. On the EU side, the concurrent negotiations of the new Multiannual Financial Framework, on the new relationship with the UK and on a new migration pact – all of them impacting on the EU-ACP relationship – made it difficult to find a common position. African, Caribbean and Pacific components of the OACPS also had divergent interests preventing them to adopt a unified position in the negotiations of the foundation.

On 3 December 2020, the chief negotiators announced that a political deal had been reached. The following day, the Cotonou Agreement was extended for a second time until the new agreement enters into force or is provisionally applied, or until 30 November 2021 at the latest. This might be further extended if needed.

The chief negotiators initialled and made public the negotiated agreement text on 15 April 2021. The initialled negotiated agreement is not binding for the parties: the new agreement still needs to be signed by the parties, and to undergo legal procedures before it enters into force or is provisionally applied. The European Commission transmitted the negotiated agreement, translated into all EU languages, to the Council on 11 June 2021. At the same time it adopted a proposal to the Council for the signature and the provisional application of the agreement (see box below).

### Next steps before the new agreement is applied

On the basis of the proposal for signature and provisional application, the Council will adopt a decision authorising the signing and, possibly, the provisional application (i.e. before the ratification procedure is concluded) of the provisions that are in the remit of the EU competences. Provisional application does not require either Parliament's consent or its consultation. The OACPS may also apply the agreement provisionally.

The OACPS-EU agreement falls into the categories for which the European Parliament has to give its consent, since it is considered an association agreement under Article 217 TFEU. A separate proposal for the conclusion of the agreement will require Parliament's consent. Only when this consent is obtained can the Council adopt the decision concluding the agreement. The Council's decision will require unanimity for its adoption.

In parallel, the OACPS and – should the Council decide the deal should be considered a mixed agreement (see discussion below) – the EU Member States will have to approve and ratify the new agreement according to their own procedures. The provisional application will end when the new agreement fully enters into force i.e. after the EU and at least two thirds of OACPS members have deposited the instruments expressing the consent to be bound (negotiated agreement, article 98).

#### EU-only or mixed agreement?

The title of the signature proposal mentions the proposed agreement as '*the Partnership Agreement between the European Union, of the one part, and members of the Organisation of African, Caribbean and Pacific States, of the other part*', and not as an agreement '*between the EU and its Member States, of the one part, and OACPS member states, of the other part*'. This means the Commission proposes that the OACPS-EU agreement be concluded as an 'EU-only' agreement. This might accelerate the ratification process on the EU side, as individual Member States would not need to ratify at domestic level. Whether this is legally possible<sup>9</sup> – i.e. the extent the provisions relate to the Member States' own competences, is a matter of legal assessment. The mixity stems from the division of competences as defined in the Treaties, divergent interpretation could arise between the institutions. In any event **the decision on mixity**, to the extent it relates to the competences shared between the Member States and the Union, **belongs to the Council**.

## Changes the agreement would bring

At this stage, the text agreed at chief negotiator level is not binding on the parties. It still requires their formal signature and the completion of the EU's and OACPS's respective procedures before it enters into force (negotiated agreement, article 98).

### Structure

#### One foundation and three regional protocols

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

Table 1 – Simplified outline of the regional protocols initialled by the chief negotiators<sup>10</sup>

Regional protocols		
EU – Africa	EU – Caribbean	EU – Pacific
<p>As a legal framework for EU-sub-Saharan Africa relations, it is meant to go 'hand in hand' with the proposed <u>Comprehensive Strategy with Africa</u>. To this end, it will assign a greater role to dialogue with the African Union and take account of relations with the countries of North Africa, the outermost regions of the EU (ORs) and the overseas countries and territories (OCTs).</p>	<p>It will build on the <u>Joint Caribbean- EU strategy</u> and work towards strengthening the links with ORs and OCTs in the region. It will take due account of the situation of Haiti, the only 'least developed country in the Caribbean'.<sup>9</sup></p>	<p>It will systematise existing relations and work towards strengthening the links with ORs and OCTs in the region.</p>
Key areas of cooperation <sup>9</sup> (main differences are highlighted in italics)		
<ul style="list-style-type: none"> <li>• Inclusive, sustainable economic growth and development, (...) <i>improving, human capital and skills, the investment climate, intellectual property, the blue economy and the extractive industries and processing.</i></li> <li>• Human and social development, (...) <i>greater emphasis on addressing inequalities and social cohesion, [and on] decent work. Further advancement of women and children's rights, cultural values and knowledge, and assistance to people with disabilities</i></li> <li>• Environment and natural resource management, <i>focusing on improved land management, retention and restoration of biodiversity and ecosystems, improved ocean governance and emphasis on the circular economy.</i></li> <li>• Peace and security, <i>as a central issue to ensure other mutual priorities flourish.</i></li> <li>• Human rights, democracy and governance, <i>particularly gender equality, rule of law, justice and financial governance.</i></li> <li>• Migration and mobility is a key issue, <i>with greater emphasis than in the past. (...) Balanced, comprehensive and coherent approach (...) in line with international law, including international human rights law.</i></li> </ul>	<ul style="list-style-type: none"> <li>• <i>Fighting against the devastating effects of climate change (...) with a special attention to the (...) small island states.</i></li> <li>• Advancing economic transformation and diversification (...) <i>focusing on key sectors such as the blue economy and connectivity, as well as new sources of growth.</i></li> <li>• <i>Promoting comprehensive citizen security strategies, (...) governance, including financial governance</i></li> <li>• Increasing investment in human and social development</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Protect[ing] the oceans and seas from various threats including climate change, ocean acidification and coral bleaching, over-exploitation, and illegal, unreported and unregulated fishing.</i></li> <li>• Improving environmental and climate resilience, while pursuing the sustainable management of natural resources</li> <li>• Building democratic, peaceful and rights-based societies and making progress in gender equality and financial governance</li> <li>• Bolstering investment and private sector development for sustainable economic growth</li> <li>• <i>Strengthening ocean governance and the conservation and sustainable management of living marine resources</i></li> <li>• Investing in human and social development, with special attention to the promotion of youth and to women's and girls' economic, social and political empowerment</li> <li>• <i>Sensitive to the serious threat posed by climate change and the significant risk incurred by small island developing states, the EU and OACPS' Pacific countries reaffirm their objective to each achieve carbon neutrality by 2050.</i></li> </ul>

Source of information and quotes: Negotiated Agreement text initialled by the EU and OACPS chief negotiators, 4.2021; except: a European Commission, Q&A, 12.2020 - b EU negotiating directives, 6. 2018

## Institutional set-up

The existing EU-ACP-wide institutions are kept: there will be an OACPS-EU Council of Ministers, an OACPS-EU Ambassadorial Level Senior Officials Committee (ALSOC), an OACPS-EU Joint Parliamentary Assembly and the possibility to organise heads of state or government summits (negotiated agreement, article 86). This validates the existence and coordination role of the OACPS, despite pressures for increased regionalisation both from the EU side (see below, box on the EPAs) and regional entities – the African Union wanted the partnership with Africa to be 'separated from the ACP context', but was not successful in this pursuit. Regionalisation is however harnessed by the set-up of a joint council of ministers and a joint parliamentary assembly for each regional component, in addition to the foundation's overarching institutions.

During the negotiations, the main stumbling block on the partnership's institutional set-up was the continuation of the ACP-EU Joint Parliamentary Assembly. Although this was 'beyond the [EU] negotiating directives' set by the EU Member States, as diplomatically put by Commissioner Urpilainen, the European Parliament made it clear it would not be in a position to give its consent to an agreement that did not provide for a full-fledged JPA (see box below).

### The Parliamentary dimension of the future agreement

The European Parliament plays a key role in the institutional framework of the Cotonou Agreement through the work of 78 of its Members (MEPs) who participate in the Joint Parliamentary Assembly alongside 78 parliamentarians from the ACP states. In their November 2016 communication, the Commission and the High Representative clearly stated that 'the present system based on joint institutions has proven to be useful to share experiences but it is now outdated since it is too heavy and cumbersome'. The EU's negotiating mandate did not explicitly mention the JPA. Against this background, the European Parliament warned it would not approve the new agreement if the JPA is not maintained (resolution of 28 November 2019). In December 2019, the JPA co-presidents expressed their 'serious concern' that the existence of the JPA in the EU's negotiating mandate was being called into question, which, in their view, 'weakens the parliamentary dimension of the ACP-EU partnership'. Joint statements released by the DEVE chair and the JPA co-presidents confirmed this strong position on 26 June 2020. This was again reiterated in December 2020, on the eve of the political deal between the chief negotiators. On 9 December 2020, Commissioner Urpilainen informed the Parliament that its demand would be met. Article 90 of the negotiated agreement therefore provides for retention of the JPA:

- as a permanent body of the partnership,
- with a consultative role,
- as a body meeting once a year,
- with the right to self-organisation (which includes e.g. deciding on its rules of procedures, and setting up a permanent secretariat).

Three new joint Regional Parliamentary Assemblies are granted similar powers.

A drafting committee, made up of the bureau of the ACP-EU Joint Parliamentary Assembly, has been set up with the task of preparing the rules of procedure of the future joint assemblies in view of their possible adoption by the end of 2021. The new agreement requires that the new JPA, which will be made up of Members of the three Regional Parliamentary Assemblies, adopts 'its rules of procedure within 6 months of the entry into force of this Agreement' (negotiated agreement, article 90).

## Sustainable Development Goals and Multilateralism

As specified in both negotiating mandates, the future agreement explicitly affirms the signatories' willingness to achieve the UN Sustainable Development Goals (SDGs). The aim is to maintain the features of the Cotonou Agreement that already reflected the spirit of the SDGs, for instance its focus on human development and the fight against climate change, and on strengthening cooperation in international fora. This commitment to multilateralism from both sides is in the spirit of SDG 17, which calls for strong international cooperation based on shared principles and values to achieve the SDGs. The parties have committed to the ratification, accession, implementation and

domestication of 'relevant international treaties and conventions' (negotiated agreement, article 78). Some of the relevant international treaties are listed throughout the negotiated agreement.

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

## Priority areas

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

### Human rights, democracy and governance

'... respect for human rights, democratic principles and the rule of law shall ... constitute an essential element of this Agreement' (article 9 (7)). While the parties will commit 'to promote, protect and fulfil all human rights be they civil, political, economic, social or cultural', some ACP states were reluctant to see the foundation agreement mention sexual orientation and gender identity (LGBTI rights) – an issue on which there are also differences among EU Member States. As a matter of compromise, the parties will commit to the implementation of existing international agreements – notably the International Conference on Population and Development Programme of Action on sexual and reproductive health and rights, the Beijing Platform on gender equality and their follow-up (negotiated agreement, article 36). The wording however falls short of the EU negotiators' ambitions.

The new agreement will detail the mechanism to address failure to comply with the respect of those principles (article 101). This mechanism favours partnership dialogues and consultations within the OACPS-EU Council of Ministers, possibly with the advice of a Special Joint Committee, made up of an equal number of EU and OACPS representatives, before any party takes 'measures proportionate to the failure to fulfil'.

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

At the time of signing the Cotonou Agreement, EU and ACP states were determined to 'fight against international crime in accordance with international law, giving due regard to the Rome Statute [of the **International Criminal Court** (ICC)]. Since then, African states have questioned the impartiality of the Court, Burundi withdrew and some other states threatened to do so, however the situation was eventually appeased after several states opposed an AU resolution for a collective withdrawal. This allowed the negotiators to strike a provision (article 19) 'encourag[ing the Parties] to ratify and implement the Rome Statute of the International Criminal Court and related instruments'. The cooperation with the ICC will be 'consistent with the principle of complementarity' with regional criminal courts, such as the African Criminal Court, 'if it becomes operational'. However the EU and some authors consider that the complementarity between the ICC and the African Criminal Court needs to be further developed.

## Peace and security

Negotiations on peace and security aspects were reportedly concluded smoothly. The provisions reflect other frameworks and agreements, mainly with Africa, where the EU is a major player in the area of security. In this domain, expenditure with military and defence implications can now be funded for all three ACP sub-regions, thanks to the broadening of the African Peace Facility into a European Peace Facility.

## Human and social development

The provisions covering education, health, sanitation, food security and social cohesion (negotiated agreement, title III) take up the mutual commitments of development cooperation between the EU and ACP countries. The coronavirus pandemic makes the need for concrete results more pressing, notably in the area of universal health coverage. Article 39 on cultural heritage evokes 'measures to prevent and combat the illicit import, export and transfer of ownership of cultural property' but does not explicitly provide for the restitution of works of art taken during the colonial era, as some African countries requested.

## Inclusive, sustainable economic growth and development

Under this title, the negotiators paid particular attention to the wording of the sections on trade. In the Cotonou Agreement, the provisions for WTO-compatible arrangements favoured the conclusion of economic partnership agreements (EPAs, see box below). EPAs are mentioned in the Cotonou Agreement but distinct from it, and will stay distinct from the future agreement. Some ACP states, mostly African ones, have serious reservations about the EPAs, fearing they could hinder their industrial development, and have been reluctant to allow any mention of them in the post-Cotonou agreement. Eventually, the negotiated agreement (article 50) acknowledges 'the importance of concluding trade arrangements' – i.e. not necessarily EPAs. As for the existing EPAs, their signatories will reaffirm their commitment to fully implement them and foster the accession of new members.

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

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

Currently, EPAs contain provisions placing them under the framework of the Cotonou Agreement: a violation of one of the Cotonou Agreement's 'essential elements' of human rights, democratic principles and the rule of law could lead to the suspension of the EPA's trade preferences for the country concerned.<sup>12</sup> However, legal discussions have arisen about the validity of such clauses and the mechanism for recourse after the expiry of the Cotonou Agreement. To secure the interpretation, article 50(6) of the negotiated agreement reads:

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

## Environmental sustainability and climate change

This title has also been a quick win in the negotiations, as EU and ACP countries have long shared common concerns and objectives in these matters. In the negotiated agreement, the provisions on environmental sustainability and climate change span 8 articles of the negotiated agreement, much more detailed than in the Cotonou Agreement – where they mostly lie in articles 32 on the environment and natural resources, and article 32A on climate change (added in the revised version of 2010). In addition, the environment, sustainable management of natural resources and climate change are key areas of cooperation in all three regional protocols, which detail specific challenges, such as the preservation of marine biodiversity in the Pacific.

## Migration and mobility

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

The parties commit to fair treatment and non-discrimination of **legal migrants** and 'shall pursue efforts to adopt effective integration policies' towards them (article 64). The negotiated agreement mentions cooperation to reduce the transaction costs of remittances, the need to facilitate circular migration, and the 'relevance' of South-South migration, but is not very detailed in this regard. The Africa protocol, title VI, includes further commitments on facilitating legal migration and mobility, encouraging diaspora investment and remittances, and supporting intra-African cooperation on migration. Provisions on legal migration are allegedly contested by some EU Member States.

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

## Financing

The financing of the future partnership was not officially part of the negotiation framework. The OACPS-EU agreement will not feature a financial protocol, contrary to its predecessor, but a declaration whereby 'the EU undertakes to communicate, at the earliest opportunity' the amounts of aid; the EU will also commit to contribute to the implementing costs of the agreement. So far, the **European Development Fund** (EDF) funded the bulk of development cooperation in the ACP-EU partnership. In the 2021-2027 multiannual financial framework, development assistance for ACP countries and the partnership overall is no longer provided by the EDF but instead by a new

instrument, NDICI / Global Europe, under the general budget of the EU – with some off-budget spending remaining, such as the EPF (see above 'Peace and security'). ACP countries will benefit from all three pillars of the new instrument (geographical, thematic, rapid response). A 'cushion' provided for in NDICI/Global Europe will include to the extent possible the flexibilities of the EDF, such as allowing unspent sums to be rolled over from one year to the next, instead of returning them to the general budget. The OACPS however expressed concern that the 'budgetisation' of the EDF risks diluting – essentially for the Caribbean and Pacific countries as they are respectively subsumed within the geographical components 'Americas and Caribbean', and 'Asia and Pacific' – the funds previously earmarked for the ACP. African countries also benefit from the EU Emergency Trust Fund for Africa, created in 2015 to respond to the migration crisis. In the future, it is expected that other sources, such as 'innovative financing' (including, for instance, blending, micro-finance and public-private partnerships), will contribute more extensively to the funding. In addition, the OACPS is willing to establish its own source of funding.

## Stakeholder and academic views<sup>13</sup>

### EU civil society and private sector

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

### EU think tanks

Several analysts welcome the efforts made by the negotiators, but note that the ratification of the new agreement will be complicated – on the EU side, it is already being challenged by Hungary – and question the effective implementation of the partnership. According to a European Centre for Development Policy Management note, the main advantage of the new agreement for the EU is that it will provide a framework avoiding bilateral arrangements with 79 third states. However, it risks being deemed less relevant than other frameworks such as those for relations with the African Union (of which 48 out of 55 members are part of the OACPs).

### EP SUPPORTING ANALYSIS

See references in the Legislative Train Schedule, EPRS, European Parliament, updated monthly.

### OTHER SOURCES

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

Negotiated Agreement text initialled by the EU and OACPS chief negotiators on 15 April 2021.

Council of the European Union, Negotiating directives, 21 June 2018.

ACP Council of Ministers, ACP negotiating mandate, 30 May 2018.

## ENDNOTES

- <sup>1</sup> The Cotonou Agreement is part of the body of EU law incorporated by the new EU Member States. Three OACPS member states are not bound by the agreement – Cuba, which has not signed it, and Sudan and Equatorial Guinea, which have not signed the 2010 revision. However, these countries have been involved in the negotiations for the future agreement. The procedure for the accession of South Sudan to the OACPS has not been finalised. South Africa is a party of the agreement not eligible for support under the European Development Fund (EDF).
- <sup>2</sup> Since 1 February 2020, the UK is no longer an EU Member State. However, it had to comply with the EU's international agreements during a transition period that lasted until 31 December 2020. Since then, the UK can conclude agreements with individual ACP states or the OACPS as a bloc. The UK's departure has financial implications too, given the country's contribution amounted to nearly 15 % of the EDF.
- <sup>3</sup> Some case studies have come to more nuanced conclusions. See, in particular, A. Were, Debt trap? Chinese loans and Africa's development options, SAIIA, 2019, and the notes in the second edition of this briefing (in French).
- <sup>4</sup> For a detailed analysis, see the previous editions of this briefing.
- <sup>5</sup> For more details, see the previous editions of this briefing.
- <sup>6</sup> Cuba was part of the 'post-Cotonou' negotiations.
- <sup>7</sup> For more details, see the previous editions of this briefing.
- <sup>8</sup> See Len Ishmael, Insights into the EU-OACPS negotiations 2018-2021, KAS, April 2021.
- <sup>9</sup> Compare 'As long as an international agreement does not cover areas coming under exclusive member state competence, it could then be concluded as an EU-only agreement. For this to happen, the Council of the EU (bringing together the member states) would have to decide to exercise the EU's shared competences, thereby pre-empting the member states.' (M. Chamon, Provisional Application of Treaties: The EU's Contribution to the Development of International Law, *European Journal of International Law*, Volume 31, Issue 3, August 2020, Pages 883–915) with 'If the subject matter of an agreement does not fall under the exclusive competence of the EU, EU countries also have to sign the agreement' (Eur-Lex, Summaries of EU legislation) and 'for agreements covering areas of shared competency decisions are taken together with the Council by common accord (agreement of all member states).' (Council of the EU, The role of the Council in international agreements.)
- <sup>10</sup> For a detailed outline of the EU negotiating mandate, see the fourth edition of this briefing (in French).
- <sup>11</sup> Official name: the International Criminal Law Section of the African Court of Justice and Human Rights (ACJHR).
- <sup>12</sup> Although this is not straightforward in all EPAs: 'The EPAs with Ghana and Côte d'Ivoire only reaffirm the commitments of the parties to the fundamental principles of the Cotonou Agreement in the recitals, not in a binding article. The Central Africa EPA does not contain any reference in this respect.' (I. Zamfir, An overview of the EU-ACP countries' economic partnership agreements, EPRS, 2018.)
- <sup>13</sup> This section aims to provide a general overview of the debate and is not intended to be an exhaustive account of all different views on the agreement.

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The 'International Agreements in Progress' briefings are updated at key stages throughout the process, from initial discussions through to ratification.

# ANNEX 10

# Critical Analysis of the Post-Cotonou Agreement Significant Governance Structure Changes and Controversial Treaty Provisions

## A. Significant Governance Structure Changes

**The Problem:** The pending EU-ACP Agreement ("Treaty") is a 20-year, binding treaty between the European Union and 48 African, 16 Caribbean, and 15 Pacific countries known as the ACP Group of States. It is a proposed extension of the Cotonou treaty that has governed EU-ACP economic and trade relations from 2000 to today.

Both the governance structure and the funding mechanisms in the current ACP-Agreement – Cotonou Agreement have been one of the main strengths of the ACP-EU Partnership. However, this will no longer be the case in the pending Agreement owing to major changes that have been introduced:

### Examples of Governance Structure and Funding Changes

1. **In the Pending Agreement, the ACP block has now been broken down into three regional protocols, thus weakening the bargaining power that the block had** (Articles 6.1 and 6.3), Introduces the three Regional Protocol. It emerges that the EU will be the one having dominance in each one of the three protocols
2. **In the Pending Agreement, there were three Sub-Committees in both the ACP Assembly and ACP-EU Joint Parliamentary Assembly.** Somehow, these all have been left out in the pending ACP-EU Post-Cotonou Agreement. And not even in the new Regional Protocols have they been mentioned. This obviously eliminates the oversight function that these committees were providing
3. **In the Pending Agreement, the European Development Fund (EDF) has been replaced by Neighborhood, Development and International Cooperation Instrument (NDICI) as EU's main instrument of providing development aid to African, Caribbean and Pacific (ACP) countries and to Overseas Countries and Territories (OCTs).** NDICI is using a new approach that has not

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been used before and as such, the ACP states are hugely concerned. They fear that NDICI is going to bring a lot of uncertainties among recipient countries. Therefore, the new rules and targets set out in the NDICI run the risk of distorting the focus on the quality of assistance and blurring the lines of accountability.

Some of the concerns arise from the fact that funds will be accessed on a competitive basis as opposed to the EDF cycles where budget were ringfenced for countries. In view of the difficult EU procedures countries feel they will not be able to use the resources earmarked to them. The frequent changes to the EU templates make it difficult to users to keep pace with the changes and updates hence missing out on resource absorption.

## **B. Controversial Treaty Provisions**

**The Problem:** The pending EU-ACP Agreement ("Treaty") is a 20-year, binding treaty between the European Union and 48 African, 16 Caribbean, and 15 Pacific countries known as the ACP Group of States. It is a proposed extension of the Cotonou treaty that has governed EU-ACP economic and trade relations from 2000 to today. Although the Cotonou agreement also addressed human rights, it did so only in the context of well-established and universal rights approved by UN member states in binding international treaties. In contrast, the pending Treaty would mandate compliance with a variety of new alleged "human rights" that the European Union is pushing--including abortion, controversial comprehensive sexuality education for young children, and special LGBT rights.

Any African State that ratifies this Treaty would need to abide by unspecified "international norms" and "fully support" the divisive work of the UN Human Rights Council, which pushes issues like autonomous

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## Significant Governance Structure Changes and Controversial Treaty Provisions

sexual rights for children. The Treaty also would require the ACP group to “coordinate” positions and voting with Europe in international fora, even though many of the EU’s social positions violate the religious and cultural values of most African states. Simply put, the Treaty is an assault on the sovereignty of ACP member states. Its governance structure disadvantages the ACP group by dividing it into separate protocols, defeating its very purpose. Moreover, ACP state parliamentarians have not been consulted on any of the treaty’s substantive issues despite (i) provisions in the Treaty emphasizing the importance of doing so; and (ii) the EU parliament shaping the Treaty by adopting a resolution on the Work of ACP-EU Joint Parliamentary Assembly that calls for the Treaty to “include an explicit clause regarding non-discrimination based on sexual orientation or gender identity.”

### Non-Exhaustive Examples of Controversial Treaty Provisions

1. **The EU-ACP Treaty requires ACP countries to implement controversial “sexual and reproductive health and rights” or SRHR** (Article 36.2), a contested term that has never been adopted in an international binding treaty and has been rejected repeatedly by most ACP countries in UN-negotiated agreements for good reasons. The EU conveniently neglected to define SRHR in the treaty, yet soon after the treaty text was agreed upon in April 2021, the European Parliament officially defined SRHR to encompass abortion, gender identity and sexual orientation “rights” (June 2021). See Matić Report on the situation of sexual and reproductive health and rights in the EU (5 June 2021).
2. **ACP countries would need to “commit to the full and effective implementation of the Beijing Declaration and Platform for Action and the Programme of Action of the International Conference on Population and Development and the outcomes of their review conferences...”** (Article 36.2 of the Treaty and Article 40.6 of the Treaty’s Africa Regional Protocol). None of these documents

## Critical Analysis of the Post-Cotonou Agreement Significant Governance Structure Changes and Controversial Treaty Provisions

referenced in the Treaty are legally binding for a reason—They establish concepts that African States generally do not ascribe to and have regularly rejected in international negotiations. For example, the outcome document of the ICPD Beyond 2014 International Conference on Human Rights has 5 references to “transgender,” 5 references to “sexual orientation and gender identity,” 14 references to “sex work,” 15 references to “comprehensive sexuality education” and 65 references to “abortion.” In addition, Article 40 of the Treaty would require African States to adopt the Draft Maputo Plan of Action 2016-2030, a non-binding document drafted largely by the IPPF, a pro-abortion NGO, that is intended to implement the Maputo Protocol but exceeds its mandate by (i) promoting universal access to abortion where possible, and (ii) requiring “sexuality education for young people in and out of school.”

Such fictitious “sexual rights” in secondary non-binding sources are in conflict with international human rights treaties that African States are legally obligated to comply with and that protect children, parental rights, and the family as the fundamental unit of society.

- 3. The Treaty’s Africa Regional Protocol would mandate that African States provide to all children “comprehensive sexual and reproductive health information and education”** in the context of UNESCO’s radical “International Technical Guidance on Sexuality Education” (Article 40.6). Those UNESCO guidelines recommend educating young children on highly controversial topics such as masturbation, sexual orientation, gender identity, homophobia, and transphobia, and claim that children have a right to sexual pleasure.
- 4. Treaty signatories must “systematically promote a gender perspective and ensure that gender equality is mainstreamed across all policies”** (Article 2.5). This mandate requires signatories to “embody the principle of gender equality in their national

# Critical Analysis of the Post-Cotonou Agreement

## Significant Governance Structure Changes and Controversial Treaty Provisions

constitutions or other appropriate legislation" (Article 10.1). The term "gender" is increasingly being proposed by the EU and others in UN documents not only to promote equality between men and women, but also is an attempt to mainstream LGBTI+ equality as a synonym of gender equality as evidenced by the report of the UN Independent Expert on sexual orientation and gender identity.

5. **Human rights are considered an "essential element" of the Treaty** (Article 9.7), and not trade or development that are the original purposes of the EU-ACP partnership. This essential element provision means that the EU can take appropriate measures (e.g., sanctions) with immediate effect without consultation if it feels that an African State has violated the "human rights" proposed in the Treaty (see Article 101.7). In other words, the EU can make billions of EU foreign aid contingent on adherence to EU "values", including SRHR and sexuality education for youth.
6. **The Treaty creates a "Council of Ministers" (co-chaired by the EU) with power to make binding legal decisions to ensure implementation of this nefarious Treaty, which will directly impact the laws and policies of 48 African countries in the ACP group** (see Article 88). This could undermine the decisions of regional and subregional bodies in ACP countries (e.g., AU, OAS, SADC, EAC, and ECOWAS) on the subjects addressed in the Treaty (see also next bullet).
7. **Indeed, per Article 97 of the EU-ACP Agreement or Treaty, no other treaty, agreement or arrangement "shall impede the implementation of this Agreement."** This supremacy clause will override conflicting provisions in any other agreement African States enter into. This leaves African States that cannot accept the human rights provisions of the treaty with only two choices: (i) decline to become a party to the Treaty, or (ii) make effective reservations if possible. As to the second option, the Treaty is silent on how

## **Critical Analysis of the Post-Cotonou Agreement Significant Governance Structure Changes and Controversial Treaty Provisions**

reservations to its text can be made. Article 19(c) of the Vienna Convention on the Law of the Treaties notes that a state cannot make a reservation to a treaty if it "is incompatible with the object and purpose of the treaty." Given that human rights are considered an essential element of the EU-ACP Treaty, it is at least questionable whether any reservation to one or more such alleged rights can be made at all and certainly seems implausible without at least the EU's approval.

**In summary, the above issues are only some of the serious substantive problems in the Treaty. Even if some African States are open to bind themselves to concepts that clearly undermine the family and parental rights, they should be worried about other issues the Treaty raises and the power that it grants the EU to drive both their interpretation and enforcement in ways that undermine national sovereignty.**