

Changing relations between the European Union and the African, Caribbean and Pacific Group of States after the current agreement expires in 2020 – state of play and reflections.

This document is a translation of the summary, conclusions and recommendations contained in a report written in Swedish by Anders Oljelund and submitted to the Swedish Ministry for Foreign Affairs in November 2014. The descriptive sections of the report have not been translated.

Summary

This report is about the relations between the European Union (EU) and 78 countries in the African, Caribbean and Pacific Group of States (ACP). What these countries have in common is that they were once French and British possessions that were allowed to maintain their trade preferences with their former mother countries when the EU was founded. A long series of agreements with ACP countries, the most recent being the Cotonou Agreement, have subsequently regulated trade preferences and also made aid available to them through the European Development Fund (EDF).

Cooperation between the EU and ACP countries has been ongoing for 50 years. During this time the world has changed radically, as have relations between Europe and what once were European colonies. The current EPA negotiations between the EU and ACP countries reflect this change. There is a growing opinion that it is time to abandon the old-style agreements and develop more contemporary forms of cooperation. Both the EU and the ACP group have therefore begun to consider what form relations between them could take when the Cotonou Agreement expires in 2020.

This report aims to make the Ministry for Foreign Affairs somewhat better equipped to participate in future discussions on the successor to the Cotonou Agreement. The first part outlines EU and ACP thinking as it currently stands. This is followed by a number of conclusions and proposals for Swedish positions on the issues that will require discussion in the future.

The main proposal is that Sweden should welcome the dissolution of the Cotonou Agreement in its present form, but not unconditionally; the merits of the Cotonou Agreement and its predecessors should be maintained. These include political dialogue, which should continue. But one of the proposals in the report is that we should ask ourselves whether we have really achieved what we had intended for this dialogue to achieve. A further proposal is that a reform of the Cotonou Agreement, which affects so many of the EU's partner countries, should be used to review the various EU cooperation instruments and criteria for them.

Author's conclusions

First of all, a few reservations are in order.

Most capital cities in the EU have not begun to reflect on what will come after Cotonou and consequently have no established position on the issue. Several have mentioned that Sweden

appears to be the first country to have started thinking about it. The Commission and the EEAS are conducting an internal study but are unwilling to disclose more than a broad outline of its contents. The same applies to ACP countries. They are looking into the future of their own organisation but have given little thought to what a successor to Cotonou Agreement might look like.

Another general reservation is that my impressions are mainly based on talks with the EU side and ACP representatives in Brussels. For this reason, the European perspective dominates in this study. Admittedly, our missions abroad have conducted a survey in a number of African capitals but this mainly showed that no capital-city-based ACP opinion exists as yet. **A deeper Swedish dialogue with African countries would seem to be important if we want an all-round view and wish to demonstrate responsiveness to our counterparties' interests.**

When the Commission presents its Green Paper for public consultation later in 2015, we will gain a clearer sense of the Commission's views. An assessment that can be made at present (October 2014) would suggest that the **following elements** will be important in future work.

1. What does post-2020 global development policy look like?

Part of my mandate is to reflect on the EU's future aid and political relations with Africa, the Caribbean and the Pacific. This is an issue that extends far beyond the Cotonou Agreement.

After 2020, the situation will differ in many significant respects from what it is today. Global change – including major shifts in the balance of economic and political power, the declining role of aid in relation to other financial flows, and perhaps in the future a different definition of Official Development Assistance (ODA) – makes it necessary to try to imagine the political, economic and development context of a successor to the Cotonou Agreement. In addition, there are the new international agendas that the international community is in the process of agreeing, in particular the post-2015 development agenda. This is broader than the predominantly aid-oriented Millennium Development Goals (MDGs). It includes other forces for development and other financial flows besides ODA. It wants to take better advantage of countries' own resources. It envisages the participation of civil society and business. It focuses on the fundamental prerequisites for sustainable development: models of production and consumption, good governance and respect for human rights. It allows for difference in that it does not prescribe the same solutions for all countries and situations.

In this broad perspective, the Cotonou Agreement seems to be an important issue but even so a lesser one. In the further deliberations, the essential issues will be: how can the successor to the Cotonou Agreement best support the development agenda that the EU will pursue after 2020? What contribution can a post-Cotonou agreement, whatever it looks like, make to economic growth, equitable distribution, employment, human rights, good governance, climate change, poverty reduction and other common goals? In my opinion, this should be kept in mind when working on a new relationship between the EU and the countries of the current ACP group. **This relationship should be political and economic rather than based on history and development cooperation.**

All this will reasonably require more coherent action on the part of the EU, more flexibility in the use of its various resources and better ability to focus on areas in which it currently has more expertise and greater scope than other actors. Given its many strategies and instruments and a newly

appointed Commission, the EU should be well equipped to take on the work of adapting the old EU-ACP relationship to a new reality. New Commission President Juncker has been quoted as saying, as a national politician, “We all know what to do, we just don’t know how to get re-elected after we’ve done it.” Juncker no longer needs to feel that particular limitation.

2. In this perspective, should the ACP as a geographical concept and a beneficiary group be retained in a future arrangement or should it be done away with completely?

The reasons for doing away with the ACP as a concept were given above: it is obsolete; it is the expression of a geography that exists in the Cotonou Agreement but hardly in reality; it does not fit into the EU’s current set of strategies and instruments, nor in the EEAS structures. In this light, should the ACP group continue to be treated as a separate category or should it be an integral part of the strategies, instruments and criteria that apply to the EU’s external relations in general? The most common answer to this question is yes. Cotonou has had its day and, once the EPA negotiations are concluded, trade will in practice disappear from the Cotonou Agreement. If and when the EDF becomes part of the EU’s regular budget, political dialogue is actually all that will remain of the Cotonou Agreement’s three pillars.

Among the reasons cited for maintaining Cotonou and the ACP as a partner group are historical tradition, the ingrained notion that the EDF is an effective aid instrument, and that Cotonou is ‘unique’ as a form of cooperation. Another reason that may prove important is if the ACP countries transform the ACP organisation into a strengthened and more EU-independent international actor, and its relationship with the EU is just one of its tasks. If the ACP group develops in that direction, the result may be that more will be retained of ‘Cotonou’ than is currently planned. These reasons may indicate that the ACP as a concept will remain, perhaps in the form of some kind of parallelism between the A, C and P groups.

3. Should the binding nature of the Cotonou Agreement be retained in a future agreement?

It is often said that the Cotonou Agreement differs from other similar agreements in that it is an intergovernmental agreement between two formally equal parties, it provides a common framework for policy dialogue on all matters relating to implementation of the agreement and it brings a certain financial stability and predictability. Other EU agreements may also contain these elements but not in the same consistent manner. The purpose of retaining some form of legal framework for cooperation with the ACP group would be to give the future relationship with these countries the same stability and predictability. Many believe that a mutually agreed framework is essential to ensure the continuity and force of political dialogue. It should be noted that the possibility of imposing penalties for human rights violations in the EPA agreements today is dependent on the reference to the Cotonou Agreement contained in them. Others, including the EEAS, consider that a legal framework is unnecessary. Dialogue can take place just the same. The EU has different types of dialogue with a number of countries without agreements of the Cotonou variety.

If it is found that a legal framework of the Cotonou variety is necessary, the question then arises of whether only the current ACP countries should be covered by it or whether the binding nature of Cotonou should be incorporated into other strategies and agreements that the EU has with other regions. And, if so, how would this be done? If it is found that a new legally binding agreement is not

necessary, one option would be to design Cotonou's successor as a political declaration only, containing statements about a maintained and perhaps broader dialogue on key development issues.

Concerning the legal form, there is also the question of whether a successor to the Cotonou Agreement should have all EU Member States as contracting parties, as is the case today, or whether only the EU/Commission should be party to any future agreement.

The above issues are quite technical and legal. Drafting possible scenarios must be a matter for the Commission and the EEAS. It is unclear whether this will take place before the Commission's presentation of its Green Paper in early 2015.

4. Possible scenarios

Theoretically, it is possible to imagine various scenarios for replacing Cotonou. The Commission and the EEAS are now considering them. One is to do away with Cotonou and the ACP concept and not to replace these with anything else. ACP countries will obviously not be done away with; they would be placed in the various EU development instruments according to their development levels and needs. Naturally, the EU's existing collaborations with countries in Africa, the Caribbean and the Pacific will remain and, in principle, will not be affected.

At the other end of the scale, it is possible to imagine a scenario in which Cotonou and the EDF are retained but revised in the same way as has been done ever since Yaoundé. This scenario does not imply any actual new thinking, but may possibly be the result if the parties do not have the time or energy to negotiate anything else or if they do not achieve the necessary consensus around a new approach.

Between these extremes, it is possible to imagine various combinations. A fairly likely alternative is regional agreements (perhaps with the same regions as covered by the EPA) that would replace Cotonou. Regional agreements could be combined with political declarations or binding agreements for each country group: A, C and P. The purpose of these declarations/agreements could be to confirm and provide legal support for key elements of the Cotonou Agreement, political dialogue in particular.

5. Should the EDF be budgetised, i.e. integrated into the general budget?

It has long been the intention to integrate the EDF into the EU's regular budget but for budgetary reasons some countries have opposed this and still do. It is also possible that ACP countries and parts of the NGO aid community will protect the EDF. The European Parliament, however, considers that budgetisation of the EDF would be advantageous as the Parliament could then influence this part of the budget as well. To date, Sweden has been among the countries that consider it most logical and most in line with the rest of EU development policy to incorporate the EDF into the general budget. If the Cotonou Agreement in its current form is terminated and the ACP group as a contracting party to the EU is considered to be an outdated construct, there would be even less reason to keep the EDF as a separate budget. If, however, it is decided that the EDF is to remain as a separate part of the EU budget, the question arises as to whether it should be reserved for ACP countries as has been the case so far.

6. Financing of peace support operations

The EDF financing of the African Peace Facility (APF) will have to be discussed if the EDF is budgetised but probably even if the EDF stays outside the budget. Few are satisfied with the current financing of the APF, but for various reasons the Member States have not previously been able to agree on an alternative. The discussion will also concern the very definition of ODA. Some believe that the financing of peace-support operations of the APF type should be gathered in a special instrument that should be at the disposal of intergovernmental cooperation under the CFSP, not the Commission.

7. What will happen to the ACP group?

The ACP's ambitious plans to create a significantly stronger and EU-independent organisation are obviously not a matter for the EU, but one that must be decided by the ACP countries themselves. But if ACP countries agree to further develop ACP cooperation into an independent and strengthened international organisation, the EU will need to give some thought to its relations with this new organisation. Financing is one aspect of this. Today's ACP organisation and its Secretariat in Brussels are financed almost entirely by the EU. In my view, it is not a given that the EU should fund a partially converted ACP organisation of the future that would not have a relationship with the EU as its sole purpose.

If the aims of the ACP organisation are extended, it will be important for the EU to clarify its relationship with other organisations that have ACP countries as members, not least with the African Union (AU). It may be said that today's Cotonou Agreement divides Africa into two: members in the south and non-members in the north. Not surprisingly, the AU considers this unfortunate. During a visit to Sweden in August, Deputy Chairperson of the African Union Commission Erastus Mwencha was emphatic: "The EU's future relations with Africa must cover all of Africa."

It will probably not be possible to assess how realistic the ACP's future plans are until a few years from now. The EU may therefore need to map out its path before the future of the ACP has become clear.

8. Potentially contentious issues

In addition to the above, there are aspects of the relationship between the EU and Africa that are related to the Cotonou Agreement but that exist regardless, and that may very well create major political problems and divisions in the ongoing negotiations. These include issues as diverse as the ICC, sexual rights, migration and aid conditionality. It is also possible that unresolved EPA issues may impede the work. Whether or not these and other issues will cause real problems will depend very much on the way the EU and Member States want to conduct the dialogue with their counterparts in the ACP group. Both the EU and the ACP countries, particularly the African countries, would probably need to adapt the political dialogue, both in terms of content and structure, to make it more relevant in an evolving and different partnership.

Recommendations

1. It is important to understand and communicate outwardly that the issue of Cotonou's future is about the form and structure of the EU's partnership with ACP countries, not primarily the

content of the partnership. The ACP countries will still be there, the EU will continue to have relations with each and every one of them, political dialogue will continue, as will trade and aid. The bilateral relations between individual EU countries and individual ACP countries are unlikely to be affected if the EU-ACP agreement is not renewed. Nor should joint programming be affected. As far as is known, no individual EU country has had bilateral relations with ACP countries as a group.

2. The EU's relations with the rest of the world have changed and will continue to change, and in many areas they will do so radically. When working on a successor to the current Cotonou Agreement, we must look ahead to the global development environment post-2020. Preserving the Cotonou structures should not imply any kind of 'freedom from change'.
3. Sweden should recommend that the Cotonou Agreement not be renewed but replaced with regional agreements and, where necessary, with broad political declarations. The main reason is that the ACP group is a heterogeneous group of countries whose levels of development and needs vary greatly. As a group, it is not particularly well suited as a counterparty to today's EU, which has developed strategies and instruments that respond to today's political and economic realities in partner countries. A further reason is that when the EPA negotiations are concluded, trade cooperation is likely to be detached from Cotonou and follow its own path. This reduces the need for a new Cotonou Agreement.
4. In early 2015 the Commission is likely to propose the form a replacement for the Cotonou Agreement could take. Various options are possible. In my opinion, a new framework should contribute to coherence and clarity in today's rather complex plethora of cooperation instruments. The EU should avoid a framework that would in practice continue to give ACP countries special treatment.
5. A decision on whether a new framework after Cotonou should take the form of binding agreements or political declarations should be determined on the basis of what would provide most coherence, flexibility, equity and transparency in the EU's external policies. The choice of legal basis should not result in a more rigid system. Purpose should take precedence over form.
6. Sweden should support the inclusion of the EDF in the EU's general budget (budgetisation). This would bring greater uniformity and transparency to the EU's development policy and would also be in line with the Swedish view on the need to differentiate between countries according to agreed aid criteria. If the EDF is budgetised, there will be one less reason to keep the Cotonou Agreement, although it would be theoretically possible both to dissolve the Cotonou Agreement and keep the EDF on the one hand, and to keep Cotonou but budgetise the EDF on the other.
7. If the EDF is incorporated into the EU's general budget in the multiannual programme in 2020, this should not be done just as a simple budget operation. We should, in the EU, also work for a review of the EU's many cooperation instruments and their adaptation to the changing development policy needs we will be facing after 2020.

8. We should be prepared to externally justify and explain the mechanisms behind the nominal increase in the EU budget that would result from budgetisation of the EDF.
9. The Government should be prepared to take part in what is likely to be a difficult discussion in the EU on the future financing of the African Peace Facility (APF).
10. Political dialogue between the EU and the partner countries should continue. In my view, Sweden should simultaneously promote an impartial review of political dialogue as a form of cooperation. The Commission, the EEAS and Member States should reflect on the experiences of the various ongoing political dialogues and consider the focus, content and strategic objectives of political dialogue in a future relationship between the EU and partner countries. Purpose should take precedence over form.
11. Civil society and business are assigned a relatively central role in the Cotonou Agreement. In practice, however, it appears that the partnership has been primarily government-oriented. A future framework should ensure that better use is made of civil society's contributions to development.
12. Upcoming negotiations on a post-Cotonou arrangement must necessarily be conducted with ACP countries within the existing agreement structures. But the EU should avoid negotiating exclusively through the structures of the Cotonou Agreement. If the starting point is to think broadly and come up with new ideas, forms of negotiation should also be new and as open-ended as possible. Other consultation and decision-making groups, such as the Africa Working Party (COAFR) and the Political and Security Committee (PSC), should be involved in the post-Cotonou process at an early stage.
13. In view of its long tradition of cooperation with numerous African countries, Sweden should liaise closely with them and with the African Union on the issue of a successor to Cotonou.
14. When we have made some headway in the preparations, we should issue an invitation to an information and consultation meeting with Swedish civil society organisations.
15. Sweden should request that the Commission conduct an impact assessment that describes the effects – positive and negative, perceived or real – that different change scenarios would have in the following respects:
 - How will the influence of Member States change?
 - How will the EU and ACP countries' common organisational structures be affected?
 - How will political dialogue be affected formally and in practice by different scenario choices?

- What will happen if the EDF is budgetised in regard to the Multiannual Financial Framework (MFF) process, the level of Member State contributions, influence, political dialogue, resource allocation and differentiation?
- In what ways is the Cotonou Agreement unique compared with other EU agreements and strategies?
- Is there a risk that the focus on poverty eradication and other key objectives of the Cotonou Agreement will be weakened if the Cotonou Agreement and the EDF are terminated?
- How well are different post-Cotonou scenarios adapted to the development agenda we can expect after 2020, which includes the agenda for sustainable development?
- How would the future financing of peace and security initiatives such as the APF be designed?