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**POLITICAL CONDITIONALITY IN
EUROPEAN UNION DEVELOPMENT ASSISTANCE**

ASSESSING EFFECTIVENESS AND CONSISTENCY

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List of Acronyms and Abbreviations

ACP	African, Caribbean, and Pacific
CAP	Common Agricultural Policy
CDE	Centre for the Development of Enterprise
CPA	Cotonou Partnership Agreement
cpa	Comprehensive Peace Agreement
CFF	Compensatory Financing Facility
CFSP	Common Foreign and Security Policy
CID	Centre for Industrial Development
COHOM	Working Party on Human Rights
COREPER	Committee of Permanent Representatives
CSA	Commonwealth Sugar Agreement
CSP	Country Strategy Paper
CSS	Country Support Strategy
DAC	Development Assistance Committee
EAMA	Associated African and Malgache Countries
EBA	Everything But Arms
EC	European Community
ECHR	European Court of Human Rights
ECOWAS	Economic Community of West African States
ECJ	European Court of Justice
ECT	Treaty establishing the European Community
ECU	European Currency Unit
EDF	European Development Fund
EEC	European Economic Community
EIB	European Investment Bank
EPA	Economic Partnership Agreement
ESAF	Enhanced Structural Adjustment Facility

ESDP	European Security and Defence Policy
EU	European Union
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GOVNET	OECD/DAC's network on governance
ICC	International Criminal Court
IGAD	Inter-Governmental Authority on Development
IGO	Intergovernmental organisation
ILO	International Labour Organisation
IMF	International Monetary Fund
LDCs	Least Developed Countries
MDG	Millennium Development Goal
MFN	Most-Favoured-Nation
MEP	Member of European Parliament
MINUSTAH	United Nations Stabilisation Mission in Haiti
MNC	multinational corporation
NGO	Non-governmental organisation
NIP	National Indicative Programme
OAS	Organisation of American States
OCT	Oversees Countries and Territories
OECD	Organisation for Economic Cooperation and Development
SAF	Structural Adjustment Facility
SAP	Structural Adjustment Programme
SEA	Single European Act
SPLA	Sudan People's Liberation Army
SPLM	Sudan People's Liberation Movement
Stabex	Stabilization of export earnings system
Sysmin	System for Safeguarding and Developing Mineral Production
TEU	Treaty on European Union
u.a.	Units of Account (forerunner of the Ecu)
UDEAC	Central African Customs Union
UDEAO	West African Customs Union

UDHR	Universal Declaration of Human Rights
UK	United Kingdom
US	United States
WTO	World Trade Organisation

Introduction

It is often said that the European Union is a *soft power* rather than a *hard power*. That is to say, the instruments it has to promote its norms and values are mostly peaceful. Whereas some super powers, such as the United States, might interfere in a country's territory with military means in order to establish a democracy, the EU appeals to other countries by using a method of *carrots and sticks*. In other words, it punishes – usually economically – countries who don't comply with the EU values of democracy, human rights, good governance and rule of law, and rewards obedient countries. This is a quite easy and effective manner to influence countries neighbouring the EU. They are usually very dependent on the EU in terms of trade and development assistance, and often the prospect of becoming an EU Member State is a carrot of utmost effectiveness. However, for countries outside Europe this incentive of future EU Membership does not apply. The EU nevertheless tries to encourage countries to adopt democratic principles, to conform to international human rights standards, and to apply the rule of law. The most important instruments in this area to achieve these goals are through development assistance and through the existing trade relations between the EU and a big number of – mostly developing – countries.

The promotion of these democratic values and principles has not always been present in EU development assistance programmes. Or, in any case, it has not always been present that clearly, for we could find some cases of aid suspension due to a country's internal political organisation during the first few decades of EU (in that time EEC) development aid programmes. Gradually, the politicisation of development assistance became more prominent. The explanation for this can be found not only in the evolution of the Community itself, but also in some radical changes in the international world order. We will discuss this in chapters one and two.

Thus, the method used by the EU to promote human rights and democratic principles in developing countries is a combination of positive support and negative actions. Examples of positive support are democracy assistance, the financial support of democratic reform programmes, the assistance given to non-governmental organisations (NGOs) that promote democratic principles, and other forms of *political aid* given to developing countries. Negative actions are usually sanctions, such as trade embargoes, arms embargoes, the suspension of diplomatic relations, or even the suspension of aid in developing programmes or frameworks.

This study focuses on the second method; that of sticks the EU uses in an attempt to alter the political situation in developing countries. The EU tries to stimulate and support political reforms in developing countries by making its trade and financial assistance programmes conditional. It does so by defining a number of values it considers indispensable in order to sustainably develop a country, the most important being the consolidation of human rights, democratic principles, good governance, and rule of law. When talking about conditionality in development aid, we can make a distinction between *political* and *economic* conditionality. Though explaining both concepts, the attention in this study will be on political conditionality of EU development assistance. Furthermore, in order to limit the scope, we will exclusively focus our study on EU trade and financial aid through its widest and most known development assistance programme; the agreements with the so-called ACP States – the African, Caribbean and Pacific States. At the moment, there are seventy-nine ACP States.¹ The number of ACP States has grown throughout the decades of EEC and EU development cooperation programmes, as has the scope and character of these programmes evolved.

¹ The group of ACP States currently consists of: Angola, Antigua and Barbuda, Chad, the Commonwealth of the Bahamas, Barbados, Belize, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, the Comoros, the Democratic Republic of Congo, Republic of Congo, Cook Islands, Côte d'Ivoire, Cuba, Djibouti, Dominica, Dominican Republic, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Fiji, Gabon, Gambia, Ghana, Grenada, Guinea, Guinea-Bissau, Guyana, Haiti, Jamaica, Kenya, Kiribati, Lesotho, Liberia, Madagascar, Malawi, Mali, Marshall Islands, Mauritania, Mauritius, Micronesia, Mozambique, Namibia, Nauru, Niger, Nigeria, Niue, Palau, Papua New Guinea, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, São Tomé and Príncipe, Senegal, Seychelles, Sierra Leone, Solomon Islands, Somalia, South Africa, Sudan, Suriname, Swaziland, Tanzania, Togo, Tonga, Trinidad and Tobago, Tuvalu, Uganda, Vanuatu, Zambia, and Zimbabwe.

The first part of this study – chapters one and two – will focus on the evolution of EEC/EU development assistance. We will start with the origins of a common development aid programme among the six member states that founded the European Economic Community (EEC), after which we will describe the successive conventions and agreements between the EEC/EU and the ACP States. Special attention will be given to the four Lomé Conventions and the Cotonou Partnership Agreement, the former because of its duration and innovations, the latter because it constitutes the current framework of EU-ACP cooperation. This framework is based on the one created with the Lomé Convention. Evidently, special attention will be given to the introduction and evolution of political conditionality within the framework of EEC/EU-ACP development cooperation. We will see what role the internal political system of ACP countries played during the first few decades of development assistance, what factors contributed to the politicisation of EEC development aid, and in what manner the EEC introduced and expanded conditionality in the already existing development cooperation framework. In addition, we will take a look at the initial reactions of the ACP States. Did they show indifference or reluctance to accept political conditionality? What were their counter-arguments? Did they eventually accept aid conditionality or are they still opposing it?

The second part of this study takes a closer look at political conditionality of EU development cooperation in practice. We will discuss the notions of human rights, democratic principles, and rule of law more into detail, and see how the EU defines these *essential elements* of development cooperation. In addition, we will examine the legal basis of political conditionality in EU development aid, as well as the procedures employed. An important part will be dedicated to assessing the effectiveness and consistency of political conditionality. Since its introduction, a lot of criticism has been expressed by scholars, governments and other actors, the most substantial being the lack of effectiveness. Instead of sanctions such as the suspension of aid affecting the governments that violate human rights, democratic principles, or rule of law, the real victims would be the poor. A factor diminishing the effectiveness would be the lack of coherence among donors.

Related to the effectiveness is the consistency of applying political conditionality in different countries. Naturally, a lack of consistency would decrease the effectiveness of aid sanctions by undermining the EU's credibility. An often heard argument is that human rights and democracy policies are subordinated to other foreign policy concerns. In the selection of imposing aid and trade sanctions on countries, factors other than the human rights and political situation would dominate, such as the size of the country concerned, its geostrategic importance, and its trade and economic weight. Another issue is the normative side of political conditionality. Questions arising are the legitimacy of external intervention: how can the EU legitimise the interference in a country's internal affairs? How upright is the EU in its policy? Does it really see political reform as the sole path of developing a country or has it got other interests, such as maintaining global dominance?²

By means of a number of case studies we will try to find the answers to these questions. We will see how the EU adopts political conditionality in practice. What does the procedure look like? Who has the competences to decide on the interruption of aid? How often has trade or aid been suspended with a country for political reasons? We will look at the cases where aid or trade suspension has taken place within the framework of the Cotonou Agreement, and try to assess the effect this had on the human rights or democratic situation in that country. Did the EU's decision contribute to the amelioration of the political situation in the country? What other factors – such as internal opposition movements, the government itself, or relations with third countries – could also have played a role in the improvement? Moreover, we will try to find out how consistent the EU is in its political conditionality: how objective does the EU assess the human rights situation in a country, or a country's adherence to democratic principles and the rule of law? What were the concrete reasons for the EU to suspend aid? And what indicators were used in order to determine the resumption of aid?

This study will end with a number of conclusions and recommendations. What are the main deficits in the application of political conditionality? Should the EU

² For more information on the normative issues, see: Gordon Crawford, *Foreign Aid and Political Reform. A Comparative Analysis of Democracy Assistance and Political Conditionality*, Hampshire/New York: Palgrave Macmillan 2001, pp. 36-41.

keep conditionality included in its development cooperation with the ACP States and if yes, what can be done to make this more effective and consistent? What changes are needed?

It is important to be aware of the difficulties arising when assessing the *effectiveness* of political conditionality or the *impact* the EU has on a country's political system. As said before, there is a wide range of factors that can contribute to the democratisation of a country, or to changes in the human rights situation. Moreover, the EU is not the only donor with a political dimension in its development programmes. Other donors – including individual EU member states – can contribute to or even obstruct the effectiveness of EU conditionality. However, the examination of a considerable number of case studies and the awareness of external factors affecting the effectiveness of the EU's actions will help to make the results and conclusions more substantiated. Caution will nevertheless play an important role in drawing these conclusions and providing recommendations.

PART I

1

History of EU Development Assistance in Africa, the Caribbean and Pacific

Development cooperation between the European Communities and a number of African States is as old as the European Community itself. That is to say, the 1957 signature of the Treaty of Rome gave several provisions for financial and technical aid to African as well as to other developing countries. This chapter describes the evolution of EEC/EU development assistance since its initiation in the 1950s until the end of the twentieth century. It starts with aid until 1963, then describes the two Yaoundé Conventions, after which it will give an overview and analyse the four successive Lomé Conventions.

1.1 The Origins of EEC Development Assistance

Due to French insistence at the time of negotiating, the 1957 Treaty of Rome establishing the European Economic Community between Belgium, the Federal Republic of Germany, France, Italy, Luxembourg and the Netherlands includes a part that deals with development cooperation with ‘the overseas countries and territories’ (OCT). These are non-European countries and territories that have special relations with one of the EC countries, i.e. mostly African countries that were still colonised at that time or with which some EC Member States had historical links. The other five Member States had been little interested in including provisions for their (ex-)colonies: only Belgium and Italy – who still possessed some territories in Africa at that time – could be persuaded by France. Germany and the Netherlands had no colonies anymore. However, French persistence bore fruit and resulted in ‘Part Four’ of the Treaty of Rome, which

contains provisions for the ‘Association of the overseas countries and territories’.¹ These provisions were concluded for an undetermined period, but Article 136 limits this to five years, although it also confers the Council, acting unanimously, the right to ‘lay down provisions for a further period, on the basis of the experience acquired and of the principles set out in this Treaty’.²

Article 131 gives the objective of the Association, stating that ‘[t]he purpose of association shall be to promote the economic and social development of the countries and territories and to establish close economic relations between them and the Community as a whole’.³ It tries to promote trade between the associated countries and the EC members by progressively abolishing customs duties on imports and increasing import quotas. The emphasis, thus, seemed to lay on economic development. For the determination of the details and procedure for the Association, the Treaty annexes an Implementing Convention on the Association of the OCT with the Community which creates a ‘Development Fund for the Overseas Countries and Territories (...) over a period of five years’.⁴ The Fund is administered by the European Commission, with an important part being managed by a specific Fund council representing the Member States. These have a number of votes based on the size of their contribution to this European Development Fund (EDF).⁵

Important to note is that the Associates themselves did not participate in the negotiations leading to the Treaty of Rome Association, they were not involved in the decision-making system of the Treaty of Rome, and they had no choice over whether to join the Association or not.⁶ Indeed, the character of this first form of EEC development aid was very traditional, based on the inequality between the developed European countries and the developing OCT.

The results of this first attempt to channel development aid through a common European programme were mixed. The abolition of customs duties and increase of

¹ The so-called ‘Treaty of Rome Association’.

² EEC, ‘Treaty establishing the European Economic Community’, Part IV, Article 136.

³ Ibid., Article 131.

⁴ EEC, ‘Treaty establishing the European Economic Community - Implementing convention on the association of the overseas countries and territories with the Community’.

⁵ Ibid., Article 7 and Annex A.

⁶ Marjorie Lister, *The European Community and the Developing World. The Role of the Lome Convention*, Aldershot: Avebury 1988, pp. 13-14.

import quotas did not have the expected effect. The Associates' export hardly increased and inter-associate trade did not enhance at all.⁷ EEC trade grew even less rapidly with the Associates than with other Least Developed Countries (LDCs). Concerning financial aid to the Associates, the major problem was the slow dispersal of money and the delays in the EDF's activities. This was partly due to the difficulty of getting the Member States to agree on projects, as well as to the problems experienced by the Associates in the preparation and presentation to the Commission of feasible and technically satisfactory proposals for EDF projects.⁸ Some progress, nevertheless, was made, especially in the areas of transport, agriculture, education, ports and public health.

1.2 The Yaoundé Conventions

Five years after the entry into force of the Treaty of Rome and when most former territories had gained independence, France proposed a new convention and hoped for a permanent framework for EEC-Africa cooperation. Belgium strongly supported this, whereas Germany and the Netherlands initially opposed the continuation of the Association. Eventually, they renounced their objections and after a long series of negotiations – in which the Associates had little bargaining power despite the establishment of a Council and Committee of Coordination and a secretariat – a formal convention between the EEC and the *Etats Africains et Malgache Associes* (EAMA or Associated African and Malgache Countries⁹) was signed on 20 July 1963, called the Yaoundé I Convention and covered by the second EDF. It gave eighteen ex-colonial countries in Africa commercial advantages and developmental aid; this number was smaller than the number of OCT had been and covered a more restricted area – sub-Saharan Africa and Madagascar – excluding territories from the Caribbean and Pacific States. The EEC stated that the possibility of establishing relations on specific bases was not

⁷ Alassane D. Ouattara, 'Trade Effects of the Association of African Countries with the European Economic Community', *Staff Papers*, International Monetary Fund, 1973.

⁸ Marjorie Lister, *The European Community and the Developing World. The Role of the Lome Convention*, Aldershot: Avebury 1988, pp. 27-28.

⁹ The countries included were Benin, Burkina Faso, Burundi, Cameroon, Central African Republic, Chad, Congo (Brazzaville), Congo (Kinshasa), Côte d'Ivoire, Gabon, Madagascar and Mauritius (who joined in 1973), Mali, Mauritania, Niger, Rwanda, Senegal, Somalia and Togo.

limited to ex-colonial countries of one of the Member States: any country 'which has an economic structure and production comparable to those of the Associated States' was allowed to join.¹⁰ The Six particularly declared their willingness to include other black African countries, its main purpose being the creation of a sphere of political and economic influence.¹¹ This led to the 1966 Lagos Convention with Nigeria¹² and the Arusha Agreement in 1968¹³, which established trade links between the EC and the East African States of Kenya, Tanzania and Uganda. These agreements would a few years later be closely associated with the Yaoundé II Convention.

The Yaoundé I Convention was mainly based on the previous treaty between the EC members and OCT, and likewise had a validity of five years (1964-1969). However, a few changes were visible: EEC preferences and preferential trade terms among the Associates on a number of tropical products were reduced or even abolished, and the competitive agricultural products exported to the EEC by the EAMA were regulated by special trade arrangements.¹⁴ Besides, the application of aid was extended to new areas – including surveys, training personnel, aid to production and diversification, to price stabilisation schemes, and aid to private projects – and part of the EDF was used for loans, on which the recipients had to pay interests.¹⁵ Another change was the creation of joint institutions that enabled a continuous dialogue and at least formally underlined the equality between the EEC and EAMA States. It consisted of the Council of Association, who delegated some of its powers to the Committee of Association;

¹⁰ EEC, 'Convention of Association between the European Economic Community and the African and Malagasy States Associated with that Community', Article 58.

¹¹ Marjorie Lister, *The European Community and the Developing World. The Role of the Lomé Convention*, Aldershot: Avebury 1988, p. 11.

¹² The legal basis of this Convention was Article 238 of the Rome Treaty. It was signed in 1966, but the Nigerians never ratified it. (See, for instance, S.A. Akintan, *The law of international economic institutions in Africa*, Leiden: Brill 1977.)

¹³ This Agreement was concluded under Article 238 of the Rome Treaty as well. Arusha I expired before it was ratified, and the second one was negotiated at the same time as Yaoundé II.

¹⁴ Ellen Frey-Wouters, *The European Community and the Third World. The Lomé Convention and Its Impact*, New York: Praeger Publishers 1980.

¹⁵ Marjorie Lister, *The European Community and the Developing World. The Role of the Lomé Convention*, Aldershot: Avebury 1988, p. 42.

the Parliamentary Conference; and the Arbitration Court.¹⁶ The powers of these institutions were nonetheless limited. The objectives – although similar to those in the Treaty of Rome Association – were more clearly expressed in the Yaoundé Convention, namely to continue the relationship between the EEC and Africa, to base the cooperation on the notion of equality, to foster economic development and to promote economic cooperation among the EAMA.¹⁷ This last point is important, as the EEC had failed to promote inter-associate trade during the Treaty of Rome Association, and to a certain extent it was successful. It has been argued that it contributed to the creation of the West African Customs Union (UDEAO) and the Central African Customs Union (UDEAC).¹⁸ A division in Africa between members and non-members of the Yaoundé Convention, however, remained inevitable.

After the treaty expired, it was followed up by another Yaoundé Convention, which entered into force on 1 January 1971. The negotiations leading to this Convention were again slow and difficult, but not as difficult as those of its predecessor. After all, it did not radically modify the previous Convention, although new provisions for preferential trade arrangements were included, as well as beneficial measures concerning price and volume to export raw materials to Europe. Trade arrangements and decreases of custom duties were not only beneficial for the Associates, but for the EEC as well; it thus combined a sense of responsibility with an element of self-interest.¹⁹ Another change with the new Convention was the closer adaptation of technical and financial assistance to the needs of the associated States. This was mainly introduced because of expressed criticisms about Yaoundé I. As financial aid concerns, this increased with 25.8 per cent compared to Yaoundé I aid, but the EDF grants rose from 620 to 748 million units of account (u.a.),²⁰ which means an increase of 20.6 per cent.

¹⁶ European Communities – information, *The European Community and the developing countries*, Luxembourg: Office for Official Publications of the European Communities 1977, http://aei.pitt.edu/4479/01/001977_1.pdf.

¹⁷ Marjorie Lister, *The European Community and the Developing World. The Role of the Lomé Convention*, Aldershot: Avebury 1988, p. 38.

¹⁸ *Ibid.*, p. 40.

¹⁹ Christian Bjørnskov and Ekatarina Krivonos, *From Lomé to Cotonou. The New EU-ACP Agreement*, Danish Institute of Agricultural and Fisheries Economics (SJFI) Working Paper no. 14/2001.

²⁰ One unit of account equaled one U.S. dollar in that time.

The results of Yaoundé II were corresponding to the first Yaoundé Convention. EEC imports from the EAMA grew gradually, but even slower than those from non-associated African States and any other group of developing countries.²¹

The accession of the United Kingdom into the EC in 1973 led to the wish to include the twenty former Commonwealth countries of the African, Caribbean and Pacific (ACP) regions into the preferential trade agreement, as well as other developing States in those regions. Moreover, the progress of European integration resulting in a customs union and cooperation on an increasing number of policy areas made a comprehensive development programme at the EC level rather than at the level of the individual Member States more needful. Besides, the Second Yaoundé Convention was due to expire in 1975. The EC Member States therefore decided to negotiate a new, broader form of cooperation, leading to the Lomé Convention in 1975 (Lomé I).

1.3 The Four Successive Lomé Conventions

In the decades following – from 1975 to 2000 – European development aid was shaped by the four so-called Lomé Conventions. Both European leaders and those of the African, Caribbean and Pacific countries stressed the changes and improvements compared to the former conventions. In this section, the four Lomé Conventions will be described. Thereby the focus will lie on how the negotiations elapsed, what the main provisions established in them are, to what extent they were a continuation or a break with the preceding convention, and what factors could explain those changes.

1.3.1 Lomé I (1975-1980)

As mentioned before, EEC accession negotiations with Denmark, Ireland, and the UK revealed the latter's wish to include the former Commonwealth countries into the preferential trade agreement. This led to the adoption of 'Protocol 22', which was annexed to the Treaty of Accession of the new Member States. It offered twenty Commonwealth countries in Africa, the Caribbean and the Pacific the

²¹ J. Matthews, *Association System of the European Community*, New York: Praeger 1977, p. 45.

opportunity to negotiate association accords or commercial agreements with the EEC. Moreover, it guaranteed the maintenance of the advantages held by the EAMA countries. Emphasis was placed upon the Community's firm purpose to safeguard the export of primary products, particularly sugar, for those countries heavily depending on them.²²

Negotiations with the ACP started in July 1973, after the UK, Denmark and Ireland had joined the EEC. The in total 46 ACP countries²³, having learned from previous negotiations, tried to coordinate their positions and to express themselves as one group. This might have contributed to the difficulty of and duration needed for reaching an agreement, although the EEC was clearly on the dominant side, with merely few provisions being a result of ACP States' requests. A final agreement was reached more than twenty months after they had started negotiating and the Convention was signed on 28 February 1975.

On the day of signature in Lomé, the capital of Togo, both the ACP States as well as the Europeans praised the radical changes of the new Convention. The Senegalese ACP Council Chairman Babacar Ba declared that in his opinion, "the cooperation we are about to establish has a certain revolutionary character, in the sense that between ourselves and the developed continent of Europe, all our relationships will be falling into a new pattern".²⁴ Similarly, Commissioner President François-Xavier Ortoli in his speech spoke about "a major turning point in the history of international economic relations during the second half of the twentieth century – in fact, in history itself".²⁵ He added that "[t]he importance and the originality of the Lomé Convention derive not only from the particular conditions in which it has been negotiated [i.e. the ACP speaking as one group]

²² Commission of the European Communities, 'The Signing of the Lomé Convention – An Historic Event (88/75)', Brussels: EEC Publication February 1975, p. 2.

²³ The 46 ACP States participating were the Bahamas, Barbados, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Central African Republic, Chad, Congo (Brazzaville), Congo (Kinshasa), Côte d'Ivoire, Equatorial Guinea, Ethiopia, Fiji, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Grenada, Guyana, Jamaica, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mauritania, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, Somalia, Sudan, Swaziland, Tanzania, Togo, Tonga, Trinidad and Tobago, Uganda, Western Samoa, and Zambia.

²⁴ Alain Lacroix (Ed.), 'Lomé Dossier', *The Courier* Special Issue, 31 (1975), (Brussels: Commission of the European Communities), pp. 6-7.

²⁵ *Ibid.*, pp. 19-21.

but also, perhaps especially, from its contents”.²⁶ What were the contents of Lomé I and to what extent did they differ from the past?

The main provisions can be divided into four categories, the first and most important being trade.²⁷ Lomé I saw the total elimination of customs duties and quantitative restrictions on the import of industrial products. The same preference was granted for agricultural products, albeit with some restrictions. Some ACP agricultural products that were part of the EEC’s Common Agricultural Policy (CAP) were not given completely free access but preferential treatment, meaning that some charges would remain but on a smaller scale than those applicable to goods from third countries. According to the EU, this was necessary in order to maintain Community protection in favour of some European products, and they covered only four per cent of agricultural exports of the ACP. It concerned products such as maize, rice, beef and cut flowers. Perhaps the biggest change compared to Yaoundé was the abolition of reciprocal preferences. From now on, ACP States were not obliged to reciprocate, as long as European exports were still given Most-Favoured-Nation (MFN) treatment. A last change was an increased flexibility in the rules-of-origin principle. Whereas with Yaoundé the percentage of value added needed to obtain originating status had been fifty per cent, for many product categories this was reduced to 25 per cent.²⁸ The possibility to finance programmes for commercial promotion of products from the ACP, which had been introduced in Yaoundé, was continued in the Lomé Convention.

A major innovation in Lomé I, at least according to the European Commission, was the introduction of Stabex, the stabilisation of export earnings system. Its purpose was to guarantee to the ACP exporters a certain level of export earnings, by protecting them against any shortfall of production and the effects of world

²⁶ Ibid.

²⁷ For more information about the main provisions, see: Commission of the European Communities, ‘The Lomé Convention. EEC – Africa – Caribbean – Pacific (89/75)’, Brussels: EEC Publication without date; Commission of the European Communities, ‘The Signing of the Lomé Convention – An Historic Event (88/75)’, Brussels: EEC Publication February 1975, and Marjorie Lister, *The European Community and the Developing World. The Role of the Lomé Convention*, Aldershot: Avebury 1988, pp. 76-102.

²⁸ Marjorie Lister, *The European Community and the Developing World. The Role of the Lomé Convention*, Aldershot: Avebury 1988, p. 77.

price fluctuations.²⁹ A stabilisation fund of 375 million u.a. was introduced, which would provide compensation in case an ACP State experienced a drop of at least 7.5 per cent in its export earnings from a commodity³⁰ that represented at least 7.5 per cent of the total export. The State concerned would pay this money back when the market improved. For certain countries – islands, land-locked and LDC's – the percentage would be 2.5, and the money would be given as a grant. However, the question is if this fund was really such an innovation. Although the European Commission underlined the differences between Stabex and the Compensatory Financing Facility (CFF), the latter a facility of the International Monetary Fund (IMF)³¹, both tried to stabilise the export earnings of developing countries, although the IMF programme applied stricter conditions and covered all export products. Furthermore, Yaoundé II had established a reserve fund to deal with exceptional difficulties, such as a drop in commodity prices. Stabex could therefore be considered as a further elaboration of this reserve fund.³²

One of the most important and controversial issues during the negotiations – especially for the UK and the Commonwealth – was that of sugar. Consequently it was the last point on which agreement was reached.³³ The Commonwealth had enjoyed the privileges of a Commonwealth Sugar Agreement (CSA), in which the UK purchased and imported specific quantities of cane sugar at guaranteed prices. The CSA had been into existence since 1951 and for the UK the creation of a similar agreement at EEC level was a *sine qua non* to become a Member State. Eventually it was not included in Stabex, but in a separate Sugar Protocol ('Protocol No 3 on ACP sugar') annexed to Title II of the Lomé Convention. The prices were to be 'negotiated annually, within the price range obtaining in the Community, taking into account all relevant economic factors'.³⁴ The Sugar

²⁹ Commission of the European Communities, 'The Lomé Convention. EEC – Africa – Caribbean – Pacific (89/75)', Brussels: EEC Publication without date, p. 2.

³⁰ The commodities included were groundnuts, cocoa, coffee, cotton, coconut, palm, palm nut and kernel, leather and raw hides, timber, bananas, tea, raw sisal and iron ore.

³¹ See, for instance: Commission of the European Communities, 'The Signing of the Lomé Convention – An Historic Event (88/75)', Brussels: EEC Publication February 1975, p. 5.

³² Marjorie Lister, *The European Community and the Developing World. The Role of the Lomé Convention*, Aldershot: Avebury 1988, p. 77.

³³ Commission of the European Communities, *The Signing of the Lomé Convention – An Historic Event (88/75)*, Brussels: EEC Publication February 1975, p. 6.

³⁴ ACP-EEC, 'Convention of Lomé' 'Protocol No 3 on ACP sugar', Article 5, paragraph 4.

Protocol largely resembled the CSA, but was certainly an innovation in EEC development aid.

The second main provision deals with industrial cooperation. It was proposed by the ACP States at a ministerial meeting in Kingston and quite enthusiastically received by the EEC. Title III of the Convention deals with it, and the provisions included cover the whole industrial field. The objectives were to promote the development and diversification of industry; the establishment of new trade links between the Community Member States and the ACP States; to increase the links between industry and other sectors; to facilitate the transfer of technology to the ACP States; to promote the marketing of ACP industrial products in foreign markets; to encourage small and medium-sized industrial firms; and to encourage Community firms to participate in the industrial development of the ACP States.³⁵ In order to reach these goals, a Centre for Industrial Development (CID) was set up, whose activities were guided, supervised and controlled by a Committee on Industrial Cooperation. The CID was to be run jointly by the Community and the ACP, something that showed the EEC's willingness to involve in and actually cooperate with the developing countries. Remarkably, the finance of such industrial programmes and projects would be through the EDF, thus no separate investment fund was established. Given that the EDF was managed by the EEC, the participation of the ACP States remained limited. Moreover, the fact that it was financed by the EDF meant that it followed the same rules and procedures as other programmes and projects; thus it was up to the ACP States' proposals if more financial aid would go to the development of industries. In short, it only *promoted* the development of this sector, but there were no guarantees.³⁶

Another main provision concerns financial aid. Title IV of the Lomé Convention deals with this, denominating it 'Financial and technical cooperation' in order to underline the increased responsibilities of the ACP States in the

³⁵ Ibid., Article 26.

³⁶ See, for instance Commission of the European Communities, *The European Community's contribution to the industrialisation of developing countries*, Brussels: EEC Publication May 1975, pp. 37-42, which States at p. 40 that 'the sum assigned to industrial development will in the main depend on the priority attached to this sector by the different ACP States themselves, in the framework of the financial and technical cooperation programme'.

management of financial cooperation.³⁷ Indeed, the Convention states that '[t]he method or methods of financing which may be contemplated for each project or programme shall be selected jointly by the Community and the ACP State or States concerned'.³⁸ The method(s) selected 'jointly' needed to be approved by the European decision making body, the European Commission, who narrowly followed the EDF Committee's judgements. Thus, given that the final decision on projects was made by the EEC, in practice the participation of the ACP States resulted of minor importance.

The other aspects of financial aid remained largely the same to those of the Yaoundé Conventions. The aid was still covered by the European Development Fund (EDF IV, which disposed of 3,390 million u.a.) over a five-year period. A part of the aid (390 million u.a.) was covered by the European Investment Bank (EIB), which consisted of loans. In addition, 160 million u.a. was allocated to countries, territories and departments overseas, of which 10 million came from the EIB.³⁹ The general sectoral priorities remained the same too, as well as the reserves for emergency aid given to ACP States facing severe difficulties as a result of natural calamities or other extraordinary circumstances.

The last main provisions concerned the institutions to run and administer Lomé. These resembled largely the Yaoundé institutions, with only some changes in the names: the Council of Association became the Council of Ministers who, where necessary, delegated any of its powers to the Committee of Ambassadors – the former Committee of Association. The Parliamentary Conference transformed in the Consultative Assembly. Only the Arbitration Court was abolished. Instead, any dispute concerning the interpretation or the application of the Convention would be placed before the Council of Ministers. If this body failed to settle the dispute, three arbitrators would be appointed who would decide on the issue by majority vote.⁴⁰ The continuity in the character of the institutions was mainly due to the satisfaction on both the ACP as the EEC side with them. In addition, the

³⁷ Commission of the European Communities, *The Signing of the Lomé Convention – An Historic Event* (88/75), Brussels: EEC Publication February 1975, p. 9.

³⁸ ACP-EEC, *Convention of Lomé*, Article 43, paragraph 1.

³⁹ Commission of the European Communities, *The Signing of the Lomé Convention – An Historic Event* (88/75), Brussels: EEC Publication February 1975, p. 8.

⁴⁰ ACP-EEC, *Convention of Lomé*, Article 81.

institutions were composed on the basis of parity, but the powers they possessed were limited.⁴¹ The EEC was happy with these limited powers, and the ACP States were satisfied with the equal role they had in them.

Overall, we can say that although Lomé definitely included some changes such as in the trade provisions and the introduction of Stabex, these ‘innovations’ were mostly shallow. They often merely introduced new terminologies for provisions that resembled the Yaoundé Conventions or development programmes outside the EEC.

1.3.2 Lomé II (1980-1985)

The first Lomé Convention had entered into force on 1 April 1976 and was set to expire five years later. The agreement was renewed in the Second Lomé Convention, which was signed on 31 October 1979 and entered into force in January 1981. This Convention was largely a continuation of the former one; it kept the structure and main provisions without major changes. However, some changes can be observed, due to the changed world economy situation, the relations among the ACP States, and the experiences of Lomé I. They will be assessed here.

Where the ACP States five years earlier had proven their ability to speak with one voice, during the Lomé II negotiations this resulted more difficult. The changed world economy situation also had a big impact on the negotiations: the ‘big boom’ in African GDP growth during the 1960s had come to a complete halt, with commodity prices almost collapsing.⁴² The EEC, on the other hand, was in the beginning of its deepest recession since the Second World War, and was more concerned with its own economic situation than with that of the ACP States. Related to this, the EEC tried to protect its own food production through CAP rather than protecting the import of ACP commodities. The ACP States were disappointed in the achievements of the first Lomé Convention – especially in the restrictions on trade and the EEC protectionist policies – which made them eager

⁴¹ Marjorie Lister, *The European Community and the Developing World. The Role of the Lomé Convention*, Aldershot: Avebury 1988, pp. 96-97.

⁴² Christian Bjørnskov and Ekatarina Krivonos, *From Lomé to Cotonou. The New EU-ACP Agreement*, Danish Institute of Agricultural and Fisheries Economics (SJFI) Working Paper no. 14/2001, p.12.

to aim for substantial changes, while the Community's aim was to change as little as possible. Another factor dominating ACP-EEC relations was the re-emergence of the Cold War, which increased the level of external military intervention on the African continent.⁴³

The main demands the ACP States asked for were complete free access of products to the EU market; changes to the rules of origin to ease ACP access; increases in access for special commodities such as rum, sugar, and beef; and an end to the safeguard clause for ACP products.⁴⁴ Criticisms, moreover, were raised about the slow rate of aid disbursement⁴⁵ and led to the ACP's demand to speed up the procedure. They also requested a separate fund for industrial cooperation, given Lomé I's failure to boost the industry.

Two exceptions from the EEC's wish to maintain the existing provisions without modifications were the proposal to introduce a system in order to protect the ACP States' mining industry, and to include a human rights clause into the Convention. The latter can be seen as the EEC's first attempt to make development aid conditional. It was caused by gross human rights abuses in Uganda and Equatorial Guinea during the first few years of Lomé. The EEC, feeling the need to restrict aid for these countries, while at the same time being aware of the lack of a legal basis in the Convention to do this, cut aid flows to these countries discreetly, and resumed aid once both regimes were overthrown in 1979. Most ACP countries agreed with the EEC's actions. More problems arose, however, in EEC relations with South Africa. Although this country violated human rights as well in its apartheid regime, the EEC did not dare to impose sanctions, due to the importance of the country. Many ACP States condemned this lack of coherence. Even though most ACP States thus approved of the EEC's actions following human rights violations, they objected to include a human rights

⁴³ Christopher S. Clapham, *Africa and the international system: the politics of state survival*, Cambridge: Cambridge University Press 2002, p. 100.

⁴⁴ William Brown, *The European Union and Africa: the restructuring North-South Relations*, London/New York: I.B. Tauris 2002, p. 64. The safeguard clause enables the EEC to restrict free access of ACP products to its market in case it 'violently destabilises the EEC market'.

⁴⁵ The problems concerning the disbursal of aid were recognised by the European Commission as well. See, for instance: Commission of the European Communities, *Ten Years of Lomé. A Record of ACP-EEC Partnership 1976-1985. Report on the implementation of financial and technical cooperation under the first two Lomé Conventions*, Brussels: EEC Publication September 1986, p. 19.

clause into the Convention. They argued that this would infringe their sovereignty, that Lomé was a non-political convention, something that had been alleged by the Community itself – and that it was unequal because they would get no power in return for the EEC’s power to suspend aid. Their last point was that human rights not only meant political and civil rights, but economic and development rights, too. These would be undermined in case of a human rights clause.⁴⁶ The ACP’s determination and consensus on this topic, together with the lack of agreement among the EEC Member States, had as its result that at this point the ACP States managed to keep a human rights clause out of the Convention. The other proposal regarding the mining industry, suggested by the EEC because of its worries about the production of minerals, was arranged in the new Convention, constituting the ‘major innovation’ of Lomé II. It was called the System for Safeguarding and Developing Mineral Production (Sysmin) and included aluminium, bauxite, copper, cobalt, manganese, phosphates, tin, and iron ore (the last one previously being covered by Stabex). Its operation was similar to the Stabex regime, but instead of amounting to at least 7.5 per cent of export earnings, the percentage needed was 15 per cent. A drop in export earnings, or in productive capacity, had to be of at least 10 per cent. Transfers were to be used to restore productive capacity, rather than constituting a guarantee for the States affected.⁴⁷

Apart from Sysmin, there were only minor changes in the new Convention, which were mainly proposals from the ACP States. The EEC compromised on these to show its willingness to make concessions, while simultaneously preventing big changes.⁴⁸ These modifications were an increase of commodities covered in Stabex – this had already started during the Lomé I years – and the lowering of the Stabex threshold to 6.5 per cent (2 per cent for LDC’s). As regards the disappointing results on trade and industrial cooperation, more emphasis was placed upon agriculture – and rural development in particular – industry, communications and transport. Therefore, a Technical Centre for

⁴⁶ Marjorie Lister, *The European Community and the Developing World. The Role of the Lome Convention*, Aldershot: Avebury 1988, pp. 196-201.

⁴⁷ William Brown, *The European Union and Africa: the restructuring North-South Relations*, London/New York: I.B. Tauris 2002, pp. 65-66.

⁴⁸ Ibid.

Agricultural and Rural Development was set up. Nevertheless, due to the economic situation, the EEC was more concerned about its own agriculture and granted the ACP States only a minor increase of access to their market for products covered by CAP.

Even the amount of aid provided was a disappointment for the ACP countries. Despite an absolute increase in aid of 1,837 million to 5,227 million u.a. – of which 4,542 million from the EDF and 685 million from the EIB – when taking into account the increased population, the growing number of ACP States,⁴⁹ and inflation, it represented a fall of 20 per cent in real per capita aid.⁵⁰

In short, Lomé II shows us the stalemate of the ‘North-South’ dialogue: the declining influence the ACP States had during the negotiations, the unequal relation between donor and recipients, and the EEC’s loss of interest in the ACP States. If this trend continued in the negotiations for Lomé III will be discussed in the next sub-chapter.

1.3.3 Lomé III (1985-1990)

The Second Lomé Convention had been characterized by the ACP States’ loss in bargaining power, the EEC’s unwillingness to significantly modify the provisions of the Convention, and an overall disappointment in the results of Lomé I. The ACP’s performance further deteriorated while Lomé II was into force, with GDP decreases in many African countries and several countries experiencing debt and food crises. However, this time the EEC was determined to re-define its relations with the ACP and to enhance the effectiveness of the cooperation. This determination is also reflected in the amount of money provided: Lomé III disposed of 8,500 million ECU, of which 7,400 million from the EDF and 1,100 million from the EIB. This was not only an increase in nominal terms but in real aid per capita as well.⁵¹ The EEC’s renewed interest in the ACP States was also

⁴⁹ The twelve new ACP States were Cape Verde, Comoros, Djibouti, Dominica, Kiribati, Papua New Guinea, St. Lucia, São Tomé and Príncipe, Seychelles, Solomon Islands, Suriname, and Tuvalu. Zimbabwe joined in 1980.

⁵⁰ Christopher S. Clapham, *Africa and the international system: the politics of state survival*, Cambridge: Cambridge University Press 2002, pp. 100-101.

⁵¹ Marjorie Lister, *The European Community and the Developing World. The Role of the Lomé Convention*, Aldershot: Avebury 1988, p. 160.

visible in the growing role of the EEC Commissioner for Development, in that time Edgard Pisani. He was responsible for Lomé III negotiations and wrote his ideas down in a report published in 1982, named the *Pisani Memorandum*. The key words were ‘policy dialogue’, strategies, rural development, and long term, while stressing the importance of effectiveness throughout the document.⁵² Pisani was mainly critical about the lack of attention for the regional circumstances in which aid projects were carried out, and for the particularities of the sector concerned. This led to a new structure of the Lomé III Convention, which consists of one part with general provisions, one part with the areas of ACP-EEC cooperation, and a third part enumerating the instruments of cooperation. He also proposed the introduction of a political dialogue into the agreement in order to stimulate a discussion between donor and recipient that could enhance the effectiveness of aid projects.

Thus, the EEC was clear about its proposals for Lomé III. The ACP States⁵³, on the other hand, failed to come with a coherent set of proposals – their only requests being a repetition of those for Lomé II, such as complete free access of products to the EEC market, changes to the rules of origin, and the abolition of the safeguard clause – and could therefore only simply accept or try to obstruct the Community’s ideas.⁵⁴

The most important changes in Lomé III were in the field of aid, and particularly the introduction of the ‘policy dialogue’ proposed in the *Pisani Memorandum*. Despite heavy objections from the ACP countries it was included in Article 215 of the Convention, which deals with the ‘programming, appraisal, implementation and evaluation’. Although the EEC was unsuccessful in using the term ‘policy dialogue’ in that Article – something that was a big disappointment for them – at least it stated that ‘the draft indicative programme [...] shall be the subject of exchanges of views between the representatives of the ACP State concerned and those of the Community in order to ensure the maximum

⁵² Commission of the European Communities, *Lomé III. Analysis of the EEC-ACP Convention*, Brussels: EEC Publication April 1985, p. 3.

⁵³ New ACP States : Angola (joined after the Convention had been signed), Antigua and Barbuda, Belize, Mozambique, Saint Kitts and Nevis, Saint Vincent and the Grenadines, and Vanuatu. The total number of ACP States was now 66.

⁵⁴ William Brown, *The European Union and Africa: the restructuring North-South Relations*, London/New York: I.B. Tauris 2002, p. 69.

effectiveness of cooperation schemes'.⁵⁵ It was clear that 'ensuring the maximum effectiveness' was mainly aimed to reassure the Community's concern about spending money on – at least in its eyes – useless projects, and indeed the same paragraph states that 'these exchanges of views shall be aimed at enabling the Community to gain knowledge of the development objectives and priorities of the ACP State concerned.

The inclusion of a 'policy dialogue' was important in the sense that it created for the first time some kind of conditionality in the Convention.⁵⁶ Another important change in the Third Lomé Convention was the reference it made to human rights. First, it mentioned in the preamble the Contracting Parties' 'faith in fundamental human rights'. Second, in a declaration annexed to the Final Act, it reiterated their 'deep attachment to human dignity as an inalienable right' and 'commitment to fight [...] for the elimination of all forms of discrimination'.⁵⁷

As said before, Lomé III specifically mentions the areas of development aid. The main focus in this 'sectoral approach' was on agricultural and rural development. The countryside was an increasing concern of both the Community and the ACP States, due to recent food crises and famines, and to ACP countries' growing dependence on food imports. In order to monitor development in this area, a special Agricultural Commodities Committee was set up. Apart from development, conservation of natural resources became important. Drought and desertification were rising phenomena, and provisions on these were made that aimed to implement awareness campaigns, promote sustainable development, improve man's knowledge, and include a 'drought and desertification control' component in all agricultural and rural development operations.⁵⁸

Related to agricultural and rural development was the growing priority given to the development of fisheries. Cooperation between the EEC and ACP States would be enhanced in order to encourage the rational exploitation of the fishery resources; increase the contribution of fisheries to rural development; and increase

⁵⁵ ACP-EEC, 'Third ACP-EEC Convention signed at Lomé on 8 december 1984', Article 215, paragraph 5.

⁵⁶ William Brown, *The European Union and Africa: the restructuring North-South Relations*, London/New York: I.B. Tauris 2002, pp. 70-71.

⁵⁷ ACP-EEC, 'Third ACP-EEC Convention signed at Lomé on 8 december 1984', Final Act, Annex I.

⁵⁸ Ibid., Articles 38-43.

the contribution of fisheries to industrial development.⁵⁹ This, too, had to contribute to the overall ‘food security’ of the ACP States that had deteriorated so much in the preceding years. Other areas such as industrial development, mining and energy, and infrastructure were not forgotten, but there were only minor changes in those sectors. Examples are the commodities covered by Stabex, which were increased to 48 products, and the threshold further lowered to six per cent (1.5 per cent for LDC’s). Sysmin saw a small change, too, in the fact that apart from trying to restore the level of production or export capacity in case of a substantial fall, it provided that ‘where it would appear impossible to restore such capacity to a viable state, the ACP State concerned and the Commission shall seek projects or programmes best suited to attaining the objectives of the system’.⁶⁰

In addition, more attention was given to the problem of refugees. Assistance urgently necessary in this field already fell under the heading of ‘Emergency aid’, but for ‘acute needs not covered by emergency aid’⁶¹ eighty million ECU was set aside from the EDF.

One aspect of cooperation introduced in the Yaoundé Convention, abandoned in Lomé I and again included in this Convention, was social and cultural cooperation.⁶² The re-introduction was mainly meant to ensure that the social and cultural dimensions were taken into account in development projects and to enhance the value of human resources – for instance through enhanced participation of the local population, education, training and science. A small chapter was therefore devoted to the promotion of cultural identities was included in the Convention.

In sum, Lomé III differed considerably from its predecessor, something mainly caused by the EEC’s renewed interest and determination to enhance the effectiveness of its development policy. It saw a shift in priority areas, and initiated the path towards a broader kind of development aid in which terms like equality and sovereignty became less absolute, and which could lead the EEC eventually to impose political conditionality on the recipients.

⁵⁹ Ibid., Article 51.

⁶⁰ Ibid., Article 182

⁶¹ Ibid., Article 204.

⁶² Ibid., Title VIII, Articles 114-128.

1.3.4 Lomé IV (1990-2000)

The fourth and last Lomé Convention, signed on 15 december 1989 between the by then twelve EEC Member States and 68 ACP States⁶³ marked another considerable change in EEC-ACP relations – probably the biggest so far. Apart from some regular changes in aid and trade, it was characterised by a major shift in the way development aid was given. Formerly, developing countries enjoyed substantial liberty on how to spend the money. The EEC was the one approving proposed projects, but did not impose the ACP States many conditions under which they would give assistance. This evolved already gradually during the first three Lomé Conventions – the introduction of ‘policy dialogue’ in Lomé III being an important step towards conditionality. The developments and events of the 1980s, with the ACP States (and other developing countries) facing a severe debt crisis, food crises and a continuing decline in GDP, made the donors aware that only development assistance would not be enough to develop the South. A more structural alteration in the countries’ economic management and perhaps even governance was needed. This led to the rise of Structural Adjustments Programmes (SAPs).

The World Bank was the first institution to introduce SAPs in the 1970s. The economic crisis in those years led all over the world to a reduction of State intervention in the economy, including the privatisation of state companies, public expenditure cuts, and import liberalisation. The World Bank argued that the same was needed for the African countries, because it was the State that impeded their development. The IMF soon followed, with the introduction of a Structural Adjustment Facility (SAF) and later Enhanced Structural Adjustment Facility (ESAF).⁶⁴ Thus, by the time the ACP and EEC started negotiating Lomé IV in 1988, structural adjustment was a set custom in development policies. Hence the domination of structural adjustment during the ACP-EEC negotiations, the Community being determined to introduce it into the Convention. More than that, the Commission stated that besides structural adjustment, ‘...there is nothing to

⁶³ The new ACP States were Dominican Republic, Haiti, and Namibia (after independence in 1990).

⁶⁴ William Brown, *The European Union and Africa: the restructuring North-South Relations*, London/New York: I.B. Tauris 2002, p. 77.

suggest we should be negotiating any radical changes in the Convention...'.⁶⁵ The ACP States, on the other hand, had the same demands as usual – free access to the EEC market, relaxation of the rules of origin, abolition of the safeguard clause and an increase in aid – in order to deal with their debts and improve their trade position. Surprisingly, the ACP agreed with the introduction of structural adjustment into the Convention, but hoped that this would be independent from World Bank and IMF programmes.⁶⁶ Initially, the Commission seemed to pursue a different type of adjustment programmes, stating that the pace and duration of the reforms should be suited to each country's individual circumstances, that more attention should be paid to the social dimension, and that ACP governments should have more say in planning the reforms.⁶⁷ However, during the negotiations it became clear that complete independence from World Bank and IMF programmes would be impossible. After all, the Member States of the EEC were all members of World Bank and IMF as well. How could their programmes then contradict? Thus, in order not to obstruct those institutions, the Fourth Lomé Convention mentions that 'ACP States undertaking reform programmes that are acknowledged and supported at least by the principal multilateral donors, or that are agreed with such donors but not necessarily financially supported by them, shall be treated as having automatically satisfied the requirements for adjustment assistance'.⁶⁸ The Convention also left the possibility for the Community to 'enter into co-financing arrangements with other donors or agencies'.⁶⁹

Besides the introduction of Structural Adjustment Programmes, there were other changes in Lomé IV. For the first time, the Convention was set to last for ten years – something the Commission had already asked for in former Lomé Conventions. There would be a mid-term review in 1995, to renew the Financial Protocol and, if necessary, make some adjustments to the text. The Community could not know what events were about to happen in the following years – events that changed the whole international order and therefore the relations between the

⁶⁵ Quoted in *ibid.*, p. 87.

⁶⁶ See, for instance: *The Courier* no. 113 1989, pp. I-V, and *The Courier* no. 118 1989, p. I.

⁶⁷ Commission of the European Communities (DG Development), *Lomé IV 1990-2000. Background, innovations, improvements*, Brussels: EEC Publication March 1990, p. 4.

⁶⁸ ACP-EEC, 'Fourth Lomé Convention signed at Lomé on 15 December 1989', Article 246, paragraph 2.

⁶⁹ *Ibid.*, Article 249.

ACP States and the EEC as well. However, before discussing the mid-term review, we will take a look at the other changes introduced in Lomé IV.

Lomé III saw a cautious reference to human rights in its preamble and in a declaration annexed to the Final Act. In Lomé IV, the Commission succeeded to include a clause on human rights in the main text, stating that ‘the Parties reiterate their deep attachment to human dignity and human rights’.⁷⁰ This article would be interpreted broadly by the Commission in the following years.

The Lomé Conventions saw a growing emphasis on private investment. Where Lomé II contained a brief reference to encourage this and Lomé III dedicated a whole chapter to the need of improving the investment climate, Lomé IV puts even more emphasis on the role of the private sector, enumerating actions to be taken in order to encourage private investors and create and maintain a secure investment climate.

Another new area of cooperation in Lomé IV is the environment. Lomé III recognised the problems caused by drought and desertification and stressed the necessity of projects not to harm the environment, but the importance grew rapidly during the years that followed. Therefore, Lomé IV sees a separate title (in Part Two: the areas of ACP-EEC cooperation) on environment. Notably is the article which States that ‘the Community shall prohibit all direct or indirect export of [hazardous] waste to the ACP States while at the same time the ACP States shall prohibit the direct or indirect import into their territory of such waste from the Community or from any other country’.⁷¹

Lomé IV is the first convention with a separate section on debt. In an attempt to relieve the debt crisis, special loans were replaced by more grant aid, Stabex transfers became non-reimbursable, and Sysmin and other projects with high rates of return got a two-stage procedure, whereby ACP governments received grants and lent to final borrowers the money needed.⁷² Moreover, the European Investment Bank lowered the interest rates of its loans to three to six per cent instead of five to eight.

⁷⁰ Ibid., Article 5, paragraph 2.

⁷¹ Ibid., Article 39, paragraph 1.

⁷² Ibid., Article 240, paragraph 1.

Other changes in the Fourth Lomé Convention are marginal and include the reduction of the Stabex threshold from six to five per cent (from 1.5 to one per cent for LDCs), the introduction of duty and quota free access to the EEC market for some CAP covered products (sometimes only during the off-season), the reduction of added value needed for products of mixed origin to 45 per cent, and a slight improvement for beef, veal and rum arrangements. Furthermore, a section on population and demography is included in the 'Cultural and Social Cooperation title'. In addition, more emphasis is put on decentralisation of development cooperation and regional cooperation.

Concerning the level of Lomé IV aid, this was increased with more than forty per cent to 12,000 million ECU (10,800 million ECU from EDF and 1,100 million from EIB). In real terms, this meant an increase of over twenty per cent.⁷³ Moreover, all financing under the Convention would be in the form of grants, apart from those managed by the EIB. However, given the deteriorated economic situation of most ACP States, the increase in population, and the number of new features in Lomé IV that required funding, the amount of aid was not a significant increase.⁷⁴

As mentioned before, although the Convention would last for a decade, there would be a mid-term review after five years. This was mainly meant to renew the Financial Protocol and to make 'perhaps some adjustments to the text'.⁷⁵ Both the Commission and the ACP States could not have foreseen that this mid-term review would radically modify the nature of their relations, due to major events such as the collapse of Communism in Eastern Europe, the end of the Cold War, the transformation of the EEC into the European Union (EU) that would formulate a Common Foreign and Security Policy (CFSP) among the Member States, and some general trends like the dissatisfaction with development aid because of its poor results, the recession in the west, the globalisation of international relations and the liberalisation of world trade.

⁷³ Marie-Hélène Birindelli (Ed.), 'Lomé IV dossier', *The Courier*, no. 120 (1990) (Brussels: Commission of the European Communities), p. 3.

⁷⁴ *Ibid.*, pp. 8-9.

⁷⁵ Commission of the European Communities (DG Development), *Lomé IV 1990-2000. Background, innovations, improvements*, Brussels: EEC Publication March 1990, p. 2.

When the Fourth Lomé Convention was signed in December 1989, the Berlin Wall had fallen just one month before. However, Lomé IV did not constitute a break from the past yet. Even the inclusion of SAPs and a human rights reference did not more than illustrate the gradual politicisation of development policy since Lomé III.⁷⁶ The events that followed, nevertheless, created a shift in the Commission's statement from 'perhaps some adjustments' to the need for a radical change of the aid provisions and the conditions imposed on development assistance. The seventy ACP States⁷⁷, fearing a loss of interest in development aid within the EU and their weakened geostrategic importance after the end of the East-West rivalry, as well as afraid of the consequences of the trade liberalisation, agreed with the Commission's proposal for a more comprising mid-term review, but emphasised that they did not want a full renegotiation of Lomé. Negotiations started in May 1994 and ended in June 1995. The 'Agreement Amending the Fourth ACP-EC Convention of Lomé' was signed on 4 November 1995 in Mauritius.

For the purpose of this study, the reforms concerning conditionality, particularly *political* conditionality are the most important. To a certain extent, conditionality can be found since the beginning of the Lomé years. In 1979 the EEC – albeit without legal basis in the Convention to act as such – decided to cut aid flows to two countries who were committing gross human rights violations. A first official 'light' type of conditionality can be found in the Third Lomé Convention, with the introduction of 'policy dialogue', although it was not explicitly denominated as such. Lomé IV constituted a great leap into conditionality by obliging States to put forward macroeconomic reforms through SAPs. Although this can be seen as mainly *economic* conditionality, it is closely connected to an extended political form of conditionality; as SAPs require countries to reform their institutions and focus on the political economy of the countries concerned, questions about good governance and democratisation are a logical next step. Moreover, individual donors in the 1980s already expressed

⁷⁶ See, for instance: Dieter Frisch, 'The Political Dimension of Lomé', *The Courier*, 166 (1997), pp. 78-82.

⁷⁷ The new ACP State was Eritrea. South Africa had observer status during the signature of Lomé IV and would partially access the Convention later.

their intention to favour aid for developing countries undergoing political reform.⁷⁸ This was partly an answer to a general growing dissatisfaction with the results of development aid, and partly because of alarming events concerning human rights violations in Sudan – the latter leading to the Commission’s decision to suspend financial cooperation with the country in March 1990.

Thus, the gradual evolution towards conditionality together with the revolutionary changes in the beginning of the 1990s led to the Commission’s determination to include conditionality in the Convention in a more formal and explicit way. This is done in a revised Article 5, which for the first time mentions the notions of democratic principles, rule of law and good governance, and states that ‘respect for human rights, democratic principles and the rule of law [...] shall constitute an *essential* element of this Convention’.⁷⁹ This finally gave the Commission the legal basis to – partially or totally – suspend the application of the Convention in case of failure to fulfil one of these elements.⁸⁰ Article 366a further deals with the so-called *consultation procedure* that has to be followed in such a case. It makes (partial) suspension of the Convention a measure of last resort. In addition, in order to support institutional and administrative reform measures to promote the above-mentioned values, the EU and ACP States agreed on an ‘incentive envelope’ of eighty million ECU.

An important part of the Lomé Convention that faced big challenges was the title about trade cooperation. April 1994 saw the conclusion of the GATT Uruguay Round that led to the liberalisation of world trade, and one year later, on 1 January 1995 the GATT was replaced by the World Trade Organisation (WTO). This caused the ACP States fear about the risk to lose their preferences, and rightly so, as the US Trade Representative together with Chiquita Brands International, a US-owned banana company, had already signed a petition in September 1994 objecting the preferential access to the EU market for ACP

⁷⁸ William Brown, *The European Union and Africa: the restructuring North-South Relations*, London/New York: I.B. Tauris 2002, p. 116.

⁷⁹ ACP-EEC, ‘Agreement Amending the Fourth ACP-EC Convention of Lomé signed in Mauritius on 4 November 1995’, *The Courier*, 155 (1996) (Brussels: Commission of the European Communities), Article 5, paragraph 1 (emphasis added).

⁸⁰ Chapter 3 will talk about the legal basis of political conditionality with more detail.

banana producers.⁸¹ The Commission recognised the problem, but was on the other hand convinced that the problem of falling ACP exports was because of their lack of competitiveness. More preferential access would not be the solution, but instead, more emphasis on structural adjustment was needed. Therefore, the main aim of trade development shifted towards ‘developing, diversifying and increasing the ACP States’ trade and improving their competitiveness’.⁸² Besides the division between the ACP States and the Commission concerning trade, there were also important differences among the EU Member States themselves. Whereas the United Kingdom favoured greater trade access over increases in aid, the southern EU countries feared that ACP agricultural exports would damage their own production.⁸³ Consequently, little was changed in the trade provisions. There were some tariff reductions and quota changes, and the rules-of-origin provision was a bit relaxed in the sense that some *cumulation* was allowed. That is to say that ‘products originating in a neighbouring developing country, other than an ACP State, belonging to a coherent geographical entity, shall be considered as originating in the ACP State’.⁸⁴ The maximum value added by a neighbouring country for this provision was set to fifteen per cent. Furthermore, small alterations were made in the regulation on structural adjustment that increased the attention for the regional dimension of SAPs. Nevertheless, despite the alterations, major modifications on trade provisions stayed out.

A familiar point of dispute in the negotiations was the amount of money allocated for the Second Financial Protocol. There was not only big disagreement on this between the ACP and the EU, but also among the Member States. Eventually, an agreement was reached on a total amount of 14,625 million ECU

⁸¹ Nineteen months later, on 11 April 1996 the US along with Ecuador, Guatemala, Honduras, and Mexico filed a request for the establishment of a WTO dispute settlement panel to solve the dispute on bananas. (National Council for Science and the Environment, *CRS Report: RS20130: The U.S.-European Union Banana Dispute*, <http://ncseonline.org/nle/crsreports/economics/econ-39.cfm>).

⁸² ACP-EEC, ‘Agreement Amending the Fourth ACP-EC Convention of Lomé signed in Mauritius on 4 November 1995’, *The Courier*, 155 (1996) (Brussels: Commission of the European Communities), Article 15a.

⁸³ William Brown, *The European Union and Africa: the restructuring North-South Relations*, London/New York: I.B. Tauris 2002, pp. 133-134.

⁸⁴ ACP-EEC, ‘Agreement Amending the Fourth ACP-EC Convention of Lomé signed in Mauritius on 4 November 1995’, *The Courier*, 155 (1996) (Brussels: Commission of the European Communities), Protocol 1, Article 6, paragraph 5.

(12,967 million from EDF and 1,658 million from EIB). This constituted an increase of almost 22 per cent, but taking into consideration inflation and the accession of three net contributing Member States – Austria, Finland and Sweden – it did not mean an increase in real terms at all.

1.4 Conclusion

This chapter has given a detailed description about the evolution of EEC development assistance from its establishment in 1957 up to the end of the twentieth century. We have seen how the concept of conditionality gradually became a feature of EEC-ACP relations. The next chapter will describe the changed character of development cooperation between the EU and ACP States as well as with other developing countries after the Lomé years. In particular, it will show how conditionality further evolved and in what way it is currently applied by the EU.

EU Development Assistance Today: The ACP-EC Partnership Agreement

Soon after the negotiations for the Fourth Lomé Convention were finished and signed on 15 December 1989, it had become clear that this would be the last Lomé. Due to major events that happened in the following years – the collapse of Communism that concluded the decades of East-West division, deeper European integration with the Maastricht Treaty establishing the European Union, and the replacement of GATT for the World Trade Organisation – and an overall dissatisfaction with the effectiveness of Lomé aid and trade provisions on the side of the donors, ACP-EU relations and EU development assistance in general could not continue in their current forms. During the mid-term review of Lomé IV the EU had already pursued some considerable changes, but it was unable to radically modify the Convention, since the purpose of this review had been to renew solely the Financial Protocol with, if considered necessary by one of the parties, some adaptations to the text. Nevertheless, as early as March 1991 the Commission had written a Communication to the Council and Parliament about human rights and democracy in development cooperation policy,¹ in which it stressed the increased significance of promoting these values in development cooperation. It enumerated the legal bases for the inclusion of human rights and democracy in foreign policy, namely basic international human rights documents, declarations at Community and Member State level, the EEC's cooperation agreements, and regional acts. More importantly, in 1992 the Commission wrote a famous document about the future of development policy up to and beyond 2000, which became known as

¹ Commission of the European Communities, *Communication from the Commission to the Council and the European Parliament. Human rights, democracy and development cooperation policy*, Brussels: EEC Publication 25 March 1991 (SEC(91) B1 final).

Horizon 2000. This chapter will describe this document, as well as the other steps that led to the way EU development assistance looks like today.

2.1 ‘Horizon 2000’

The Communication written by the Commission in September 1992 to the Council and the European Parliament, which became known under the name *Horizon 2000*² was an assessment of how the Maastricht Treaty and with it the establishment of a political union would change the relations with the developing countries. In the first place, it wrote about the experiences of three decades of development aid. The difficulties in assessing the effectiveness of aid notwithstanding, it stated that ‘the general impression emerging is one of wasted resources’.³ Explanatory factors were found on the side of the governments of the developing countries, such as the absence of a clearly-defined development strategy, the administrative weaknesses in programming, implementation and monitoring, and the lack of a consistent policy taking into account the long term effects. However, it also looked at the shortcomings on the donor side, blaming the often unsuccessful or even counter-productive development strategies chosen, and the devastating effect of the Cold War. This self-criticism went quite far, arguing that all those shortcomings had resulted ‘in an aid situation that is contradictory and rarely coordinated or consistent’.⁴

Secondly, *Horizon 2000* analysed future cooperation with the developing countries. While emphasising the importance of trade liberalisation, it also recognised that for Africa in particular, the slogan “better trade than aid” did not apply, given the failure to create an export industry and the collapse of the commodities market. Thus, the industrialised world would still have to focus on providing aid in Africa, while simultaneously encouraging better policies. Here, the document argued, lied the importance of conditionality. It mentioned

² The official name is: Commission of the European Communities, *Communication from the Commission to the Council and the European Parliament. Development cooperation policy in the run-up to 2000 (The Community’s relations with the developing countries viewed in the context of political union). The consequences of the Maastricht Treaty*, Brussels: EEC Publication 16 September 1992 (SEC(92) 915 final /2).

³ Ibid., p. 24.

⁴ Ibid., p. 26.

explicitly that ‘grants should be linked not only to the creation of viable economic structures on which genuine development can be founded, but also to the installation of truly democratic political systems.’⁵ In the objectives of developing assistance, the document stated that a balance should be found between political, economic and social ones, with particular focus on those that are critical to development, namely ‘the prevention and solution of conflicts, respect for human rights, support for the process of democratisation and liberalisation of the economy, and regional integration or cooperation’.⁶ An important instrument for achieving these goals was political dialogue, which for that reason had to be enhanced. It is important to note that this was not the first time that the EU showed how much importance it attached to political conditionality. In November 1991 a Council Resolution had stated the intention to introduce human rights and democracy clauses into future agreements.⁷

Surprisingly, *Horizon 2000* did not specifically focus on the ACP countries. This can be seen as an indication of the EU’s growing interest in other developing countries. It expressed the wish, for instance, to spread aid efforts more uniformly around the globe among the three major donors; the EC, the US and Japan. Up to then, each of them had concentrated its aid on a particular area. Furthermore, it called to share the aid burden among them more fairly, since the EC spent a much bigger percentage of its GDP on development assistance (0.5 per cent in 1990) than did Japan (0.32 per cent) and the US (0.18 per cent).⁸

Thirdly, *Horizon 2000* talked about the need for an intensified and differentiated cooperation policy. Four themes were elaborated, around which development strategy needed to be designed: ‘reform of the state and the political system, stabilisation and reconstruction of the economy, encouragement for new

⁵ Ibid., p. 36.

⁶ Ibid., p. 49.

⁷ Gordon Crawford, *Foreign Aid and Political Reform. A Comparative Analysis of Democracy Assistance and Political Conditionality*, Hampshire/New York: Palgrave Macmillan 2001, p. 164.

⁸ Commission of the European Communities, *Communication from the Commission to the Council and the European Parliament. Development cooperation policy in the run-up to 2000 (The Community’s relations with the developing countries viewed in the context of political union). The consequences of the Maastricht Treaty*, Brussels: EEC Publication 16 September 1992 (SEC(92) 915 final /2), pp. 46-47.

competitive economic structures, and acceptance of countries from the South in international trading.⁹

In the fourth place, the document gave a description of development assistance priorities, observing that different approaches were needed for Sub-Saharan Africa, the Mediterranean, Latin America and Asia, not only because of the individual characteristics of each region, but also because of the varying influence the Community could exert on them. In Sub-Saharan Africa for instance, the document argued, cooperation should ‘be used [...] to support policies for restructuring the economic fabric and for introducing democratic reforms’.¹⁰

Thus, *Horizon 2000* showed the Community’s wish to play a bigger role in the international economic scene, given its rising economic and political power, and the fact that it was the largest aid donor, above the US and Japan. Furthermore, while re-emphasising the EU’s special relations with the ACP countries, its interests in other developing parts of the world became visible. The wish to be a more influential global political actor also expressed itself in the EU’s attempt to broaden its development cooperation policies into the political sphere. The growing attention for the internal political situation of developing countries made conditionality of aid increasingly important, something we have seen while discussing the mid-term review of Lomé IV.

2.2 The 1996 Green Paper: ‘challenges and options for a new partnership’

Lomé IV was set to expire on 29 February 2000 and in the Convention it was provided that negotiations in order to examine what provisions would subsequently govern relations between the Community and its Member States on the one side, and the ACP States on the other had to start eighteen months before the expiration, thus in September 1998.¹¹ In order to prepare for this, the European Commission launched a wide-ranging debate on the future of ACP-EU relations, starting with the publication in November 1996 of a *Green Paper on relations*

⁹ Ibid., p. 56.

¹⁰ Ibid., p. 73.

¹¹ ACP-EEC, ‘Fourth Lomé Convention signed at Lomé on 15 December 1989’ and: ACP-EEC, ‘Agreement Amending the Fourth ACP-EC Convention of Lomé signed in Mauritius on 4 November 1995’, Article 366.

*between the European Union and the ACP countries on the eve of the 21st century.*¹² This paper particularly stressed the ‘new international environment’ after the collapse of the Iron Curtain, the end of the East-West conflict and the conclusion of the Uruguay Round trade negotiations, events that were speeding up globalisation and liberalisation and resulted in the need for the EU to redefine its political and security interests. Future ACP-EU relations had to take this new environment into account, which according to the Commission had also increased the EU’s political and economic responsibilities in the world, and had resulted in assisting developing countries in their democratisation process and integrating them in the world economy.¹³ Moreover, the Green Paper showed again the Community’s growing attention for other developing regions like the former Soviet countries, Latin America and a number of Asian countries, and questioned if the EU should continue ACP development aid in one single framework, given the economic and geographical diversity of the countries.¹⁴ It did not focus only on the future of EU development assistance, but also critically assessed the results of almost twenty-five years of ACP-EU cooperation. It recognised its shortcomings and failures, among others the difficulties of putting the principle of partnership into practice, the disappointing impact of trade preferences, and the lack of flexibility in financial and technical cooperation.¹⁵ In an attempt to make European policy more effective, the Commission expressed its wish to bring ACP-EU relations, development aid in general and other foreign policy issues together, in order to enhance the consistency and continuity among them. Indeed, the Paper stated the need for ‘a more relaxed framework for dialogue where issues of good governance, democracy and human rights, and the consolidation and maintenance of the rule of law can be broached’ and regarded policy dialogue as the only alternative to traditional forms of aid.¹⁶ Another way to enhance the effectiveness of development aid was seen in a more active participation of non-governmental players, and more coordination between the Union, individual

¹² European Commission (DG Development), *Green Paper on relations between the European Union and the ACP countries on the eve of the 21st century. Challenges and options for a new partnership*, Brussels: EC Publication 20 November 1996.

¹³ Ibid., pp. i-iii.

¹⁴ Ibid., p. ii and pp. vii-ix.

¹⁵ Ibid., pp. iv-v.

¹⁶ Ibid., pp. vi-vii.

Member States and other donors. Overall, it was clear that the EU wanted to continue increasing the political character of development aid, by supporting institutional development and political and social transition in the countries concerned.¹⁷ It wanted to keep applying conditionality to aid, but recognised the need to reform this. In order to increase its impact on countries, conditionality had to fulfil three criteria according to the Commission: it had to be realistic, comprehensive and rigorous.¹⁸

The publication of the Green Paper led to an intensive public debate comprising non-governmental development organisations, think tanks, Member States, the ACP group, and other actors. It gave rise to the *Communication from the Commission to the Council and European Parliament*, which contained guidelines for the negotiations with the ACP countries. Concerning political conditionality, this Communication stated that ‘EU-ACP cooperation is now seen as having a clear political dimension, which a new partnership should reflect fully’.¹⁹ It gave two reasons why political dialogue had to be enhanced in a new cooperation agreement, namely the necessity for development cooperation to serve the objectives of the Common Foreign and Security Policy, which should ‘preserve peace and strengthen international security’, and the need to make cooperation more effective. A way to prevent conflicts and crisis, the Commission argued, was through the promotion of human rights, democracy, the rule of law and good governance. It was thus clear that the EU would pursue the continuation of political conditionality in development cooperation and even try to increase the importance. In the next section we will see how the EU’s position has become included in the new agreement.

As said before, negotiations for a new agreement between the ACP and the EU started in 1998. They were concluded in February 2000 and formalised in the *Partnership Agreement between the members of the African, Caribbean and*

¹⁷ Ibid., p. xii.

¹⁸ Ibid., p. xv.

¹⁹ Commission of the European Communities, *Communication from the Commission to the Council and the European Parliament. Guidelines for the negotiation of new cooperation agreements with the African, Caribbean and Pacific (ACP) countries*, Brussels: EEC Publication 29 November 1997 (COM(97) 537 final), p. 11.

Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000.

2.3 The Cotonou Partnership Agreement

In this section the main features and innovations of the new agreement between the ACP and the EU will be discussed, with special attention to the provisions concerning human rights, good governance and rule of law. As said, the Cotonou Partnership Agreement (CPA) was signed in June 2000. It entered into force almost three years later, in April 2003. It is the first ACP-EU agreement with a validation period of twenty years, set to expire in February 2020. However, the Agreement provides for a revision every five years. The first revision took place in June 2005 and entered into force on 1 July 2008.

The Cotonou Agreement shows substantial changes compared to its predecessors, but preserved the so-called *Lomé acquis*. It is built upon three pillars: an economic and trade cooperation pillar, a development cooperation pillar, and a pillar dealing with the political dimension. Article 1 of the Agreement states the objective on which the partnership will be centred, namely the reduction and eventually eradication of poverty consistent with the objectives of sustainable development and the gradual integration of the ACP countries into the world economy. This will be achieved by taking account of political, economic, social, cultural and environmental aspects of development.²⁰ Cooperation between the ACP and the EU is based on the principles of equality, participation, dialogue and differentiation or regionalisation. Special emphasis is placed upon the role of non-State actors in the development process, such as private actors and civil society. The biggest amendments are in the provisions for economic and trade cooperation (Part 3, Title II) and the strengthening of the political dimension.

One of the objectives of ACP-EU economic and trade cooperation is the implementation of them ‘in full conformity with the provisions of the WTO’.²¹ This is a mayor change compared to the Lomé Convention, and was one of the

²⁰ ACP-EC, ‘Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000’, Article 1.

²¹ Ibid., Article 34, paragraph 4.

biggest issues during the negotiations. Another point is the increased attention for regional integration. In order to make trade WTO- compatible, trade barriers had to be removed. This will be concluded gradually in a transition of at least twelve years, with a preparatory period until 2008, during which the non-reciprocal trade preferences applied under Lomé IV were remained and the EU and ACP states or regions negotiated so-called 'Economic Partnership Agreements' (EPAs). The EU opened its market completely for ACP products, but an exception was made for 'sensitive' products such as bananas, sugar, beef and veal. Furthermore, in 2001 the EU approved a number of special provisions for the forty-nine Least Developed Countries, 40 of them ACP States, in the so-called 'Everything But Arms' (EBA) Initiative. This envisaged a five years process which would remove all tariffs and quotas on all EU imports from the LDCs, with the exception of arms. For bananas, rice and sugar, the implementation would take effect in three successive stages.

The second big area of change in the Cotonou Agreement was the political dimension. Whereas the use of political conditionality had already extended considerably in Lomé IV-bis, it was further expanded in Cotonou. Title II of the first part deals with the political dimension of the Agreement. It states that 'the parties shall regularly engage in a comprehensive, balanced and deep political dialogue leading to commitments on both sides',²² which would cover all aims and objectives of the Agreements. Article 9 reiterates the notions of human rights, democratic principles and rule of law introduced in Lomé IV-bis, but new is the reference made to good governance, which is said to be a 'fundamental element of this Agreement'.²³ In addition, Cotonou has an article (Article 11) about peace-building policies, conflict prevention and resolution, showing the EU's wish to have a bigger role as a global political actor and bringing development assistance in accordance with the provisions in the Maastricht Treaty. As under the revised Lomé IV, in case of violation of the essential elements of human rights, democratic principles and rule of law a consultation procedure will be started to see what measures can be taken to remedy the situation. The same applies to 'serious cases of corruption'. Articles 96 and 97 deal with the consultation

²² Ibid., Art. 8, paragraph 1.

²³ Ibid., Art. 9, paragraph 3.

procedure to be followed, and the measures to be taken in case consultation does not solve the problem, mentioning suspension of the application of the Agreement as a measure of last resort.

Regarding the aid provisions, there were some substantial changes in the types of aid. Cooperation under Cotonou still falls outside the scope of the procedures set for EU development policy and is mainly financed by the EDF. However, under Lomé there were three different types of aid, namely programmable aid, non-programmable aid, and loans, each of them having different methods and procedures for implementation. The Cotonou Agreement tried to simplify this by bringing aid resources together in a single budget heading while distinguishing between a long-term envelope, a regional envelope and an investment facility. With every individual ACP country, the EU formulated a Country Support Strategy (CSS), which is to be reviewed annually, whereby the financial support for the consecutive year depends on the country's effective use of aid. Moreover, a provision was introduced that made it possible to give aid as direct budget support to a national government who assured issues of good governance and anti-corruption.²⁴ The Stabex and Sysmin schemes, on the other hand, were abolished. Another change is the introduction of an Investment Facility, which provides risk capital and ordinary loans and is mainly meant to promote private sector development. The change in the amount of aid, however, was rather disappointing. The overall amount was set at 15,200 million euro for the first five years, of which 13,500 million from the ninth EDF and 1,700 from the EIB. This was just a marginal increase and aid per capita went even down from 23.6 to 21.2 euro.²⁵

In accordance with the revision clause, negotiations to revise the Agreement had to be concluded before 1 March 2005. These negotiations started in May 2004 and were ended in February 2005. The revised text of the Cotonou Partnership Agreement (CPA II) was signed in Luxembourg on 25 June 2005 and entered into

²⁴ William Brown, *The European Union and Africa: the restructuring North-South Relations*, London/New York: I.B. Tauris 2002, p. 194.

²⁵ Paul Hoebink, 'European Development Aid in Transition', in: Olufemi Babarinde and Gerrit Faber (Eds.), *The European Union and the Developing Countries. The Cotonou Agreement*, Leiden/Boston: Martinus Nijhoff Publishers 2005, pp. 127-153.

force more than three years later on 1 July 2008. The main reason for the five-year revisions is to define a new financial protocol. However, the revised Agreement did not mention the amount of money allocated, the financing instrument that would be used – either a successive EDF or general budget, nor the exact period covered. Annex Ia to the CPA II only stated that:

‘...for this new period, the European Union shall maintain its aid effort to ACP States at least at the same level as that of the 9th EDF, not including balances; to this shall be added, based on Community estimates, the effects of inflation, growth within the European Union, and enlargement to 10 new Member States in 2004’.²⁶

These details were later established between the EU Member States by Internal Agreement and published on 9 September 2006;²⁷ it was decided that a tenth EDF would cover six years – from 2008 to 2013 – and a total amount of 22,682 million euro (at current prices) was allocated. A new annex, Annex Ib was inserted in the treaty on the day the Internal Agreement was published, which enumerated the amounts for the different programmes. The total amount of financial resources was established at 23,966 million euro, with 21,966 under the tenth EDF and an amount of up to 2,000 million under the EIB. This was a considerable increase of 57.7 per cent, but taking into account that the tenth EDF would cover six years instead of five; this meant a real increase of ‘just’ 31.4 per cent. Apart from the growth in financial resources, CPA II introduced some other changes relating to money. First of all, there are some new provisions that extended the range of beneficiaries of EU development funds to actors such as parliaments and regional organisations. It also provides for a more flexible and more effective implementation of the Investment Facility. Secondly, the powers of the Commission over the use of allocated funds further increased. ACP states don’t

²⁶ ACP-EC, ‘Agreement amending 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 2000’, 25 June 2005, Annex Ia.

²⁷ Council, ‘Decision No 1/2006 of the ACP-EC Council of Ministers of 2 June 2006 specifying the multiannual financial framework for the period 2008 to 2013 and modifying the revised ACP-EC Partnership Agreement (2006/608/EC)’, *Official journal of the European Union*, L 247 (2006).

have the opportunity to comment on the draft proposals of the EU, and the period from proposal to decision has been reduced from 120 to ninety days.²⁸

As concerns political dialogue, the revised Agreement places greater emphasis on flexibility and effectiveness in order to prevent having to recourse to Article 96, which deals with the consultation procedure, and Article 97 dealing with severe cases of corruption. Moreover, Article 8, paragraph 6 gives the ACP and the EC the possibility to make the ‘dialogue covering the essential elements [...] systematic and formalised in accordance with the modalities set out in Annex VII’. This measure is also meant to defer the use of the consultation procedure to extreme cases only. A new annex, Annex VII, is included in the Agreement, which reiterates that consultation shall take place only ‘after exhaustive political dialogue’. Remarkably, the revised Cotonou tries to be more concrete on the essential elements, stating that ‘political dialogue concerning respect for human rights, democratic principles and the rule of law shall be conducted pursuant to Article 8 and Article 9(4) of the Agreement and *within the parameters of internationally recognised standards and norms*’.²⁹ Moreover, specific benchmarks or targets within these parameters can be developed between the ACP and the EC through setting objectives and timeframes – another attempt to make political dialogue more concrete. In order to enhance flexibility and give parties the time for preparation, the notification period for the consultation procedure is doubled to thirty days. The consultation procedure is also widened from sixty to 120 days,³⁰ and the Agreement states that timeframes agreed upon during consultations should be flexible as well.³¹ Similarly, CPA II, like the first Agreement, provides that serious cases of corruption are a reason for consultation, too. It extends the notification period from twenty-one to sixty days, and the consultation period is widened from thirty to 120 days. Last, but definitely not least, there is a clarification in the title of Article 9. Whereas this used to be called ‘Essential elements and fundamental element’, this has been replaced by

²⁸ ACP-EC, Agreement amending 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 2000’, 25 June 2005, Annex IV, article 16(4).

²⁹ Ibid., Annex VII, Art. 2, emphasis added.

³⁰ Ibid., Article 96, paragraph 2.

³¹ Ibid., Annex VII, Art. 3, paragraph 3.

‘Essential elements regarding human rights, democratic principles and the rule of law, and fundamental element regarding good governance’. The difference between *essential* and *fundamental* is significant, as the first has legal consequences, whereas the latter does not. We will come back to this in the next chapter.

Another part of the political dimension sees a major extension in the provisions. This is the part on peace-building policies, conflict prevention and resolution. The explanation can be found in the post-9/11 environment of new security threats related to international terrorism. Article 11a now deals with the ‘fight against terrorism’ in which the parties confirm their ‘condemnation of all terrorist activities and undertake to combat terrorism through international cooperation’. Furthermore, article 11b introduces ‘[c]ooperation in countering the proliferation of weapons of mass destruction’. The parties’ ‘full compliance with and national implementation of their existing obligations under international disarmament and non-proliferation treaties and agreements and other relevant international obligations’ is mentioned to be ‘an *essential* element of this agreement’,³² meaning that non-compliance will lead to consultations and, if necessary, appropriate measures. New cooperation is also established on the prevention of mercenary activities.³³ Reference, in addition, is made to the Rome Statute of the International Criminal Court (ICC), which the parties reaffirm to ratify and implement. To fight against international crime in accordance with international law is mentioned as an objective as well.

Ecological awareness has increased in the revised Agreement, with a strengthening of existing provisions on island ACP States. It includes ‘specific actions’ that ‘shall be pursued to support island ACP States in their efforts to halt and reverse their increasing vulnerability’ and ‘sustainable development’.³⁴ Awareness to the social consequences of structural adjustment seems to have increased as well; while Article 68 formerly only mentioned the ‘macroeconomic

³² Ibid., Art. 11b, paragraph 1, emphasis added.

³³ Ibid., Art. 11, paragraph 3a.

³⁴ ACP-EC, Agreement amending 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 2000’, 25 June 2005, Article 89, paragraph 1.

and sectoral reforms and policies that are at risk', the revised Agreement talks about the 'socio-economic reforms and policies that could be affected negatively'.³⁵

2.4 Conclusion

The last decade of the twentieth century, as well as the current framework of ACP-EU cooperation under the Cotonou Partnership Agreement of 2000 and the first revision shows a major shift in the EU's development policy. Whereas in the post-colonial decades development assistance was something unquestioned and even seen as a *right* for ACP States, this has evolved into the idea that developing states have to *deserve* getting development assistance. The main objective – according to the EU – has been to enhance the effectiveness of development aid, and the instruments to achieve this political dialogue and conditionality. However, one can question if the promotion of human rights, democratic principle and rule of law is only a way to make development cooperation policy more effective or also an objective in itself, mainly representing the EU's interests. After all, countries that are well governed by democratic regimes and respect human rights are likely to be more stable and involved in less conflicts than autocratic regimes. As such, they increase overall EU security. They are cooperative in the fight against international crime and terrorism, while at the same time it becomes more difficult for terrorist networks to find refuge in those countries and recruit people. Besides, there are other advantages of promoting the elements mentioned. Especially if one believes that the democratisation of a country and the development of free market economies go hand in hand. In that case, promoting democratic principles and good governance will – when leading to economic development – enhance the EU's export market enormously. A last advantage is that for European entrepreneurs it is easier and more beneficial to invest and do business in a country that respects the rule of law and has well developed laws to protect companies and intellectual property rights. Thus, the grounds to include

³⁵ For more on this issue, see: Stephen Kingah, 'The revised Cotonou Agreement between the European Community and the African, Caribbean and Pacific States: innovations on security, political dialogue, transparency, money and social responsibility', *Journal of African Law*, 50, 1 (2006), pp. 68-69.

political elements in development cooperation might be less altruistic than the EU likes to propagate. However, it is not within the scope of this study to examine thoroughly the EU's reasons for political conditionality, although it would be interesting to do so.

Thus far, we have taken a look at the evolution of EC development assistance throughout its existence. In the next chapter we will have a closer look at the notions of human rights, democratic principles and rule of law. We will see what the EU exactly means by these terms, and what their legal basis is. After that, we will elaborate further on the cases in which the EU has used political conditionality.

PART II

3

EU Political Conditionality in Practice

In the first part of this study, the term political conditionality and its use in the ACP-EC framework have been addressed without having a close look at how the EU defines the notions of human rights, democratic principles, rule of law, and good governance. In addition, the provisions in the Lomé Conventions and Cotonou Partnership Agreement notwithstanding, the legal basis of political conditionality in EU-ACP relations has not been discussed comprehensively. Therefore, before analysing a number of case studies, we will look at the definitions of the notions mentioned and their legal basis.

3.1 Definitions and Legal Basis

Human rights

The EU's definition of human rights is based on international agreements. This is the definition of universal, indivisible and inter-related human rights – including political, civil, economic, social and cultural rights – given in the 1945 United Nations Charter and 1948 Universal Declaration of Human Rights (UDHR), and reaffirmed by the 1993 World Conference on Human Rights in Vienna. Starting with a provision in the preamble of the 1986 Single European Act (SEA), the EC has included provisions for human rights in most of its declarations and agreements with non-Member countries.¹ The Treaty on European Union (TEU) states that '[t]he Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law'.² As concerns relations with third countries, the Treaty establishing the European Community

¹ Communication from the Commission to the Council and the European Parliament, *Human rights, democracy and development cooperation policy*, Brussels: EEC Publication 25 March 1991 (SEC(91) B1 final), p. 3.

² EU, 'Treaty on European Union', Article 6, paragraph 1.

(ECT) mentions that ‘Community policy [...] shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to the objective of respecting human rights and fundamental freedoms’.³ A key document that outlines the rights and principles for the Commission to act is the EU Charter of Fundamental Rights.⁴

The EU considers respect for human rights as an indispensable feature for the development of a country, as it believes that stable countries and free societies will attract more investment and business.⁵ Therefore, it tries to include multinational corporations (MNCs) to contribute to the amelioration of human rights records in developing countries. The EU’s support for multilateral trade and investment is hereby an instrument to promote human rights and democracy. Furthermore, the EU states in its *guidelines on human rights dialogue with third countries* that interdependence between respect for human rights and sustainable development, peace and stability, has been approved by consensus by the UN General Assembly and emphasised by the World Summit declaration of 2005.⁶

An attempt to achieve a coherent and consistent worldwide approach to the promotion of human rights and democratisation is through the Country Strategy Papers (CSP), which provide a yearly analysis of the situation in each country as regards human rights, democratisation and the rule of law. These CSPs are also used as a tool to measure progress over time, alongside the ratification of international instruments, peaceful resolution of existing or potential conflicts, or concrete improvements in respect for human rights of vulnerable groups.⁷ Other reports used to assess the human rights situation in a country are those written by heads of mission, by the UN and other international or regional organisations, by

³ EEC, ‘Treaty establishing the European Economic Community’, Article 181a, paragraph 1.

⁴ The Preamble states that this Charter reaffirms the human rights as they result from the constitutional traditions and international obligations common to the Member States, the TEU, ECT, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Community and by the Council of Europe and the case-law of the ECJ and of the ECHR.

⁵ Communication from the Commission to the Council and the European Parliament, *The European Union’s role in promoting human rights and democratisation in third countries*, Brussels: EEC Publication 8.5.2001 (COM(2001) 252 final), pp. 4-5.

⁶ Council of the European Union (Working Party on Human Rights (COHOM)), *EU guidelines on human rights dialogues with third countries – Update*, p. 2.

⁷ Communication from the Commission to the Council and the European Parliament, *The European Union’s role in promoting human rights and democratisation in third countries*, Brussels: EEC Publication 8.5.2001 (COM(2001) 252 final), p. 10.

the European Parliament, and by various NGOs working on the field of human rights.⁸ Moreover, EU human rights dialogues itself are assessed on a regular basis by a Working Party on Human Rights (COHOM) in cooperation with other parties. This Party looks at the situation in relation to the objectives the EU had set before starting a dialogue, the added value provided by the dialogue and the progress made. In case of progress, it tries to examine to what extent the EU's activities have contributed to this; in the opposite case, it assesses whether the EU should adjust its aims, or break off the human rights dialogue. In addition it can decide to suspend dialogue if the objectives have been achieved.⁹

Democratic principles

The EU does not give a clear definition of democracy, as it believes that there is no particular institutional model for democratic governance. Besides, the lack of an internationally agreed definition makes it very difficult to legitimise action in this field. The EU has seized upon the few provisions that can be found in international agreements as a legal basis for the inclusion of democratic principles in development assistance. The most important is Article 21, paragraph 1 of the UDHR that states that '[e]veryone has the right to take part in the government of his country, directly or through freely chosen representatives'. Paragraph 3 adds to this the sovereignty of the people expressed in periodic and genuine elections by universal and equal suffrage held by secret vote. However, the EU goes much further in its criteria in the *Communication from the Commission on Governance in the European Consensus on Development – Towards a harmonised approach within the European Union*. Though recognising each country's and society's freedom to choose and develop its own model, this has to include:

respect of human rights and fundamental freedoms – such as freedom of expression, information and association – support for democratisation processes and the involvement of citizens in choosing and overseeing those who govern them; respect for the rule of law and access for all to an independent justice system; access to information; a government that governs transparently and is accountable to the relevant institutions and to

⁸ Council of the European Union (Working Party on Human Rights (COHOM)), *EU guidelines on human rights dialogues with third countries – Update*, p. 7.

⁹ *Ibid.*, p. 13.

the electorate; human security; management of migration flows; effective institutions, access to basic social services, sustainable management of natural and energy resources and of the environment, and the promotion of sustainable economic growth and social cohesion in a climate conducive to private investment.¹⁰

Thus, the EU is not very clear about the distinction between human rights, democratic principles, good governance, and rule of law. One can argue that democratic principles must be seen as an umbrella term, under which notions as human rights, good governance and rule of law all fall. Indeed, the EU stresses the multidimensional nature of democratic governance that therefore needs to be approached holistically.¹¹ Remarkably, even the Cotonou Partnership Agreement remains vague about the notion, stating that '[d]emocratic principles are universally recognised principles underpinning the organisation of the State to ensure the legitimacy of its authority, the legality of its actions reflected in its constitutional, legislative and regulatory system, and the existence of participatory mechanisms'.¹² Equally unclear, in its Communication the EU writes that measuring progress in democratic governance has proved to be feasible,¹³ but does not identify how this can be measured. It only mentions the existence of national and international or global indicators, which should all be taken into consideration.

Rule of law

The rule of law is a problematic term, as it does not have a precise definition. Usually what is meant by this notion is a legal-political regime under which the law restrains the government by promoting certain liberties and creating order and

¹⁰ Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, *Governance in the European consensus on development. Towards a harmonised approach within the European Union*, Brussels: EEC Publication 30.8.2006 (COM(2006) 421 final), p. 5.

¹¹ *Ibid.*, p. 6.

¹² ACP-EC, 'Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000', Article 9, paragraph 2.

¹³ Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, *Governance in the European consensus on development. Towards a harmonised approach within the European Union*, Brussels: EEC Publication 30.8.2006 (COM(2006) 421 final), p. 8.

predictability regarding how a country functions.¹⁴ The essence is that individuals and the government are regulated by, submit to and obey the law, and not by arbitrary action by an individual or a small group. Thus, decisions should be made by the application of known principles or laws without the intervention of discretion in their application.¹⁵ Apart from this basic explanation, policymakers differ about questions whether democracy is a necessary precondition for rule of law, whether rule of law should be measured in moral terms – i.e. how just the legal system is – or with objective formal criteria, how the protection of human rights relates to rule of law, etcetera.¹⁶

The EU in its *Handbook on promoting good governance in EC development and cooperation* gives a very broad definition of the rule of law. The description of a country operating under the rule of law in this handbook encompasses a legislature that enacts laws that respect the constitution and human rights, an effective executive that is capable of establishing the social and economic conditions necessary for life in society, and a prison system respecting the human person.¹⁷ This broad concept includes compliance with international human rights standards and democratic principles and provides the legal basis for the inclusion of rule of law provisions in relations with third countries. The EU sees a judicial system based on the rule of law as an indispensable feature of democratic governance. This is repeated in the Cotonou Partnership Agreement, which states that ‘[t]he structure of government and the prerogatives of the different powers shall be founded on rule of law’.¹⁸

¹⁴ The University of Iowa Center for International Finance and Development, *What is the Rule of Law?*, http://www.uiowa.edu/ifdebook/faq/Rule_of_Law.shtml.

¹⁵ Bryan A. Garner (Ed.), *Black’s Law Dictionary*, St. Paul: West Group 1999, p. 1196.

¹⁶ For a discussion about the different approaches to define rule of law, see: Stephensen, Matthew, ‘Rule of Law as a Goal of Development Policy’, *World Bank*, <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTLAWJUSTINST/0,,contentMDK:20763583~isCURL:Y~menuPK:1989584~pagePK:210058~piPK:210062~theSitePK:1974062,00.html>.

¹⁷ European Commission (EuropeAid Cooperation Office), *Handbook on promoting good governance in EC development and cooperation*, Brussels: Thematic Network on Good Governance, year unknown, p. 57.

¹⁸ ACP-EC, ‘Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000’, Article 9, paragraph 2.

Good governance

The EU recognises the absence of an internationally agreed definition on good governance. However, it defines good governance as the state's ability to serve its citizens. This pragmatic terminology distinguishes good governance from definitions such as human rights, democracy, and corruption. According to the Commission in its *Communication on governance and development*, the concept of governance 'refers to the rules, processes, and behaviour by which interests are articulated, resources are managed, and power is exercised in society'.¹⁹ It is seen as a measure of stability and performance of a society, with governance evolving into good governance when a society develops more sophisticated political systems. In addition, the Cotonou Partnership Agreement defines good governance as 'the transparent and accountable management of human, natural, economic and financial resources for the purposes of equitable and sustainable development'.²⁰ Despite the lack of an internationally recognised definition, the EU emphasises the importance of good governance in development assistance by quoting the UN Millennium Declaration, which aims to create an environment that is conducive to development and to the elimination of poverty. According to the Declaration, this depends on good governance within each country, on good governance at the international level and on transparency in the financial, monetary and trading systems.²¹ In addition, Heads of States agreed in the Monterrey Consensus that good governance at all levels is essential for sustainable development, for sustained economic growth and for poverty eradication.²² The significance of including good governance in development assistance is repeated in a number of EU Communications and policy papers. The *Communication from the Commission on Governance in the European Consensus*

¹⁹ Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee, *Governance and development*, Brussels: EEC Publication 20.10.2003 (COM(2003) B1 final), p. 3.

²⁰ ACP-EC, 'Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000', Article 9, paragraph 3.

²¹ Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee, *Governance and development*, Brussels: EEC Publication 20.10.2003 (COM(2003) B1 final), p. 3, and: United Nations Millennium Declaration, paragraph 12 and 13.

²² Ibid, and: Monterrey Consensus of the International Conference on Financing for Development, paragraph 11.

on Development, for instance, states that ‘[a]chieving the MDGs [Millennium Development Goals] calls for proper delivery of public services and sustained economic growth based on the development of the private sector; these things are possible only in a climate of good governance’.²³

It is important to note, however, that the lack of a well-established rule or general principle in international law makes the inclusion of good governance into development conditionality a thorny issue. Whereas we can argue that human rights, and to a lesser extent democratic principles, have been defined in international law, this is not the case for good governance.²⁴ Moreover, the right to self-determination makes it difficult to justify the imposition of a particular way of governance.

The EU, in order to include good governance successfully in development programmes, acknowledges the significance of indicators to monitor and evaluate these programmes, and the problems still remaining here. It sees the OECD/DAC’s network on governance (GOVNET) as the major way to develop joint governance indicators.²⁵

Within the range of good governance, special attention is given to corruption. The EU sees combating corruption as a feature of good governance. The importance attached to this is expressed in the Cotonou Partnership Agreement, which states that good governance aims ‘in particular at preventing and combating corruption’,²⁶ and has a separate article (Article 97) dealing with a consultation procedure specifically concerning corruption. The EU derives the definition of this notion from the *UN’s Global Programme against Corruption*, which sees corruption as ‘every transaction between actors from the private and public

²³ Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, *Governance in the European consensus on development. Towards a harmonised approach within the European Union*, Brussels: EEC Publication 30.8.2006 (COM(2006) 421 final), p. 5.

²⁴ Karin Arts, *Integrating Human Rights into Development Cooperation: The Case of the Lomé Convention*, Leiden: Martinus Nijhoff Publishers 2000, pp. 40-41.

²⁵ Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee, *Governance and development*, Brussels: EEC Publication 20.10.2003 (COM(2003) B1 final), p. 7.

²⁶ ACP-EC, ‘Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000’, Article 9, paragraph 3.

sectors through which collective utilities are illegally transformed into private gains'.²⁷

By looking at these notions, the extent to which a legal basis exists for them became clear. Thus, the legal basis for human rights is quite well defensible. The other notions have a less well-founded legal basis. This is to a certain extent true for the notion of democratic principles, and even more for the rule of law and good governance. The lack of single internationally agreed definitions on these makes it difficult to find a legal basis. It is important to note, however, that in the relation between the EU and the ACP States these notions have an additional conclusive legal basis. As we have seen, since the mid-1990s a human rights and democracy clause became a fixed component in cooperation agreements, providing as such a solid legal basis for suspension or even cancellation of agreements on political grounds. In the Cotonou Partnership Agreement this component is expressed in Article 9, which deals with the '[e]ssential elements regarding human rights, democratic principles and the rule of law, and fundamental element regarding good governance'. The word *essential* is here of utmost importance with regard to the 1969 Vienna Convention on the Law of Treaties. Article 60 of this Convention provides for the '[t]ermination or suspension of the operation of a treaty as a consequence of its breach.' It states that in case of a material breach by one of the parties, the other party or parties can decide to suspend the operation of the treaty in whole or in part, or even to terminate it. A condition is that this material breach is either a repudiation of the treaty, or the violation of a provision *essential* to the accomplishment of the object or purpose of the treaty.²⁸ Thus, by choosing the word *essential* the EU has given political conditionality a strong legal basis in its relations with the signatories of Cotonou.

²⁷ Ibid., p. 10.

²⁸ United Nations, 'Vienna Convention on the Law of Treaties 1969', Article 60, paragraph 3a and b (emphasis added).

3.2 Case Studies

In the following sections, we will discuss the instances in which the EU has initiated a consultation procedure and taken appropriate measures with an ACP State. In order to limit the scope of the case studies, only the consultation procedures and measures held between the year 2000 and 2009 will be included, with the exception of consultation procedures with countries initiated before 2000, but that still continued under the ACP-EC Partnership Agreement.

3.2.1 *The Case of Sudan*

Due to concerns about a lack of human rights and a civil war in the south of the country, EC development assistance for Sudan was suspended in March 1990, despite the inexistence of a clause enabling the EC to suspend cooperation on the ground of these violations. Since 1994 the EU also imposed an arms embargo on the country, yet this was outside the framework of the Lomé Convention. In November 1999 a political dialogue between the EU and Sudan was established; this can be seen as a first attempt to normalise relations. The dialogue would last one year, but the EU decided to extend this for another year, thereby focussing on democracy and rule of law, human rights and the peace process. In December 2001, measures were taken in order to normalise relations in 2002. That is to say, by February 2002 the amount available for Sudan under the ninth EDF was notified, and by the end of the year a Country Strategy Paper and a National Indicative Programme were created. The repeal of aid suspension was an incentive to support the IGAD Peace Talks that were being held in the country and envisaged to be concluded by the end of 2002.²⁹ Since the resumption of aid in 2002, the Council has expressed its concern about the human rights situation and the developments in the region of Darfur in various Council Conclusions.³⁰ It also maintains its embargo on arms, munitions and military equipment on the

²⁹ Council of the European Union, *Country Strategy Paper for the Sudan – Possible normalisation of EU relations with the Sudan*, Brussels: 7 October 2002 (12683/02).

³⁰ See, for instance: Council of the European Union, *Sudan – Council conclusions*, Brussels: 18 May 2004 (9674/04); Council of the European Union, *Darfur/Sudan – Council conclusions*, Brussels: 27 July 2004 (11709/1/04); Council of the European Union, *Sudan – Council conclusions*, Brussels: 15 May 2006 (9352/06); Council of the European Union, *Sudan – Council conclusions*, Brussels: 17 March 2009 (7698/09).

country. In 2005, relations between the EU and Sudan have been fully normalised, as a result of the signature of the Comprehensive Peace Agreement (cpa) between the Government of Sudan and its main opposition, the SPLA/SPLM.

3.2.2 *The Case of Côte d'Ivoire*

A coup d'état in Côte d'Ivoire in December 1999 led to consultations between the EU and the ACP State under Article 366(a) of the fourth Lomé Convention; these took place on 7 February 2000. The interim authorities pledged to give the Interim Government full responsibility for managing the transition period; complete the work of the Electoral and Constitutional Advisory Committee by the end of March; stick to a timetable for the adoption of a constitution and the holding of Presidential, legislative and local elections before November 2000; ensure transparency of the State's decision-making process; uphold the separation of powers, pluralism and transparency, and respect human rights; strengthen audit and corrective measures to restore good governance; and submit regular reports on implementation of the above measures.³¹ In addition the Community decided to take appropriate measures until democratic principles were fully restored, such as increasing the monitoring and supervision of programmes by independent national bodies and the Commission, and a gradual and conditional approach for counterpart funds and programmes for which financing agreements had yet to be signed.³² These measures were due to expire by the end of 2000. However, given that the Presidential and parliamentary elections held were not sufficiently open and the transition to democracy was marked by violence and atrocities against the civilian population, the EU re-opened consultations on 22 January 2001. The Ivorian authorities again made a number of undertakings; the EU linked the implementation of these to the gradual resumption of cooperation. Initially, this cooperation would focus on social themes, institutional support and the private sector. In September 2001, the situation would be reviewed and if progress had been made, aid would be further resumed. In January 2002, there would be

³¹Commission of the European Communities, *Proposal for a Council decision concluding consultations with Côte d'Ivoire under Article 366(a) of the fourth ACP-EC Convention*, Brussels: 02.05.2000 (COM(2000) 258 final), p. 2.

³² Ibid., p. 7.

another review of the situation which – if positive – would lead to full resumption of cooperation.³³ This was the case, and development assistance was thus fully resumed in February 2002. According to the Council, the dialogue had enabled ‘a climate of trust and mutual understanding’.³⁴

The situation in Côte d’Ivoire nevertheless remained unstable, with a political and military crisis starting in September 2002. In various statements the EU expressed its concern about the human rights situation in the country. Despite a peace agreement signed at Marcoussis on 24 January 2003 atrocities continued and democratic principles were not respected. In light of this, the Commission proposed in August 2004 to open consultations with the country under Articles 9 and 96 of the Cotonou Agreement.³⁵ This was not adopted by the Council. The NIP, however, was not signed, given the continuing crisis and the impossibility of predicting how the political and economic situation would develop. The B envelope was used to finance any urgent operations.³⁶ The CSP and NIP for the period 2008-2013 have been signed recently.

3.2.3 The Case of Fiji

Consultations under Article 366(a) of the Lomé Convention and later Article 96 of the Cotonou Agreement were held with Fiji in 2000, following a coup d’état earlier that year. In these consultations the Commission identified a series of benchmarks that would be used to resume cooperation between the countries. These benchmarks were the content of a draft-constitution that had to be ready by the end of June 2001 and respect human, civil, political, economic and social rights for all Fijians; the adoption and promulgation of the new constitution by popular referendum before 2002; the holding of free and fair elections before July 2002; and the performance of judiciary procedures against the men who had

³³ Council, ‘Council Decision of 25 June 2001 concluding consultations with Côte d’Ivoire under Article 96 of the ACP-EC Partnership Agreement (2001/510/EC)’, in *Official Journal of the European Union* L 183, 6.7.2001.

³⁴ Council of the European Union, *Côte d’Ivoire – Final stage of the resumption of cooperation*, Brussels: 11 February 2002 (6167/02), p. 2.

³⁵ Commission of the European Communities, *Communication from the Commission to the Council concerning the opening of consultations with Côte d’Ivoire under Article 96 of the Cotonou Agreement*, Brussels: 10.8.2004 (COM(2004) 547 final).

³⁶ Communauté européenne-République de Côte d’Ivoire, *Document de stratégie pays et programme indicatif national pour la période 2008-2013*, Brussels: 4 June 2008, p. 5.

carried out the coup d'état.³⁷ The appropriate measures implemented by the Council were the suspension of all investment projects under Fiji's sixth, seventh and eighth EDF NIP, except for the Rural Primary Education Micro-Project; a gradual and conditional approach on the basis of the achievements of the benchmarks for programmes for which financing agreements had yet to be signed; and the delay in notification of the ninth EDF amount until positive developments had taken place. Contributions to regional projects, operations of a humanitarian nature, trade cooperation and trade related preferences were not affected with the measures. The NIP would only be signed at the end of the transition process with a democratically legitimate government. The Council did not specify the duration of the application of these measures, but stated that they would be revoked once free and fair elections had taken place and a legitimate government had assumed office in Fiji.³⁸ These elections were held in mid-2001, leading to the promised gradual resumption of EU-Fiji cooperation. However, full cooperation had to await a decision from the Fijian Court on the legal and constitutional conformity of the Government, given that these had been challenged.³⁹ Once the legitimacy of the Government was confirmed full cooperation was re-established – the last sanctions being lifted on 7 November 2003.

Following almost two months of tensions between the Government and the military forces, on 5 December 2006 Fiji faced a new military take-over led by Commodore Bainimarama. Given that the Government had been democratically elected in May 2006, the coup could not be justified with a lack of legitimacy of the government, and considerable internal opposition to the coup was noticed. Moreover, it was condemned widely by the international community, including the Council who called for 'the urgent and full restoration of democracy as well as return of civilian rule as soon as possible'.⁴⁰ It decided in February 2007 to open

³⁷ Commission of the European Communities, *Proposal for a Council decision concluding consultations with Fiji under Article 96 of the Cotonou Agreement*, Brussels: 2.3.2001 (COM(2001) 117 final), pp. 2-3.

³⁸ Council, 'Council Decision of 9 April 2001 concluding consultations with the Republic of the Fiji Islands under Article 96 of the ACP-EC Partnership Agreement (2001/334/EC)', in *Official Journal of the European Union* L 120, 28.4.2001.

³⁹ Council of the European Union, *Fiji – Follow-up to consultations under Article 96 of the Cotonou Agreement*, Brussels: 21 November 2001 (14240/1/01 REV 1).

⁴⁰ *Communication from the Commission to the Council on the opening of consultations with Fiji under Article 96 of the Cotonou Agreement*, Brussels: 17.1.2007 (COM(2007) 14 final), p. 3.

consultations with the country, which were conducted in a positive and constructive manner. The Interim Government agreed on a number of commitments regarding respect for democratic principles, rule of law, human rights and fundamental freedoms, and a number of follow-up commitments, such as the maintenance of a regular dialogue with the EU and full cooperation with eventual EU missions.⁴¹ The consultations were concluded on 1 October 2007, and the appropriate measures adopted by the Council were the following: the continuation of humanitarian aid, direct support to civil society and cooperation activities underway and/or in preparation as well as the ninth EDF End-of-term Review; the pursuance of cooperation activities that helped to return to democracy and improve governance; the implementation of the sugar reform accompanying measures and the preparation and signing of the multi-annual indicative programme for sugar were allowed to proceed; the finalisation, signing and implementation of the CSP and NIP for the tenth EDF were subjected to respect of the commitments made. The 2007 sugar allocation would be zero; the 2008 sugar allocation would become available in case of credible and timely preparation of elections in accordance with the agreed commitments; the 2009 sugar allocation would become available subject to a legitimate government being in place; the 2010 sugar allocation would depend on progress made in implementing the 2009 sugar allocation and the continuation of the democratic process. In addition, regional cooperation would be unaffected and cooperation with the EIB and the Centre for the Development of Enterprise was allowed to continue if fulfilment of commitments were made on time.⁴² At the time of writing the Council Decision is still effective; it will expire on 1 October 2009.

3.2.4 The Case of Haiti

In May and July 2000, general elections in Haiti took place in order to choose nineteen senators, eighty-three members of parliament, 133 mayors and 7124 local assembly members. The Organisation of American States (OAS) was in

⁴¹ Ibid., pp. 3-5.

⁴² Council, 'Council Decision of 1 October 2007 on the conclusion of consultations with the Republic of the Fiji Islands under Article 96 of the ACP-EC Partnership Agreement and Article 37 of the Development Cooperation Instrument (2007/641/EC)', in *Official Journal of the European Union* L 260, 5.10.2007.

charge to observe the elections and noted a number of irregularities, some instances of fraud, and use of an illegal method to calculate the votes for senate candidates. The Haitian authorities, however, refused to review the elections, which resulted in the EU decision to start a consultation procedure. The first meeting was held in Brussels on 26 September 2000. The failure of the Haitian authorities to take the EU concerns into account led to a Commission proposal by the end of the year to conclude the consultations and impose severe sanctions: the cancellation of the second tranche of the eighth EDF; the suspension of the direct budget aid; redirection of the remaining funds of the first eighth EDF tranche to projects directly benefitting the Haitian people, strengthening civil society and the private sector; and projects supporting democratisation and the rule of law, as well as to stop the procedure for allocating resources under the ninth EDF.⁴³ These measures were adopted by the Council in January 2001 and required a review before the end of that year.⁴⁴ On 14 December 2001, the Commission stated that some progress had been made, but no formal agreement had been signed between President Aristide's party Lafamni Lavallas and Convergence Démocratique, a coalition of the main opposition parties. The Commission proposed to use an agreement between the parties as a starting point for the gradual reactivation of the cooperation instruments affected by the measures on the basis of crisis exit indicators.⁴⁵ Moreover, the decision would be reviewed by the end of 2002. This review was a repetition of the previous year: still no formal agreement had been reached, and the Council decided to prolong the sanctions, while reiterating the EU's readiness to review the decision in case of encouraging developments, as well as to engage in enhanced political dialogue.⁴⁶ In addition, the second tranche

⁴³ Commission of the European Communities, *Proposal for a Council decision concluding the consultation procedure opened with Haiti under Article 96 of the ACP-EC Partnership Agreement*, Brussels: EEC Publication 21.12.2000 (COM(2000) 856 final), pp. 2-3.

⁴⁴ Council of the European Union, *Council Decision concluding the consultation procedure with Haiti under Article 96 of the ACP-EC Partnership Agreement*, Brussels: 23 January 2001 (5201/01).

⁴⁵ Commission of the European Communities, *Proposal for a Council decision amending Council Decision 2001/131/EC of 29 January 2001 concluding the consultation procedure with Haiti under Article 96 of the ACP-EC Partnership Agreement*, Brussels: 14.12.2001 (COM(2001) 781 final).

⁴⁶ Council of the European Union, *Council Decision amending Council Decision 2001/131/EC concluding the consultation procedure with Haiti under Article 96 of the ACP-EC Partnership Agreement*, Brussels: 19 December 2002 (15554/02).

of the eighth EDF would be provided for programmes that directly benefitted the Haitian people, that strengthened civil society and the private sector or that supported democratisation and the rule of law and the electoral process.⁴⁷ During the following year progress failed to occur again. Simultaneously, the socioeconomic situation in the country deteriorated. The OAS in its Resolution 822 specifically called for the normalisation of economic cooperation between the Government of Haiti and the International Financial Institutions. It also called for the establishment of a Provisional Electoral Council, which had to establish an Electoral Guarantee Commission in order to coordinate electoral observation in Haiti. The EU stated that decisions on the notification of the ninth EDF allocation, programming and signature of the relevant NIP would be taken on the basis of the implementation of this resolution.⁴⁸ In addition, the decision would be reviewed regularly and at least within six months, instead of the end of the next year.⁴⁹

In February 2004 the situation in Haiti deteriorated dramatically, with violence and bloodshed leading to the resignation of President Aristide. Therefore, an Interim President and Government were installed, who promised to conduct free and fair elections within eighteen months in three phases: local elections in spring 2005, legislative elections in summer 2005, and Presidential elections in fall of the same year. Furthermore, the creation of a Multinational Interim Force followed by a Stabilisation Force (MINUSTAH) were approved by UN Resolutions on 29 February and 30 April 2004 respectively, which took over on 1 June under Brazilian leadership to help stabilise the security situation and support the Interim Government in the democratisation process. The EU conditioned the re-establishment of regular cooperation to the pledges made by the Interim Government, in particular the return to full democratic rule.⁵⁰ The Commission proposed to continue the redirection of the remaining funds under the eighth EDF

⁴⁷ Commission of the European Communities, *Proposal for a Council decision amending Council Decision 2001/131/EC concluding the consultation procedure with Haiti under Article 96 of the ACP-EC Partnership Agreement*, Brussels: 15.12.2003 (COM(2003) 786 final), p. 2.

⁴⁸ Council of the European Union, *Council Decision amending Council Decision 2001/131/EC concluding the consultation procedure with Haiti under Article 96 of the ACP-EC Partnership Agreement*, Brussels: 18 December 2003 (16165/03), Annex p. 3.

⁴⁹ *Ibid.*, p. 3.

⁵⁰ Commission of the European Communities, *Proposal for a Council decision amending Decision 2001/131/EC concluding the consultation procedure with Haiti under Article 96 of the ACP-EC Partnership Agreement*, Brussels: 29.6.2004 (COM(2004) 454 final), p. 3.

to programmes with the objectives mentioned before, plus the inclusion of actions determined as short and medium term priorities in the Interim Cooperation Framework, a framework established in cooperation between the Interim Government, civil society and major donors. Moreover, it proposed to notify the allocation of resources under the ninth EDF and to start discussions on the programming of this EDF in order to prepare the CSP and the NIP. The latter would then be signed by a new democratically elected government. The ACP Working Party examined this Commission proposal and drew up a draft Council Decision on the basis of a compromise, which then needed the approval of the Council. This was done in a Decision adopted on 24 September 2004.⁵¹ Most importantly, it lifted all the previous measures, except for the signature of the ninth EDF NIP, which would take place after national elections – if judged free and fair by the competent Haitian institutions and the international Community – had been held.

In 2005, the situation in Haiti improved. Although the situation remained alarming regarding respect for human rights, safety and poverty, some progress on the political and economic front had been made, according to the assessments of the EU Commissioner on Development who visited the country in March 2005, a Commission report presented one month later, and a UN Secretary General report on MINUSTAH in May 2005. This led to the Commission and ACP Working Party proposal to repeal Decision 2001/131/EC that had concluded the consultation procedure. It was adopted by the Council on 4 October 2005.⁵² In addition, instead of postponing the signature of NIP until a new government had been democratically elected and installed, this would now be signed as soon as possible. More important than the little progress observed, the belief that the democratic process in Haiti would benefit from additional financial support made the EU decide to resume full cooperation with the country. Thus, this Decision was meant as an incentive to strengthen respect for human rights, democratic

⁵¹ Council of the European Union, *Council Decision amending Decision 2001/131/EC concluding the consultation procedure with Haiti under Article 96 of the ACP-EC Partnership Agreement*, Brussels: 17 September 2004 (11347/04).

⁵² Council of the European Union, *Council Decision repealing Decision 2001/131/EC concluding the consultation procedure with Haiti under Article 96 of the ACP-EC Partnership Agreement*, Brussels: 4 October 2005 (12336/05).

principles, good governance and rule of law. After this Decision, which was published in the Official Journal of the European Union on 17 October 2005, the consultation procedure has not taken place again with Haiti.

3.2.5 *The Case of Zimbabwe*

In October 2000 the Joint Parliamentary Assembly of the Partnership Agreement adopted a resolution on the situation in Zimbabwe, in which they declared their satisfaction about the ‘calm atmosphere’ and ‘peaceful manner’ in which the parliamentary elections of 24 and 25 June 2000 were conducted, although the electoral campaign had been marked by political violence and human rights abuses. In the months following, questions were raised to the Council by various MEPs concerning human rights abuses, intimidation and lack of freedom surrounding the electoral process, and the use of torture against supporters of opposition parties, and a number of Parliamentary resolutions were adopted, all regarding the worrisome human rights situation, the governance of Mr. Mugabe and the lack in rule of law.⁵³ Initially nothing was done, but in March 2001 a political dialogue was established, the main objective being to support free and fair March 2002 Presidential elections. Eventually a Common Position under the CFSP – thus outside the framework of the Cotonou Agreement – was adopted by the Council on 18 February 2002, when the situation in Zimbabwe had deteriorated severely and minimum internationally agreed conditions for free and fair elections had not yet been met. Moreover, a Decision was taken to close the consultation procedure under Article 96 and to implement the following appropriate measures: the suspension of the financing of budgetary support under Zimbabwe’s seventh and eighth EDF NIP; the suspension of financial support for all projects, except for those in direct support of the population; the financing of projects to support democratisation, respect for human rights and the rule of law;

⁵³ See, for instance: Concepció Ferrer (PPE-DE), ‘Written question to the Council. The electoral process in Zimbabwe’, in *Official Journal of the European Union* 113 E, 18.04.2001, p. 0082; Gunilla Carlsson (PPE-DE), ‘Written question to the Council. Reception given to President Mugabe of Zimbabwe’, in *Official Journal of the European Union* 340 E, 04.12.2001, pp. 0118-0119; European Parliament resolution on the parliamentary elections in Zimbabwe, in *Official Journal* C 121, 24.04.2001, pp. 0394-0396; European Parliament resolution on the situation in Zimbabwe, in *Official Journal* C 343, 05.12.2001, pp. 0304-0306.

the suspension of the signature of the ninth EDF NIP; and the interruption of Article 12 of Annex 2 to the Cotonou Agreement as far as required for the application of restrictive measures adopted.⁵⁴ In addition, the Common Position introduced certain restrictions against the Government, such as an arms embargo, and measures to prevent the entry into or transit through the territories of the EC Member States of persons who were engaged in activities undermining democracy, respect for human rights and the rule of law in Zimbabwe.⁵⁵ A list of the persons concerned was annexed to the Common Position and revised regularly. This was done in several amendments, such as the ‘Council Common Position of 22 July 2002 amending Common Position 2002/145/CFSP concerning restrictive measures against Zimbabwe (2002/600/CFSP)’. The Council Decision of 18 February 2002 to conclude consultations with the country was applicable for twelve months. In February 2003 it was decided to extend it for twelve months, and the same was done in February 2004,⁵⁶ in February 2005,⁵⁷ in February 2006,⁵⁸ in February 2007,⁵⁹ in February 2008⁶⁰ and in February 2009.⁶¹ Thus, the appropriate measures currently in force will continue to apply until 20 February

⁵⁴ ‘Council Decision of 18 February 2002 concluding consultations with Zimbabwe under Article 96 of the ACP-EC Partnership Agreement (2002/148/EC)’, in *Official Journal of the European Union* L 50, 21.2.2002, pp. 64-65.

⁵⁵ ‘Council Common Position of 18 February 2002 concerning restrictive measures against Zimbabwe (2002/145/CFSP)’, in *Official Journal of the European Union* L 50, 21.2.2001, pp. 2-3.

⁵⁶ ‘Council Decision of 19 February 2004 extending the period of application of the measures in Decision 2002/148/EC concluding consultations with Zimbabwe under Article 96 of the ACP-EC Partnership Agreement (2004/157/EC)’, in *Official Journal of the European Union* L 50, 20.2.2004.

⁵⁷ ‘Council Decision of 17 February 2005 extending the period of application of the measures in Decision 2002/148/EC concluding consultations held with Zimbabwe under Article 96 of the ACP-EC Partnership Agreement (2005/139/EC)’, in *Official Journal of the European Union* L 48, 19.2.2005.

⁵⁸ ‘Council Decision of 14 February 2006 extending the period of application of the measures in Decision 2002/148/EC concluding consultations with Zimbabwe under Article 96 of the ACP-EC Partnership Agreement (2006/114/EC)’, in *Official Journal of the European Union* L 48, 18.2.2006.

⁵⁹ ‘Council Decision of 19 February 2007 extending the period of application of the measures in Decision 2002/148/EC concluding consultations with Zimbabwe under Article 96 of the ACP-EC Partnership Agreement (2007/127/EC)’, in *Official Journal of the European Union* L 53, 22.2.2007.

⁶⁰ ‘Council Decision of 18 February 2008 extending the period of application of the measures in Decision 2002/148/EC concluding consultations with Zimbabwe under Article 96 of the ACP-EC Partnership Agreement (2008/158/EC)’, in *Official Journal of the European Union* L 51, 26.2.2008.

⁶¹ ‘Council Decision of 19 February 2009 extending the period of application of the measures in Decision 2002/148/EC concluding consultations with Zimbabwe under Article 96 of the ACP-EC Partnership Agreement (2009/144/EC)’, in *Official Journal of the European Union* L 49, 20.2.2009.

2010 and will be revoked only once the prevailing conditions ensure respect for human rights, democratic principles, good governance and rule of law.

3.2.6 *The Case of Liberia*

In 2001, the Council of the EU had already decided on a Common Position (2001/357/CFSP) concerning restrictive measures against Liberia as a response to human rights violations. In the same year, consultations were held under Articles 96 and 97 of the ACP-EC Partnership Agreement, with the EU expressing its concern about human rights abuses, freedom of expression, corruption and good governance. On 25 March 2002, the Council concluded these consultations and took appropriate steps that would remain into force for two years. The EU decided to take a positive approach as an incentive for the undertakings made by the Liberian authorities. The political dialogue process and six-monthly political dialogue, as well as direct support measures and preparation for the elections would be maintained. The gradual extension of cooperation would be conditional to the progress made. Moreover, implementation of current projects funded under Article 72 of the ACP-EC Partnership Agreement would be continued; contributions to regional projects, operations of a humanitarian nature, trade cooperation and trade-related preferences would not be affected; the signature and implementation of the eighth EDF NIP would be subject to actual progress made; and notification of the ninth EDF allocation would be made once free and fair elections had taken place. The Commission would continue to exercise the function of national authorising officer until implementation of the second instalment of the eighth EDF NIP.⁶²

In August 2003 the Council decided to adopt ‘in a case of special urgency’ measures ‘in order to allow support to the peace process in Liberia in particular through possible support to peacekeeping operations, a demobilisation and reintegration programme, institution building and restoring democratic

⁶² Council, ‘Council Decision of 25 March 2002 concluding consultations with Liberia under Articles 96 and 97 of the ACP-EC Partnership Agreement (2002/274/EC)’, in *Official Journal of the European Union* L 96, 13.4.2002.

structures’.⁶³ The previous measures were replaced by the following: six monthly political reviews; continuation of the implementation of current projects funded under Article 72 of the Cotonou Agreement; suspension of Chapter 1 of Annex 4 to the Partnership Agreement; and notification of the ninth EDF allocation once the Comprehensive Peace Agreement (cpa) was in force and the signatory parties had shown commitment to implement the agreement. Furthermore, the Commission continued to exercise the function of national authorising officer, and contributions to regional projects, operations of a humanitarian nature, trade cooperation and trade-related preferences were not affected.⁶⁴ These measures were due to expire by the end of 2004. In December of that year the Council however decided to extend the measures for eighteen months.⁶⁵ In June 2006, the Commission proposed to lift the measures. Several steps undertaken by the Liberian Government – such as its active involvement in implementing an anti-corruption plan and the holding of free and fair elections in October 2005 – attested to its determination to respect the principles of good governance, human rights and rule of law, according to the Council. Hence, it adopted its decision to lift the appropriate measures on 27 June 2006.⁶⁶

3.2.7 The Case of the Central African Republic

On 15 March 2003 a coup d’état took place, headed by François Bozizé who proclaimed himself President, suspended the constitution and dissolved the National Assembly and the Government. The EU heavily condemned this in a statement one week later. Bozizé announced a temporary interruption in the democratic process, but pledged to hold transparent elections, however without providing a timetable for this. The Commission, in reaction to these events, proposed the Council to open consultations under Article 96, in order to ‘examine

⁶³ ‘Council Decision of 25 March 2003 adopting measures concerning Liberia under Article 96 of the ACP-EC Partnership Agreement in a case of special urgency (2003/631/EC)’, in *Official Journal of the European Union* L 220, 3.9.2003, p. 3.

⁶⁴ *Ibid.*, p. 4

⁶⁵ Council, ‘Council Decision of 22 December 2004 amending Decision 2003/631/EC adopting measures concerning Liberia under Article 96 of the ACP-EC Partnership Agreement in a case of special urgency (2005/16/EC)’, in *Official Journal of the European Union* L 8, 12.1.2005.

⁶⁶ Council, ‘Council Decision of 27 June 2006 amending Decision 2003/631/EC adopting measures concerning Liberia under Article 96 of the ACP-EC Partnership Agreement in a case of special urgency (2006/450/EC)’, in *Official Journal of the European Union* L 179, 1.7.2006.

the situation in depth and, if necessary, to remedy it'.⁶⁷ This was adopted by the Council and consultations were opened on 22 May 2003. The Central African Republic Government made several commitments, such as the return to constitutional rule, the promise to maintain a multi-party political system, to restructure the defence and security forces, and to improve the management of public finances and fight corruption. The EU however found that although some improvements were visible – notably the initiation of a national dialogue, the payment of salaries between March and July, and an action plan to improve public finances – many concerns remained, in particular the lack of actions or measures to ensure the electoral timetable, the deterioration in the human rights situation, and the lack of rule of law. For those reasons, the Council decided to take appropriate measures under Article 96(2)(c) of the Cotonou Agreement, meaning a partial suspension of cooperation that would apply to the operations provided for in the ninth EDF NIP. Cooperation would be fully resumed once democracy and the rule of law had been re-established following the elections that would take place by early 2005 at the latest. In case of non-fulfilment of the commitments made, the Union would reduce the ninth EDF allocation to the Central African Republic by twenty per cent a year.⁶⁸ This Decision applied until 30 June 2005, after which it was decided to normalise development assistance with the country, given that Presidential and legislative elections held that year were endorsed as free and fair by the international community.

3.2.8 The Case of Guinea-Bissau

Extreme governmental instability in Guinea-Bissau had already been a problem since the end of the 1990s: in 1999 the EU held consultations with the country under Article 366a of the Lomé Convention as a result of a coup d'état earlier that

⁶⁷ Commission of the European Communities, *Communication from the Commission to the Council concerning the opening of consultations with the Central African Republic under Article 96 of the Cotonou Agreement*, Brussels: 28.4.2003 (COM(2003) 222 final), p. 2.

⁶⁸ Council, 'Council Decision of 24 November 2003 concluding the consultation procedure with the Central African Republic and adopting appropriate measures under Article 96 of the Cotonou Agreement (2003/837/EC)', in *Official Journal of the European Union* L 319, 4.12.2003.

year.⁶⁹ However, no appropriate measures were adopted due to the return to democracy during the course of the consultations. Another coup d'état took place on 14 September 2003. The Commission proposed to open consultations with the authorities in order for them to clarify the organisation and conduct of general elections; the progress of the emergency programme that was set up by the country's transitional government; the progress towards a return to an independent justice system; and undertakings concerning the submission of the armed forces to civilian rule once constitutional order was re-established.⁷⁰ During these consultations the Guinea-Bissau's representatives undertook to restore the constitutional order consistent with human rights, democratic principles and the rule of law, and to establish conditions conducive to the country's political stability and sustainable development.⁷¹ Despite numerous issues of concern remaining, in particular the consolidation of public finances, the measures taken by Guinea-Bissau's authorities – especially the ones that had enabled the holding of free, fair and transparent general elections in March 2004, and the confirmation of progress towards a return to an independent judiciary – made the Council decide in September to conclude Consultations with the country.⁷² Thus, again no appropriate measures were adopted.

3.2.9 The Case of the Togolese Republic

Cooperation with the Togolese Republic had been suspended in 1993 due to divergence on the political situation in the country. The EU gradually resumed development assistance from 1994 onwards. On 30 March 2004 again the Council decided to initiate consultations with Togo under Article 96 of the Cotonou Agreement because of the alarming situation in the country as concerns human

⁶⁹ Commission of the European Communities, *Communication from the Commission to the Council on the opening of consultations with Guinea-Bissau pursuant to Article 366a of the Lomé Convention*, Brussels: 09.07.1999 (COM(1999) 361 final).

⁷⁰ Commission of the European Communities, *Communication from the Commission to the Council concerning the opening of consultations with Guinea-Bissau under Article 96 of the Cotonou Agreement*, Brussels: 26.01.2004 (COM(2003) 824 final/2).

⁷¹ Commission of the European Communities, *Proposal for a Council decision concluding consultations with Guinea-Bissau under Article 96 of the Cotonou Agreement*, Brussels: 10.6.2004 (COM(2004) 423 final).

⁷² Council, 'Council Decision of 24 September 2004 concluding consultations with Guinea-Bissau under Article 96 of the ACP-EC Partnership Agreement (2004/680/EC)', in *Official Journal of the European Union* L311, 8.10.2004.

rights and democratic principles. These took place two weeks later in Brussels. Hereby the Togolese Government gave twenty-two undertakings, including a return to democracy, strengthening of human rights and fundamental freedoms, and a consolidation of the rule of law. In the following months some undertakings had been met, but several important measures remained to be taken, especially as concerns the restoration of democracy. Therefore the Commission proposed on 1 September 2004 that a decision should be adopted to conclude the consultation procedure, which was carried out by the Council in November 2004.⁷³ The measures taken were the following: the EU would continue the implementation of projects financed with the unexpended balances of the sixth and seventh EDF that would benefit the population and promote compliance with the essential elements of the Cotonou Agreement, as well as the decentralised environmental management projects and the Framework of Mutual Obligations for Stabex Funds; in order for the Togolese Government to carry out the undertakings made, institutional aid was provided from the unexpended balances of the sixth and seventh EDF funds; the ninth EDF allocation would be notified after electoral arrangements were established and a date for the parliamentary elections was set; aid for preparing these elections would be provided as long as Togo adhered to the conditions of transparent and democratic elections acceptable to all parties; after holding free and fair parliamentary elections, cooperation with the EU would completely resume; contributions to regional projects would be considered on a case-by-case basis; humanitarian operations, trade cooperation and trade-linked preferences would not be affected by the measures. The measures would be reviewed at least every six months.⁷⁴

The death of President Eyadema in February 2005 caused a new political crisis, the rock bottom being the constitutional coup on 6 February 2005 and the Presidential elections two months later, the fairness of them being contested by the opposition in Togo as well as by the international community. The first monitoring mission under the Council Decision and a UN fact-finding mission

⁷³ Council of the European Union, *Council Decision concluding the consultation procedure with the Togolese Republic under Article 96 of the Cotonou Agreement*, Brussels: 8 November 2004 (12744/04).

⁷⁴ Ibid., Annex pp. 4-5.

confirmed the precarious human rights situation in the country. However, the dubious legitimacy of the new President and Government caused them to follow a policy of openness, including the adoption of measures to implement the undertakings made to the EU, such as a new press code, a programme of judicial reform, and the reform of the armed forces. In October 2006 the European Commission estimated the time needed to carry out all the undertakings to be twelve to twenty-four months, and therefore proposed to the Council to extend for two years the application of the Council Decision of 2004, with some minor adjustments to the appropriate measures.⁷⁵ The Council extended the validity of Decision 2004/793/EC for twelve months, with a few changes: in addition to the measures already mentioned, the unexpended balances of the sixth and the seventh EDF would be used to support the holding of parliamentary elections, a programme to reform the justice system and raise awareness of human rights, and to finance a welfare programme of highly labour-intensive works. In addition, given that electoral arrangements were established, the notification and implementation of the ninth EDF would be initiated.⁷⁶

By the end of 2007 the situation in Togo had improved in such a way that the General Secretariat of the Council asked COREPER to recommend the Council to bring the appropriate measures to an end. An important landmark was the positive conduct of the parliamentary elections held in October 2007, which were assessed as being satisfactory by the observer missions of the EU and other international organisations. Development cooperation was fully re-established by the end of 2007.

3.2.10 The Case of the Republic of Guinea

The democratic environment and rule of law had been deteriorating gradually in the Republic of Guinea since the end of the 1990s. Events as the dubious 2000

⁷⁵ Commission of the European Communities, *Proposal for a Council decision amending Decision 2004/793/EC concluding the consultation procedure with the Togolese Republic under Article 96 of the Cotonou Agreement*, Brussels: 6.10.2006 (COM(2006) 577 final).

⁷⁶ Council of the European Union, 'Council Decision of 16 November amending Decision 2004/793/EC concluding the consultation procedure with the Togolese Republic under Article 96 of the Cotonou Agreement (2006/863/EC)' in *Official Journal of the European Union* L335, 1 December 2006, p. 44.

municipal elections that were marked by violence, the referendum of November 2001 enhancing considerably the powers of the President, and the undemocratic parliamentary elections in June 2002 amounted to the Commission's judgement of non-respect for the essential elements enumerated in Article 9 of the ACP-EC Agreement and led to its proposal to the Council to open consultations with the country.⁷⁷ This proposal was adopted on 31 March 2004 and consultations started on 20 July of the same year. Despite some substantial initiatives taken by Guinea's authorities with respect to the undertakings made during the consultations, several important measures remained to be taken regarding human rights, fundamental freedoms and good governance. Therefore, the Council decided on 14 April 2005 to conclude the consultations with the Republic of Guinea, and take appropriate measures that would be valid for three years: cooperation financed from the unexpended balances of the sixth, seventh and eighth EDF continued only for implementation of the undertakings given by Guinea's authorities; cooperation financed from Envelope B of the ninth EDF only continued for implementation of programmes directly aimed at improving the living conditions of the most disadvantaged sections of the population; programmes to strengthen civil society, democratic principles, human rights and good governance and the consolidation of free media were also supported; contributions to regional projects were to be considered on a case-by-case basis; support for preparation of the elections was provided from the unexpended balances or from Envelope B of the ninth EDF; and Envelope A of the ninth EDF was reduced by 65 million euro. Evidently, humanitarian operations, trade cooperation and trade-linked preferences were continued. The signature and implementation of the CSP and NIP were postponed until sufficient progress had been noticed, mainly with regard to the preparation and holding of free and fair local and legislative elections.⁷⁸ In addition, an enhanced political dialogue within the framework of Article 8 of the Cotonou Agreement was established with the Government of Guinea. Political dialogue initially made slow progress and was

⁷⁷ Commission of the European Communities, *Communication from the Commission to the Council concerning the opening of consultations with the Republic of Guinea under Article 96 of the Cotonou Agreement*, Brussels: 26.8.2003 (COM(2003) 517 final).

⁷⁸ Council of the European Union, *Council Decision concluding consultations with the Republic of Guinea under Article 96 of the Cotonou Agreement*, Brussels: 12 April 2005 (7367/05), pp. 4-5.

even suspended from December 2005 following the local elections. From July 2006 onwards, considerable progress was made and at the end of the year the EU decided to make Envelope A of the ninth EDF available. At the same time living conditions in Guinea deteriorated, leading to considerable instability in the country, and the postponement of parliamentary elections – hence the extension of the appropriate measures for twelve months until 14 April 2009.⁷⁹

Before the expiration of the appropriate measures, a coup d'état as a result of the death of President Conté was carried out in the country, leading to the suspension of the constitution and political and trade union activities, and the dissolution of the institutions of the Republic. The EU, condemning the seizure of power, reacted by proposing to re-open consultations under Article 96 in order to give the military junta the opportunity to present its proposals for ending the crisis.⁸⁰ These consultations are currently being held.

3.2.11 The Case of Mauritania

On 3 August 2005 a coup d'état took place in the Islamic Republic of Mauritania. Considering that this coup constituted a violation of certain essential elements in Article 9 of the ACP-EC Partnership Agreement the EU invited Mauritania to consultations, which began on 30 November 2005. The Government made a number of undertakings and provided the EU a report with the progression made in mid-January 2006. Consequently, a Council Decision was adopted on 29 May 2006 that concluded the consultations with Mauritania, and in which the EU announced the appropriate measures adopted. These would expire on 29 November 2007. They involved the continuation of cooperation activities under way under the ninth EDF and its predecessors; the sustain of preparation and implementation of the institutional support projects bolstering the transition process; the launch of programming activities for the tenth EDF in accordance

⁷⁹ Council of the European Union, 'Council Decision of 14 April 2008 extending Decision 2005/321/EC concluding the consultation procedure with the Republic of Guinea under Article 96 of the Cotonou Agreement (2008/363/EC)', in *Official Journal of the European Union* L 125, 9.5.2008.

⁸⁰ Commission of the European Communities, *Communication from the Commission to the Council on the opening of consultations with Guinea under Article 96 of the Cotonou Agreement*, Brussels: 16.2.2009 (COM(2009) 76 final).

with a timetable drawn and conditional on the holding of the referendum on the constitution and the planned elections; and the delay in signing the tenth EDF CSP until the country returned to a constitutional order.⁸¹ These appropriate measures were lifted in 2007 as had been provided by the Decision, given that Mauritania's interim authority had carried through a democratic transition and a constitutional referendum, as well as the fact that parliamentary and Presidential elections had taken place earlier that year.

Despite these promising developments, a political crisis starting in May 2008 culminated in another coup on 6 August 2008. This was the reason to re-open consultations, which started on 20 October 2008 in Paris. Mauritania's proposals and commitments, however, were not satisfactory to the EU, and the EU failed to notice any progress in the country. The Commission therefore proposed a series of appropriate measures, including individual sanctions targeted at those responsible for the coup, economic sanctions to reduce the amount of aid paid directly to or managed by the government, state agencies and state-owned enterprises, and restrictions on cooperation.⁸² In April 2009, the Council adopted the Decision with appropriate measures valid for twenty-four months, aiming a gradual re-opening of cooperation in response to four steps towards the return to constitutional order. In this approach, every step contains a series of measures. Currently, Mauritania is still in the first step. Some examples of measures currently taken are the suspension of the implementation of ongoing projects and of the tenth EDF indicative programme; the honouring of payments relating to ongoing contracts in accordance with the relevant financing decisions; and the signature of new contracts restricted to certain programmes such as those in the 'non-State actors and democracy and human rights' area (non-EDF), programmes implementing the migration management support project and the 'refugee return

⁸¹ 'Council Decision of 29 May 2006 concerning the conclusion of consultations with the Islamic Republic of Mauritania under Article 96 of the revised Cotonou Agreement (2006/470/EC)', in *Official Journal of the European Union* L 187, 8.7.2006.

⁸² Commission of the European Communities, *Proposal for a Council decision concerning the conclusion of consultations with the Islamic Republic of Mauritania under Article 96 of the revised Cotonou Agreement*, Brussels: 24.02.2009 (COM(2009) 92 final), p. 4.

support' project.⁸³ It remains to be seen if the sanctions and measures taken will be effective.

3.3 Conclusion

This chapter has provided a detailed explanation of the essential notions mentioned in Article 9 of the ACP-EC Partnership Agreement. In addition, an overview has been given of the cases in which the EU has conducted consultations, often accompanied by appropriate measures, under Article 96 – and in one case Article 97 as well – of the Agreement. Yet nothing has been said about the effectiveness and consistency of the cases. In the next chapter, an attempt will be made to provide some answers and conclusions to this and the questions arising with them.

⁸³ Council of the European Union, *Council Decision concerning the conclusion of consultations with the Islamic Republic of Mauritania under Article 96 of the ACP-EC Partnership Agreement*, Brussels: 3 April 2009 (7857/1/09).

4

The Effectiveness and Consistency of EU Political Conditionality

In the previous chapter the notions on which the EU imposes conditionality – that is to say human rights, democratic principles, rule of law and good governance – have been discussed. The countries that breached (one of) the essential elements mentioned in the ACP-EC Partnership Agreement and on which the EU has imposed sanctions or suspended part of the Cotonou Agreement have also been studied. This chapter will try to assess how effective the EU's actions were. In addition, it will examine how consistent the EU is in opening consultations and taking appropriate measures under Article 96 or 97.

4.1 Methodology

In order to be able to assess the effectiveness and consistency of EU political conditionality, use has been made of the data of the Freedom House¹ concerning countries' political rights and civil liberties situations. This is an annual index examined by the Freedom House that rates political rights and civil liberties for all the countries in the world. That is to say the electoral process, political pluralism and participation, and functioning of the government on the one hand, and freedom of expression and belief, associational and organisational rights, rule of law, personal autonomy and individual rights on the other. Table 4.1 shows the records of the seventy-nine ACP States from 2000 to 2008. The numbers one to seven represent the average ratings of the political rights and civil liberties in every country. Countries with an average between one and 2.5 are considered to be *free*; countries marked with an average between three and five are *partly free* countries; and countries with an average of 5.5 or higher – up to seven – are

¹ Freedom House is an independent NGO that supports the expansion of freedom in the world.

labelled *not free*. In addition, Table 4.1 indicates the instances the EU has initiated the consultation procedure and implemented appropriate measures under Article 96 or 97 of the ACP-EC Partnership Agreement. These instances were discussed in the previous chapter. The effectiveness will be examined in the next section.

Table 4.1 Freedom House Rating of ACP States

ACP State	2000-2001		2002		2003		2004		2005		2006		2007		2008	
	PR	CL	PR	CL	PR	CL	PR	CL	PL	CL	PR	CL	PR	CL	PR	CL
Angola	6	6	6	5	6	5	6	5	6	5	6	5	6	5	6	5
Antigua & Barbuda	4	2	4	2	4	2	2	2	2	2	2	2	2	2	2	2
Bahamas	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Barbados	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Belize	1	2	1	2	1	2	1	2	1	2	1	2	1	2	1	2
Benin	3	2	3	2	2	2	2	2	2	2	2	2	2	2	2	2
Botswana	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2
Burkina Faso	4	4	4	4	4	4	5	4	5	3	5	3	5	3	5	3
Burundi	6	6	6	5	5	5	5	5	3	5	4	5	4	5	4	5
Cameroon	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6
Cape Verde	1	2	1	2	1	1	1	1	1	1	1	1	1	1	1	1
Central African Republic	5	5	5	5	7	5	6	5	5	4	5	4	5	5	5	5
Chad	6	5	6	5	6	5	6	5	6	5	6	6	7	6	7	6
Comoros ²	6	4	5	4	5	4	4	4	4	4	3	4	4	4	3	4
DR Congo	6	6	6	6	6	6	6	6	6	6	5	6	5	6	6	6
Republic of Congo	5	4	6	4	5	4	5	4	5	5	6	5	6	5	6	5
Cook Islands	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Côte d'Ivoire	5	4	6	6	6	5	6	6	6	6	7	6	7	5	6	5
Cuba ³	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	6
Djibouti	4	5	4	5	5	5	5	5	5	5	5	5	5	5	5	5
Dominica	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Dominican Republic	2	2	2	2	3	2	2	2	2	2	2	2	2	2	2	2
East Timor	5	3	3	3	3	3	3	3	3	3	3	4	3	4	3	4
Equatorial Guinea	6	6	7	6	7	6	7	6	7	6	7	6	7	6	7	7
Eritrea	7	6	7	6	7	6	7	6	7	6	7	6	7	6	7	6
Ethiopia	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5
Fiji	4	3	4	3	4	3	4	3	4	3	6	4	6	4	6	4

² The Case of Comoros is not included in Chapter 3, because Council Decisions on consultations and appropriate measures were all taken under Article 366(a) of the fourth Lomé Convention.

³ Cuba is not a signatory of the Cotonou Agreement. However, in 2008 the Council decided to lift the diplomatic measures, adopted in 2003 as 'a means to facilitate the political dialogue process'.

Table 4.1 Freedom House Rating of ACP States

ACP State	2000-2001		2002		2003		2004		2005		2006		2007		2008	
Gabon	5	4	5	4	5	4	5	4	6	4	6	4	6	4	6	4
The Gambia	5	5	4	4	4	4	4	4	5	4	5	4	5	4	5	4
Ghana	2	3	2	3	2	2	2	2	1	2	1	2	1	2	1	2
Grenada	1	2	1	2	1	2	1	2	1	2	1	2	1	2	1	2
Guinea	6	5	6	5	6	5	6	5	6	5	6	5	6	5	7	5
Guinea-Bissau	4	5	4	5	6	4	4	4	3	4	4	4	4	4	4	4
Guyana	2	2	2	2	2	2	2	2	3	3	2	3	2	3	2	3
Haiti	6	6	6	6	6	6	7	6	7	6	4	5	4	5	4	5
Jamaica	2	3	2	3	2	3	2	3	2	3	2	3	2	3	2	3
Kenya	6	5	4	4	3	3	3	3	3	3	3	3	4	3	4	3
Kiribati	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Lesotho	4	4	2	3	2	3	2	3	2	3	2	3	2	3	2	3
Liberia	6	6	6	6	6	6	5	4	4	4	3	4	3	4	3	4
Madagascar	2	4	3	4	3	3	3	3	3	3	4	3	4	3	4	3
Malawi	3	4	4	4	3	4	4	4	4	4	4	3	4	4	4	4
Mali	2	3	2	3	2	2	2	2	2	2	2	2	2	3	2	3
Marshall Islands	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Mauritania	5	5	5	5	6	5	6	5	6	4	5	4	4	4	6	5
Mauritius	1	2	1	2	1	2	1	1	1	1	1	2	1	2	1	2
Micronesia	1	2	1	2	1	1	1	1	1	1	1	1	1	1	1	1
Mozambique	3	4	3	4	3	4	3	4	3	4	3	4	3	3	3	3
Namibia	2	3	2	3	2	3	2	3	2	2	2	2	2	2	2	2
Nauru	1	3	1	2	1	1	1	1	1	1	1	1	1	1	1	1
Niger	4	4	4	4	4	4	3	3	3	3	3	3	3	4	3	4
Nigeria	4	5	4	5	4	4	4	4	4	4	4	4	4	4	5	4
Niue	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Palau	1	2	1	2	1	1	1	1	1	1	1	1	1	1	1	1
Papua New Guinea	2	3	2	3	3	3	3	3	3	3	3	3	3	3	4	3
Rwanda	7	6	7	5	6	5	6	5	6	5	6	5	6	5	6	5
Saint Kitts & Nevis	1	2	1	2	1	2	1	2	1	1	1	1	1	1	1	1
Saint Lucia	1	2	1	2	1	2	1	2	1	1	1	1	1	1	1	1
Saint Vincent & Grenadines	2	1	2	1	2	1	2	1	2	1	2	1	2	1	2	1
Samoa	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2
São Tomé & Príncipe	1	2	1	2	2	2	2	2	2	2	2	2	2	2	2	2
Senegal	3	4	2	3	2	3	2	3	2	3	2	3	2	3	3	3
Seychelles	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3
Sierra Leone	4	5	4	4	4	3	4	3	4	3	4	3	3	3	3	3
Solomon Islands	4	4	3	3	3	3	3	3	3	3	4	3	4	3	4	3
Somalia	6	7	6	7	6	7	6	7	6	7	7	7	7	7	7	7
South Africa	1	2	1	2	1	2	1	2	1	2	2	2	2	2	2	2
Sudan	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7
Suriname	1	2	1	2	1	2	1	2	2	2	2	2	2	2	2	2
Swaziland	6	5	6	5	7	5	7	5	7	5	7	5	7	5	7	5
Tanzania	4	4	4	3	4	3	4	3	4	3	4	3	4	3	4	3

Table 4.1 Freedom House Rating of ACP States

ACP State	2000-2001		2002		2003		2004		2005		2006		2007		2008	
Togo	5	5	6	5	6	5	6	5	6	5	6	5	5	5	5	5
Tonga	5	3	5	3	5	3	5	3	5	3	5	3	5	3	5	3
Trinidad & Tobago	3	3	3	3	3	3	3	3	3	2	2	2	2	2	2	2
Tuvalu	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Uganda	6	5	6	4	5	4	5	4	5	4	5	4	5	4	5	4
Vanuatu	1	3	1	2	2	2	2	2	2	2	2	2	2	2	2	2
Zambia	5	4	4	4	4	4	4	4	4	4	3	4	3	4	3	3
Zimbabwe	6	6	6	6	6	6	7	6	7	6	7	6	7	6	7	6

Source: Freedom House and official documents from the EU. PR = political rights, CL = civil liberties. 1 represents the most free and 7 the least free rating.

Consultations opened under Article 96 and/or Article 97 of the ACP-EC Partnership Agreement
Appropriate measures implemented under Article 96 and/or Article 97 of the ACP-EC Partnership Agreement

Table 4.2 provides an overview of the numbers and percentages of ACP countries labelled as free, partly free and not free. This gives the opportunity to see the trend between 2000 and 2008. It shows that there is a slight increase in the number of free ACP countries, and a marginal decrease in the numbers of partly free and not free ACP States. However, there are no large alterations in these numbers and percentages. This could indicate that the EU does not have a lot of influence on the internal situation of a country. On the other hand, transforming States into free countries that respect political rights and civil liberties is a slow and difficult process involving many political, economic and social factors. For those reasons it is hard to see big changes in a table comprising merely eight years. In the next section we will nevertheless try to assess the effectiveness of the consultation procedure and appropriate measures adopted by the EU in the cases studied in the previous chapter.

Table 4.2 Division of 76 ACP States into Free Countries, Partly Free Countries and Not Free Countries

Year	Free Countries		Partly Free Countries		Not Free Countries	
	Number	Percentage	Number	Percentage	Number	Percentage
2000-2001	30	39.0	30	39.0	17	22.1
2002	32	41.6	28	36.4	17	22.1
2003	31	40.3	27	35.1	19	24.7
2004	32	41.6	27	35.1	18	23.4
2005	32	41.6	29	37.7	16	20.8
2006	33	42.9	28	36.4	16	20.8
2007	33	42.9	29	37.7	15	19.5
2008	32	41.6	29	37.7	16	20.8

Source: Freedom House and own calculations.

Total number of ACP States included in this table: 77 (no data were available for the Cook Islands and Niue).

4.2 Effectiveness

Eleven cases in which the EU initiated consultations – often followed by appropriate measures – are examined in chapter 3. In two cases, i.e. Haiti and Liberia, there is a considerable progress in political rights and civil liberties visible during the implementation of appropriate measures (in the case of Liberia) or after normalisation of cooperation with the EU (as is the case with Haiti). However, in order to find out if this progress is due to the EU's measures, these cases need to be revised.

In the case of Haiti, the occasion to open consultations was the fraud and illegal method used in the general elections of 2000. Initially, these talks seemed to have little influence on the country's performance. As a consequence the EU imposed severe sanctions on the country. These had a marginal effect: some progress was made, but no official agreement was signed between the President's party and a coalition of the opposition parties. In the next few years, no real progress was made. To the contrary, the situation in Haiti even deteriorated despite the efforts of the EU and other international organisations such as the OAS. In 2005, the situation somewhat improved. The EU tried to stimulate this trend by lifting most of the restrictive measures. Since EU-Haiti relations have been normalised, Haiti has made some further progress. Although the situation in the country remains fragile, in 2006 Presidential, legislative, local and municipal

elections were held, which were approved by the international community. This means the country now has a coalition Government and a legitimate, representative Parliament.⁴ Moreover, the Country Strategy Paper for 2008-2013 mentions the improvements made in the field of human rights and the emerging of a civil society, though at the same time stressing the problems remaining in the judicial system and the public security. In short, we can conclude that in the case of Haiti, sanctions did contribute to changes in the political situation. However the EU was not the only international actor that played a role: the OAS and UN constituted important factors as well. OAS Resolution 822 laid out a clear process for the Government; it committed itself to a number of reforms that would strengthen rule of law, and prepare for free and fair elections. The normalisation of economic cooperation between the Government of Haiti and the International Financial Institutions was conditioned to these commitments. In addition, the UN Stabilisation Mission in Haiti played and continues to play an important role in improving the security situation of the country. Thus, especially the *cooperation* of the international community – mainly the OAS, UN, and EU – appears to have made a significant contribution to the stabilisation of Haiti.

In the case of Liberia consultations were opened in order to discuss human rights abuses, freedom of expression, corruption and good governance in the country. These talks were not a result of a specific incident, but can be seen as a consequence of the overall situation in Liberia – a country involved in a civil war – and after the UN and EU had already imposed arms embargoes. The restrictive measures the EU implemented were mainly meant as an incentive for the undertakings the Liberian government had made. The EU thus did not impose severe sanctions on the country. Besides, whereas other donors reduced their presence in Liberia during the civil war, the EU kept its office in the capital open.⁵ In 2003, the EU adopted new measures in order to support the peace process in

⁴ République d'Haïti-Communauté européenne, *Document de stratégie pays et programme indicatif national pour la période 2008-2013*, Port au Prince: 5 December 2008, p. 9.

⁵ Republic of Liberia-European Community, *Country Strategy Paper and Indicative Programme for the period 2008-2013*, Lisbon: 9 December 2007, p. 22.

the country.⁶ These measures were lifted in 2006, as considerable steps had been taken by the Liberian authorities in order to improve the human rights, good governance and rule of law situation. That the situation indeed improved considerably is shown by the findings of the Freedom House (see Table 4.1). This progress nevertheless is likely to be a result of the efforts of various international players, not in the last place those of the UN Security Council, who on 1 August 2003 authorised the establishment of a multinational force in Liberia and the establishment of a follow-on UN stabilisation force to be deployed. Moreover, 2003 saw the signing of a Comprehensive Peace Agreement in Accra, by which the parties requested the UN to deploy a force to support the National Transitional Government of Liberia and assist in the implementation of the Agreement.⁷ A final important factor was the deployment of the ECOWAS Mission in Liberia in the same year, through which the security situation improved considerably. Therefore in this case again, EU political conditionality has been effective, but most likely thanks to the combined efforts of different international organisations.

In the other nine cases, countries' progress towards more respect and protection of political rights and civil liberties is less visible. In three instances EU consultation procedures and appropriate measures seem to have (had) no effect at all. This is the case in Sudan, Zimbabwe and Côte d'Ivoire.

The case of Sudan is a clear example of how political dialogue failed to be effective. The EU normalised its relations with the country in 2005, a decision meant to show the EU's support for the Comprehensive Peace Agreement. However, the human rights situation is still alarming. The same applies to other political rights and civil liberties, which are not yet respected. Despite the progress made in the country after the end of the North-South civil war in 2005, the ongoing war in the western region of Darfur hinders growth and development in the country considerably. The priority in EU development aid is to provide

⁶ 'Council Decision of 25 March 2003 adopting measures concerning Liberia under Article 96 of the ACP-EC Partnership Agreement in a case of special urgency (2003/631/EC)', in *Official Journal of the European Union* L 220, 3.9.2003.

⁷ *United Nations Mission in Liberia (UNMIL)*, <http://unmil.org/1content.asp?ccat=history&zdoc=1>.

post-conflict support, governance reforms in order to prevent further conflict, and food security.⁸

EU political conditionality has not been effective in Zimbabwe either. The Council Decision of 18 February 2002 to conclude consultations and impose appropriate measures, which was due to expire after twelve months, has been prolonged seven times and remains in force at the time of writing. Despite these measures and other restrictions adopted outside the Cotonou framework, the country has failed to adhere to the essential elements laid down in Article 9 of the ACP-EC Partnership Agreement.

Côte d'Ivoire is a complicated case. In 1999, consultations were opened as a result of a coup d'état, which led to a major social and political crisis. The appropriate measures the EU implemented consequently did not have the effect hoped for, and were extended once. In 2002, development assistance was resumed as the Ivorian authorities had made considerable progress in the undertakings made. The situation in the country however remained unstable. Because of this, the NIP could not be signed, and development assistance could not be carried out in its usual manner. Although the crisis is still not solved, the two opposition sides have been engaged in direct dialogue since 2007. Moreover, the CSP for 2008-2013 was signed one year ago, on 4 June 2008. In short, the EU's led consultations and imposed appropriate measures have not had much effect on the respect of the essential elements of Article 9 in Côte d'Ivoire. However, this is likely not due to the unwillingness of the authorities, but to the crisis situation in the country. The Government in 2001 did implement the undertakings it had made to the EU, but these did not lead to the stabilisation of the country.

In three other cases the EU's policy seems to have (had) a marginal or at best modest contribution to the country's progress in respecting political rights and civil liberties. This is the case in Guinea, Mauritania and Fiji. However, in the first two countries it is difficult to assess the EU impact, as appropriate measures are currently still imposed. In Guinea, enhanced political dialogue – starting after appropriate measures had been imposed in 2005 – initially made slow progress.

⁸ European Commission, *EU Relations with Sudan*,
http://ec.europa.eu/development/geographical/regionscountries/countries/country_profile.cfm?cid=sd&type=short&lng=en.

The Guinean authorities seemed unwilling to alter the situation. Nevertheless, one year later the country made considerable progress, despite the deteriorating living conditions. Recently, the death of the president led to renewed instability in the country and consequently to the EU's decision to re-open consultations. These are held at the moment, and it is therefore too early to assess their impact on the political situation in the country. However, the effectiveness of political conditionality in the case of Guinea seems to be at most marginal, although the progress made in 2006 can be explained partly by the EU's use of political dialogue and incentives.

As regards Mauritania, assessing the effectiveness of EU political aid is difficult too. The occasion to open consultations was a coup d'état in 2005, carried out to overthrow the authoritarian regime of colonel Maaouya Ould Sid'Ahmed Taya, who had governed the country since 1984. These consultations and the successive appropriate measures appear to have had considerable effect, as the interim authorities succeeded to carry through a democratic transition, a constitutional referendum, and parliamentary and Presidential elections were held. On the other hand, these democratic reforms and the measures taken to modernise the State and improve its governance had already been the objective of the military.⁹ Thus, one can doubt how much the progress has been a result of EU efforts. At least it has given the reforms a boost and the EU's appropriate measures have been effective *to a certain extent*. It could, on the other hand, not prevent another military coup in 2008. This led to new consultations which had less effect on the country's performance. Consequently, new appropriate measures have been imposed this year, yet the effect of them remains to be seen.

In the case of Fiji, consultations were opened after a coup d'état had taken place in the country. Although these led to commitments from the Fijian side in order to return to constitutional rule and despite the Fijian and ACP Group's representatives' satisfaction with the consultations,¹⁰ it has not resulted in an increased respect of political rights and civil liberties in the country. Moreover,

⁹ Mauritanie-Communauté européenne, *Document de stratégie pays et programme indicatif national pour la période 2008-2013*.

¹⁰ Karin Arts, 'Political Dialogue in a 'New' Framework', in Olufemi A. Babarinde and Gerrit Faber (Eds.), *The European Union and the Developing Countries. The Cotonou Agreement*, Leiden/Boston: Martinus Nijhoff Publishers 2005, p. 171.

the continuing instability culminated in another coup in 2006. Thus, perhaps the authorities are willing to strengthen democracy, rule of law, good governance and human rights in the country, but political conditionality has not succeeded to contribute to this.

The EU's approach of political conditionality appears to have been a bit more effective in a number of other cases. These are the Central African Republic, Guinea-Bissau and Togo. Consultations with the Central African Republic were initiated after the country faced a coup d'état in 2003, followed by a "temporary interruption of the democratic process," according to Bozizé, who had headed the coup.¹¹ The deterioration in political rights and civil liberties is visible in the data of the Freedom House. The appropriate measures taken after consultations had been concluded seem to have been rather effective. The EU had stated that cooperation would be fully resumed after elections re-establishing democracy and the rule of law had been held. The Central African Republic succeeded to hold free and transparent elections in 2005. Therefore, relations between the EU and the Central African Republic were normalised in the same year. This trend of political development has continued in the last few years, but the deficiencies are not insignificant: lack of good governance, rule of law and respect for human rights, and the omnipresent corruption in the country are still major problems.¹² Although the consultations seemed to be no effective at all, nevertheless it can be said that the appropriate measures and conditions imposed for resuming aid have helped the Government of the Central African Republic to stick to their commitments.

Once more, in the case of Guinea-Bissau a coup d'état was reason to initiate consultations. These were held in 2004. During these talks Guinea-Bissau's representatives already showed their commitment to restore the constitutional order consistent with human rights, democratic principles and the rule of law.¹³ In

¹¹ Commission of the European Communities, *Communication from the Commission to the Council concerning the opening of consultations with the Central African Republic under Article 96 of the Cotonou Agreement*, Brussels: 28.4.2003 (COM(2003) 222 final), p. 2.

¹² République Centrafricaine-Communauté européenne, *Document de stratégie pays et Programme indicatif national pour la période 2008-2013*, pp. 7-8.

¹³ Commission of the European Communities, *Proposal for a Council decision concluding consultations with Guinea-Bissau under Article 96 of the Cotonou Agreement*, Brussels: 10.6.2004 (COM(2004) 423 final).

order to realise this, a considerable number of measures were taken by the authorities. The EU therefore decided not to take any appropriate measures after concluding the consultations. In this case, thus, the Interim Government showed its willingness and determination to change the political situation in the country by carrying out some important reforms. On the other hand, the situation in Guinea-Bissau is far from being stable: the excessive size of its security forces and its administration, the inefficiency of its judicial system, and corruption remain weaknesses.¹⁴ Moreover, the Freedom House's data show a slight improve of the situation nowadays compared to the period 2000-2003, and the EU-led consultations might have had some effect on the country's performance, but it has not dramatically altered the situation.

The third instance in which the EU has had a modest effect on the country is the case of the Togolese Republic. Contrary to most cases, consultations with Togo were opened in 2004 without a clear occasion leading to them: cause was the overall alarming situation in the country as concerned human rights and democratic principles. Despite the twenty-two undertakings the Togolese Government made, these consultations did not appear to be very effective. That is to say, when the Commission examined the progress in the country, very few undertakings had been met. Consequently, the appropriate measures adopted by the Council might have been not very effective if the death of the President in 2005 had not led to a coup d'état. This sounds contradictory, but the events caused increased attention – and thus pressure – from the international community. Furthermore, the new President and Government were in a weak position, as the fairness of the elections had been questioned by the opposition and the international community. This led to a policy of openness and intensified efforts to implement the undertaking made to the EU, and eventually to the normalisation of EU-Togo cooperation. In short, as was the case with Haiti and Liberia, the coordination of the international community as regards aid suspension and other measures seems to have contributed to the effectiveness of EU political conditionality.

¹⁴ République de Guinée-Bissau-Communauté européenne, *Document de stratégie pays et programme indicatif national pour la période 2008-2013*, p. 1.

Table 4.3 Consultation procedure with States under Article 96/97 of the ACP-EC Partnership

Agreement Country	Reason to open consultations	Conditions for resumption of cooperation	Actual reason for resumption of cooperation
Central African Republic	Coup d'état in 2003	Re-establishment democracy and rule of law after elections	Free and fair Presidential and legislative elections in 2005
Côte d'Ivoire	Coup d'état in 1999	Restoration of democratic principles; undertakings made by the authorities	Progress in implementation undertakings
Fiji	Coup d'état in 2000	Series of benchmarks, especially elections	Elections
	Coup d'état in 2006	Implementation of commitments made by the authorities	Cooperation not yet resumed
Guinea	Overall non-respect of the Article 9 essential elements	Progress in the situation, particularly preparation and holding of local and legislative elections	Cooperation not yet resumed; new consultations opened due to a coup d'état in 2008
Guinea-Bissau	Coup d'état in 2003	Return to constitutional order respecting human rights, democratic principles and the rule of law; establishment of conditions conducive to political stability and sustainable development	Measures taken by the authorities, in particular general elections and progress towards an independent judiciary
Haiti	Election fraud in 2000	Agreement between the two parties; implementation of OAS resolution 822; pledges made by interim-authorities	Improvement of the situation (resumption as an incentive rather than a real improve)
Liberia	Human rights, freedom of expression, corruption and good governance concerns in 2001	Progress made; notification 9 th EDF allocation once free and fair elections were held	Cooperation not resumed due to the deterioration of the situation; the appropriate measures were replaced by other measures
	Case of special urgency in 2003 (alarming deterioration of the situation)	Notification of the 9 th EDF allocation after cpa is in force and the signatory parties have shown commitment to implement it	Steps taken by the government that showed its determination to respect the principles of good governance, human rights and rule of law
Mauritania	Coup d'état in 2005	Programming activities 10 th EDF after holding a referendum and elections; signing of the 10 th EDF CSP once the country returned to a constitutional order	Referendum and parliamentary and Presidential elections held; democratic transition in process
	Coup d'état in 2008	Gradual re-opening of cooperation in 4 steps towards the return to constitutional order	Cooperation not yet resumed; the country is still in step 1
Sudan	Civil war; human rights situation	No clear conditions	Signature of the cpa
Togolese Republic	Human rights and democratic principles concerns	Implementation of 22 undertakings; free and fair parliamentary elections	Improvement of the situation; free and fair parliamentary elections
Zimbabwe	Human rights, good governance, rule of law concerns; support 2002 Presidential elections	Respect for human rights, democratic principles, good governance and rule of law	Cooperation not yet resumed

4.3 Consistency

The consistency of political conditionality is closely related to its effectiveness. After all, if the EU is not consistent in employing the consultation procedures and the implementation of appropriate measures under Articles 96 and 97, this will undermine its credibility and decrease the effectiveness of consultations and sanctions; hence the importance of examining the consistency of EU political conditionality. Scholars tend to be sceptic about donors' consistence when it comes to political issues. Other factors, such as the size of the country, the importance of its economy, its geopolitical position, and the dependence of the donor countries on exports, would dominate conditionality in development aid. Another point often raised by critics is the way donors measure the adherence to principles of human rights, democracy, rule of law and good governance. According to them, this is characterised by a lack of objective criteria. Let us therefore first of all have a look at how and why the EU decided to open consultations. Hereby reference will be made to the data of Table 4.1 and 4.3.

When looking at Table 4.3, it becomes clear that in seven of the thirteen cases¹⁵ (fifty-four per cent) a coup d'état was the reason for the EU to open consultations. In five cases (thirty-eight per cent) general concerns about respect for one or more of the essential elements led to a Council Decision to initiate the consultation procedure. In the remaining case (eight per cent) the opening of consultations was a result of fraud during the elections. Thus, a coup d'état seems an objective factor for the EU to open consultations with a country. Indeed, when revising all coup d'états that have taken place between 2000 and 2008 in the ACP States, the EU always has responded to them. An exception is the 2003 coup d'état in São Tomé and Príncipe. Although the EU strongly condemned the coup, the Commission did not propose any consultations. The reason could be the uncertainties around the coup: initially there was no indication of who was behind the coup and what the

¹⁵ In this section Fiji is counted as two cases, as consultations were concluded in 2003 and a new consultation procedure was started in 2007. The same applies to Mauritania, where appropriate measures were lifted in 2007 and new consultations were opened in 2008. In the cases of Liberia, consultations were re-opened after new alarming events had taken place, leading to modified appropriate measures. However, the first consultation procedure and appropriate measures had not been repealed yet, thus Liberia is considered to constitute one case.

demands were.¹⁶ Moreover, the coup was bloodless and did not severely deteriorate the human rights situation in the country, nor its adherence to democratic principles, rule of law, and good governance.

The EU is less consistent in opening consultations as regards respect for the essential elements laid down in Article 9. When studying the data of Table 4.1 we can observe many countries where political rights and civil liberties are not respected at all. Examples are Angola, Chad, Democratic Republic of Congo, Equatorial Guinea, Eritrea, Rwanda and Somalia. However in these countries the EU has failed to open consultations and take appropriate measures within the Cotonou framework. Of course we cannot make conclusions by just looking at numbers – there are various reasons why the EU might not have intervened: a country can be engaged in a civil war or be a failed state. In both cases the authorities won't have the means and the power to modify the situation. These circumstances apply to Somalia. In the case of a post-conflict State, the EU might argue that peacekeeping at that moment is more important than expressing concerns about human rights, democratic principles, good governance or rule of law, and taking sanctions. This could go for the Democratic Republic of Congo and Rwanda. Not only the country might be in a fragile situation, a whole region can be instable, leading the EU to decide not to open the consultation procedure. This argument can be used for Chad and Eritrea. All these arguments notwithstanding, we have to conclude that the EU is not very consistent in opening the consultation procedure as a result of concerns about one or several of the essential elements. Moreover, besides the reasons already enumerated, other factors might play a role in determining whether to open consultations. This leads to the assumptions mentioned previously of economic, trade and geopolitical considerations when deciding on opening consultations. This will be examined more into detail at a later point.

Another question as regards consistency is what factors the EU uses as conditions to resume cooperation. A condition often used to normalise relations is the implementation of undertakings made by the authorities of the country concerned. This was the case during the majority of the consultations, namely in

¹⁶ Gomes Porto, João, 'Coup d'état in São Tomé and Príncipe', *African Security Review* 12, 4 (2003).

Côte d'Ivoire, Fiji (during the second consultation procedure), Guinea-Bissau, Haiti, Liberia, Mauritania, and Togolese Republic. Another important condition for the resumption of cooperation, and often constituting one of the undertakings made by the authorities, is to hold free and fair elections. This was a condition in six of thirteen cases, i.e. Central African Republic, Fiji, Guinea, Liberia, Mauritania and Togolese Republic. In four cases – Central African Republic, Fiji, Mauritania and Togolese Republic – cooperation was indeed resumed gradually after free and fair elections had taken place. In the other two cases, cooperation has either not yet resumed (in Guinea) or conditions changed after a 'case of special urgency' (in Liberia). In Guinea-Bissau elections were not a clear condition but played an important role in the EU decision to resume cooperation.

However, in the cases where the implementation of undertakings made by the authorities is a condition to resume cooperation, the EU is not very consistent in the way to measure progress. In the cases where elections are part of the government's commitments, the EU focuses mostly on this. This applies to Fiji, Guinea-Bissau, Mauritania and Togo, thus four of the seven cases where the authorities made a number of undertakings. In the other cases, the reasons to normalise relations vary from real progress made by the governments (in Côte d'Ivoire), steps taken that show the country's willingness to respect human rights, good governance and rule of law (in Liberia), to little progress (in Haiti). In the latter case resumption is meant as an incentive for the government to improve the situation. Thus, the EU does not apply the same criteria to different countries.

When we look at the cases studied of ACP States that have undergone consultations and (in most cases) appropriate measures, it is striking that most are small or medium-sized countries. Only Sudan is a very large country – the largest in Africa. Zimbabwe and Mauritania are medium-sized countries, whereas the other cases concern rather small countries. This appears to affirm the assumption that other factors play an important role in the decision of imposing sanctions. By comparing the countries' scores of political rights and civil liberties represented in Table 4.1, we have already indicated a number of countries with poor records who have nevertheless not been invited for consultations by the EU. These were Angola, Chad, Democratic Republic of Congo, Equatorial Guinea, Eritrea,

Rwanda and Somalia. In order to obtain more certainty about the assumption that other factors play a role, we will examine more closely three of these countries.

Chad

Chad is a medium-sized country at the heart of central Africa, surrounded by Libya, Sudan, Central African Republic, Cameroon, Nigeria and Niger. In the last study of the Freedom House, it was rated seven for political rights and six for civil liberties. The trend of the past eight years shows a decline in both. Despite these breaches of the essential elements mentioned in the ACP-EC Partnership Agreement, particularly those of good governance and rule of law, the EU has never started a consultation procedure under Article 96 or 97 with this country. This could be due to the instability in the country and the region as a whole. The conflict in Darfur – the western province of Sudan that neighbours Chad – has led to a severe deterioration of the situation in Chad. As a consequence of this and other crises, 300,000 Sudanese and Central Africans have sought refuge in the country, over 17,000 Chadians are displaced, and over 45,000 Chadian refugees travelled to Sudan.¹⁷ On 28 January 2008, the EU decided to launch a military operation in Chad and the Central African Republic (operation EUFOR Tchad/RCA) in accordance with the mandate set out in UN Security Council Resolution 1778 of 2007.¹⁸ However, this is under the framework of the European Security and Defence Policy (ESDP) and thus not under the ACP-EC Partnership Agreement. In any case it shows the EU's awareness of the situation and its willingness to change it. In addition, the Country Strategy Paper for 2008-2013 mentions as its main two focuses the support of good governance and sustainable development. Important hereby are the reduction of poverty and economic development.¹⁹ Thus, although the EU's consideration to renounce a consultation procedure and appropriate measures is with this not justified, it does show that the EU does not overlook the situation in the country.

¹⁷ République du Tchad-Communauté européenne, *Document de stratégie pays et programme indicatif national pour la période 2008-2013*, Lisbon: 9 December 2007, p. ii.

¹⁸ Council of the European Union, *EUFOR Tchad/RCA*, <http://www.consilium.europa.eu/showPage.aspx?id=1366&lang=en>.

¹⁹ République du Tchad-Communauté européenne, *Document de stratégie pays et programme indicatif national pour la période 2008-2013*, Lisbon: 9 December 2007, pp. 13-17.

Democratic Republic of Congo

The Democratic Republic of Congo is a very large country with a population of over sixty million divided into 200 ethnic groups. In 2008 it scored six both on political rights and civil liberties in the Freedom House index. Respect for political rights showed a slight decline compared to the previous two years. The country has been involved in regional wars (1997 and 1998-2002) and is currently considered a fragile post-conflict State. The Sun City peace agreement of 2002 marked the beginning of a transition period, with a constitutional referendum being held in 2005 and general elections in 2006. However, the Eastern part of the country remains very unstable with several armed groups operating there. The 2008 Goma Peace Conference has been the latest attempt to restore peace and stability in the region.

The EU has assisted army, police and justice reform through two ESDP missions; EUSEC and EUPOL²⁰, but has never addressed good governance, rule of law, democratisation or human rights concerns by initiating consultations, although it stresses the problems remaining and the focus within the tenth EDF on good governance, together with transport infrastructure, health support, and environmental protection.²¹ Why has the EU failed to open consultations and implement appropriate measures? One reason could be the instability of the country. Sanctions or other restrictive measures could lead to a deterioration of the overall security situation in the country or even the whole region. Another argument could be the *de facto* non-existence of the Congolese State. Thus, even if the EU imposed measures on the Government, this would impossibly lead to stabilisation of the country. Moreover, given the size of the conflict and the problems stemming from this, the Government could never be held responsible for this or for the reconstruction of the country. Even the EU – without help from other donors and international organisations – would likely not be able to do

²⁰ For more information, see: <http://www.consilium.europa.eu/showPage.aspx?id=909&lang=en> (EUSEC) and <http://www.consilium.europa.eu/showPage.aspx?id=1303&lang=en> (EUPOL).

²¹ République démocratique du Congo-Communauté européenne, *Document de stratégie pays et programme indicatif national du 10^e FED 2008-2013*, Kinshasa: 30 October 2008, pp. 8-9; 16-25.

this.²² These and other considerations can have played a role in the EU's decision not to invite the country for consultations.

Somalia

The third and last country to be examined more in detail is Somalia, a country in the Horn of Africa neighbouring Djibouti, Ethiopia and Kenya. Somalia has not been able to sign or ratify the Cotonou Agreement, because of the absence of normally established government institutions. However, paragraph 6 of Article 93 provides for special support to ACP States that were part of previous ACP-EC Conventions in cases like this. 'This support may concern institution building and economic and social development activities, taking particular account of the needs of the most vulnerable sections of the population.'²³ Thus, the strategic objectives of EU aid in Somalia are to encourage reconciliation, democracy and the development of governance structures; assist the Somali people, particularly the most vulnerable groups, in the reconstruction of the country; and restoring the rule of law by supporting Somali-owned governance and security sector initiatives.²⁴

The decision not to engage in the procedures of Article 96 and 97 is thus due to the absence of a government or other representative of the country. Moreover, this fact notwithstanding, the EU has adopted certain restrictive measures on Somalia under the CFSP framework. This was decided by the Council Common Position of 10 December 2002 and amended several times.²⁵ They concern the supply of arms and related material of all types to Somalia, and the direct or indirect supply of technical advice, financial and other assistance and training related to military activities.

²² Maes, Nelly, 'Written Question to the Commission. Reconstruction of a constitutional state in DR Congo', *Official Journal of the European Union*, 14.08.2003 192 E, p. 144.

²³ ACP-EC, 'Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000', Article 93, paragraph 6.

²⁴ Somalia, *Joint Strategy Paper for the period 2008-2013*, place and date unknown, p. 8.

²⁵ Council of the European Union, 'Council Common Position of 10 December 2002 concerning restrictive measures against Somalia (2002/960/CFSP)', in *Official Journal of the European Union* L 334, 11.12.2002. Additional Common Positions and amendments were adopted on 27 January 2003, 12 February 2007, 7 June 2007 and 16 February 2009.

The closer examination of a few cases where Articles 96 and 97 have not been applied by the EU gives us more insight in the considerations behind it. Although it does not refute assumptions about other priorities that dominate development policies, these might need to be pronounced a bit more nuanced. In many cases the instability in the country seems to be a factor in the decision not to open consultations, as these would not be effective anyway or could even aggravate the crisis. On the other hand, however, there are many cases in which the EU did initiate the consultation procedure, despite the fragile situation in the country. Examples are Sudan, Liberia, Central African Republic and Mauritania.

In short, the conclusion that the EU is somewhat arbitrary in its decisions to open consultations and to implement appropriate measures seems inevitable. Similarly, the reasons the EU gives to resume cooperation do not show much consistency. Free and fair elections may often lead to normalisation of relations, but this is not always the case. In some cases, very little progress had been made at the moment the EU resumed cooperation, hoping this step to be an incentive for the country to perform better, while in other cases lack of progress leads to the amendment or extension of appropriate measures.

4.4 Conclusion

This chapter has intended to evaluate the effectiveness of EU political conditionality under the Cotonou framework. Closely related to the effectiveness is the EU's consistency of opening consultations and adopting appropriate measures. By also looking at a few cases where the EU decided not to initiate the consultation procedure, an attempt has been made to find out what other reasons could play a role. The next and last chapter will provide the conclusions of this study and will give a few recommendations for the EU to enhance the effectiveness and consistency of political conditionality.

Conclusions

The phenomenon of conditioning developmental assistance is a relatively new one. Whereas European development aid to former colonies in Africa, Asia and America has existed since they gained independence, the way it has been given, as well as how it is perceived, have extremely changed. An important alteration is that financial assistance initially was seen as a *right* by the developing States. Even the European countries did not question this; development assistance was considered as a natural duty, the relations between them and their former colonies comparable to those between parents and their children.

This self-evidence of development aid, however, has been changing in the previous decades, particularly in the last twenty years. Gradually, development aid became subject to conditions imposed by the donor countries. That is to say, developing countries have to *earn* assistance, mainly in the sense of political performance. Trade and financial aid have become instruments to influence a country's internal situation and organisation. It has been used as a method of *carrots and sticks* in order to promote the norms and values of the donor country concerned. This form of development assistance in which aid is subject to political performance, called political conditionality, is one possibility of including political elements in development assistance.

History of EU Development Aid

This study has examined political conditionality in European Union development aid. Since the establishment of the EC, developmental assistance has been provided by the Community as a whole, while simultaneously individual Member States kept their bilateral aid programmes. Community development assistance has evolved from a few provisions for relations with a small number of overseas colonies and territories in the Treaty establishing the European Community to a

comprehensive framework of a ‘partnership agreement’ with nearly eighty developing States in Africa, the Caribbean and the Pacific. Not only has the number of participating States increased enormously, the relations between the EC Member States on the one hand, and the ACP States on the other have evolved, the programmes have changed, and the actors involved – such as NGOs and private corporations – have increased. Simultaneously, the role of political conditionality has evolved, from playing a marginal role in the first few decades of EC development aid, to constituting an important part in the Cotonou Partnership Agreement.

In order to investigate EU political conditionality, this study has first described the evolution of Community development aid. Starting in 1957 with the Treaty of Rome, it has described the provisions of the two Yaoundé Conventions, the four successive Lomé Conventions, the run-up to a new form of cooperation or ‘partnership’, and the result of this; the Cotonou Partnership Agreement and the revised CPA. Special attention has been given to the evolution of these Conventions and Agreements – that is the changes compared to the former ones – and the introduction and expansion of political conditionality in them. In this part it has become clear that even before a political element was formally introduced in the framework the EU already imposed some kind of political conditionality. The two most obvious cases of early conditionality are the suspension of aid to Uganda and Equatorial Guinea during the first years of the Lomé Convention, due to human rights abuses. However, this political conditionality was far from consistent; whereas the EC punished small countries as the two mentioned, it did not react to the apartheid regime in South Africa. The latter was a typical example of how other interests – i.e. trade and economic interests – dominated political aid. Besides, the EC did not have well-expressed reasons to suspend aid, or a procedure in order to address its concerns, nor did it pronounce clear standards that had to be met in order for aid to be resumed. More importantly, any legal basis to suspend aid on grounds of human rights abuses was absent.

However, the formal inclusion of some kind of conditionality did not have to wait long: Lomé III provided for a policy dialogue between the EC and ACP States, although it did not explicitly mention this term. In addition, for the first

time the Convention made reference to human rights, in the preamble and in a declaration annexed to the Final Act. The successive Lomé Convention, nevertheless, contained a bigger change as far as conditionality concerns. This was mainly a consequence of the Structural Adjustment Programmes introduced in the 1970s by the World Bank, soon followed by the International Monetary Fund. SAPs focused on the economic structure of developing countries, and were thus mainly a form of economic conditionality. However, political concepts such as good governance and rule of law are closely related to the economic situation in a country, and SAPs also focused on the political economy of the country. Therefore it resulted impossible to strictly separate economic from political conditionality. From the beginning of the 1990s onwards, the role and significance of political conditionality grew rapidly. Global events such as the collapse of Communism and consequently the end of the Cold War, the establishment of the European Union with the Maastricht Treaty, the failure of progress in developing countries and the liberalisation of trade all contributed to this. The EU responded to this with Communications and Green Papers, and the inclusion in Lomé IV-bis of a revised Article 5 that enumerates the essential elements of human rights, democratic principles and the rule of law, as well as a consultation procedure elaborated in Article 366. This Convention constituted the biggest alteration as regards political conditionality.

The Cotonou Partnership Agreement and its revision show a further elaboration of the essential elements and consultation procedure.¹ Although it does not contain major changes, the EU has made increasingly use of the consultation procedure. The EU thus sees political conditionality as a significant part in its relations with the ACP States. That is striking, given the uncertainty of its effectiveness, and the criticisms expressed by a large number of scholars. Another thorny issue is the consistency of political conditionality. We have seen that it was far from consistent before it became formally part of the relations with the ACP States. It was characterised by selectivity and a lack of objectivity. The question is if this has improved since the inclusion of provisions dealing with this in the

¹ ACP-EC, 'Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000', Article 9 and 96/97 respectively.

revised Lomé IV Convention and consecutively in the two Cotonou Agreements. For these reasons, in the second part of this study we looked at the cases where the EU has opened the consultation procedure and, if necessary, has taken appropriate measures because of a country breaching (one of) the essential elements of Article 9. Moreover, the legal bases of these actions have been studied. We will now discuss the findings and conclusions of these and of the case studies.

Assessment of Effectiveness

The notions enumerated in Article 9, with the exception of human rights and to a lesser extent democratic principles, are missing clear legal bases in international conventions, treaties or declarations. However, the fact that they are denominated as *essential elements* gives them a strong legal basis. It gives the EU the power to suspend partly or fully the Agreement in case of a breach of one of them. After all, the ACP States have signed and ratified the Agreement, and as such committed themselves to respecting these elements. The only problem remaining is the lack of an internationally agreed definition. The EU tends to interpret very broadly the notions of democratic principles, good governance and rule of law. Nevertheless, the EU does not seem too bothered with this, and the ACP States are (still) subordinate, thus not being able to exert much influence.

Twelve cases (or thirteen if one counts Fiji as two cases) in which the EU at least invited an ACP State to initiate consultations have taken place between 2000 and 2008. These cases have been studied, and a number of conclusions can be drawn from them.

In most of the cases, consultations and appropriate measures have had at best a modest effect on these countries. The EU, when acting alone, does not seem able to exert sufficient pressure on the countries concerned. One of the reasons could be the severity of the appropriate measures taken. Up to now, the EU has never completely suspended development assistance. In some cases, such as Haiti, the EU has imposed relatively severe sanctions. However, in most cases appropriate measures were rather weak. One reason behind this is to prevent that the poor part of the society becomes victim of the sanctions, but the problem is that this

consideration sometimes decreases the effectiveness. Other reasons are the lack of political will to impose sanctions on the side of the EU and, as mentioned before, the existence of contradicting economic and geopolitical interests.

Besides this, the complexity of factors that play a role in improving the human rights, democracy, good governance and rule of law situation in a country undermines the effectiveness of political conditionality as well. In the case of democratising a country, for instance, an enormous number of factors influence the outcome, among others the willingness of the government, the presence or absence of a strong opposition, the socioeconomic situation in the country, pressure from societal actors, the (in)existence of a civil society, the degree of development of the country, and the history of the country. Conditionality – and political aid in general – constitutes merely a minor factor in this big range that in addition only comprises a top-down approach, whereas a bottom-up approach is at least equally important.

Furthermore, the result of the complexity of factors is that every country is different and no *one-model-fits-all* approach can be used. In a number of ACP States, the government seems willing to increase democratic principles and respect human rights, but they are nevertheless unable to do so. Social and economic divisions between sections of the population and other internal problems lead to instability; civil wars, coup d'états and organised crime can be consequences of this. Other countries are governed by autocratic dictators and regimes, unwilling to change the status quo. Obviously, these two groups cannot be treated in the same manner, but the EU nevertheless does so. Other specific country situations require different approaches. Examples are post-conflict States, countries currently engaged in a conflict, and failing or collapsed States.

With the revision of the Cotonou Partnership Agreement, more attention is given to flexibility and the individual circumstances of a country. Specific benchmarks or targets can be developed with a country, and political dialogue can be made systematic and formalised. This could be useful in enhancing the effectiveness of political aid. It is, however, too early to draw comprehensive conclusions on these changes.

Assessment of Consistency

As stressed in the previous chapters, closely related to the effectiveness of political conditionality is the consistency of the donors. That is to say that a lack of consistency in addressing concerns about human rights, democratic principles, good governance or rule of law, in applying sanctions, and non-consistency in the conditions set to resume cooperation are very likely to result in the reduction of effectiveness. In this area, the EU has still a lot to learn. Admittedly, the EU is very consistent in starting the consultation procedure in case of a coup d'état. Between 2000 and 2008, it held consultations with all ACP States that faced a coup, with the only exception of the one in São Tomé and Príncipe in 2003. As section 4.3 on consistency and Table 4.3 indicated, this appears to be the only aspect in which the EU shows consistency. In other cases, non-respect or concerns about one or more essential element *can be* a reason to invite the country for consultations, but these circumstances do not always lead to EU action under Article 96 or 97. The same goes for election fraud and civil war. Whereas they led in some instances to consultations (e.g. Haiti and Sudan respectively), this was not always the case. In Equatorial Guinea, for instance, elections have been marked by irregularities and fraud in several occasions between 2000 and 2008. Moreover, as stated in chapter 4, violations of essential elements as a result of civil war have not led to consultations in several countries, such as in Eritrea and the Democratic Republic of Congo.

The actual appropriate measures taken reveal inconsistency of the EU as well. In one case – Guinea-Bissau – the EU chose not to implement any measures after the consultations had finished, because of the measures already taken by Guinea-Bissau's authorities. Yet this did not mean that all problems and concerns were solved. In other cases, such as Central African Republic, Togo and the Republic of Guinea, the EU noted the improvements made during the consultation procedure, but nevertheless decided to take appropriate measures. Besides this, there are also substantial differences in the severity of the sanctions taken. Evidently this is linked to the seriousness of the situation in the country, but the EU seems to choose the measures in an inconsistent and random way. As stated before, the measures taken tend to be not very severe. The approach used by the

EU when implementing appropriate measures, however, differs considerably. In Côte d'Ivoire, for instance, the EU was cautious in resuming cooperation. In Liberia, on the other side, the EU chose a positive approach as an incentive for the undertakings made by the authorities.

Finally, the conditions set for resumption of cooperation as well as the actual event that led to normalisation of relations are often incoherent. In the previous chapter we have seen that free and fair Presidential or legislative elections often give way to normalisation. This is, however, not always the case. In a number of cases, e.g. in Côte d'Ivoire and Liberia, the progress in implementing the undertakings or an improvement of the situation in the country is given as the reason to resume cooperation. Moreover, in the case of Haiti, normalisation of relations is used as an incentive rather than the consequence of real improvement in the situation, whereas in other instances such as Fiji the EU waits till the country has fully returned to a constitutional democracy.

Proposals and Recommendations

After having studied the history of EC/EU development assistance, the gradual inclusion and extension of political conditionality in it, and the effectiveness and consistency of this conditionality, we can conclude that some progress certainly has been made. Especially the formal inclusion of an article about human rights, democratic principles, rule of law and good governance, and the creation of a consultation procedure have contributed to this. The effectiveness is nevertheless in most cases still limited. An important reason is the lack of consistency. What could be done in order to enhance this?

First of all, the EU should establish clear and objective standards to measure a country's adherence to human rights, democratic principles, rule of law and good governance. On the base of that, the EU could state if an ACP State breaches one or more of the essential elements laid down in article 9 of the Cotonou Partnership Agreement. If this is the case, the EU can invite the country for consultations according to Article 96 and 97 of the Agreement. During these, the EU can discuss its concerns, as well as the appropriate measures it is planning to take. These should take into account the specific characteristics and necessities of the

country concerned. Equally important, clear benchmarks should be set for the resumption of cooperation. Although this naturally varies somewhat from country to country, it cannot show discrepancies as large as is currently the case. Resumption cannot be used as an incentive in one country, whereas in another one the EU waits to normalise relations until the country has completely returned to the *status quo ante*.

The failure to undertake action when a country breaches an essential element – whether as a result of the country’s economic or geopolitical importance or because of the specific situation in the country – is one of the most important causes of reduced effectiveness. For that reason, the EU should always invite a country for consultations if it does not respect the essential elements. If it is afraid that appropriate measures could further increase the instability of the country, it could at least start an enhanced political dialogue or hold the consultation procedure and discuss what could be done to improve the situation.

In order to increase the effectiveness more generally, the EU should take more country-specific approaches. As said, it is impossible to compare a country with a government willing to enhance democracy and rule of law, and respect human rights to one with an autocratic regime. The EU, despite the self-evidence of this statement, does use one approach for all ACP States, although this has somewhat changed with the introduction of the *Annual Country Reviews* and *Country Strategy Papers*.

More effectiveness can also be achieved through cooperation with other donors and the international community in general. The cases treated in this study illustrate this: in the two cases where conditionality appeared effective, this effectiveness was to a great extent the result of the involvement of several international actors. Cooperation with intergovernmental organisations (IGOs) such as the UN and the African Union can considerably enhance the pressure on a country and subsequently be effective in getting through important reforms.

The proposals and recommendations in order to enhance the effectiveness and consistency of political conditionality in EU development assistance notwithstanding, important to keep in mind is that conditionality usually refers to negative measures. As stated in the introduction, in the *carrots and sticks* method

political conditionality focuses on the sticks. It is a way to punish a country when it does not adhere to the norms and values established by the donor. In the case of the EU and the ACP States these are settled by both parties – although in practice mainly the EU – in the Cotonou Agreement. However, one should not underestimate the importance of positive measures, such as programmes to establish and consolidate democracies, aid to develop civil society and measures to support respect for human rights. Indeed, it is on the *carrots* that should be the focus, rather than on the *sticks*. Positive measures and long-term programmes still constitute a larger contribution to the alteration of a country's political situation than do sanctions and threats.

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