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COVER NOTE

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| From: | Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director |
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| To: | Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union |

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| Subject: | Recommendation for a COUNCIL DECISION authorising the opening of negotiations on a Partnership Agreement between the European Union and countries of the African, Caribbean and Pacific Group of States |

Delegations will find attached document COM(2017) 763 final.

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Strasbourg, 12.12.2017
COM(2017) 763 final

Recommendation for a

COUNCIL DECISION

**authorising the opening of negotiations on a Partnership Agreement between the
European Union and countries of the African, Caribbean and Pacific Group of States**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Reasons for and objectives of the proposal

The purpose of this initiative is to renew the partnership agreement with countries member of the Africa, Caribbean and the Pacific (ACP) group of States. Currently these relations are governed by the Cotonou Partnership Agreement (CPA), which establishes that the Parties must open negotiations eighteen months before its expiration in February 2020.

The aim of the proposal is the conclusion of a comprehensive agreement with the current 79 countries signatories to the CPA, with a focus on materializing common as well as specific EU interests (e.g. migration; peace and security, investment), going beyond the 'universal' approach and departing even more from donor-recipient dynamics.

Learning from the positive outcomes and weaknesses of the current CPA, while taking into account the changed context and current EU policies, and having taken a long term perspective beyond 2020, the EU has identified overarching strategic interests to be pursued. Namely: 1) forging a political partnership focused on building peaceful, stable, well-governed, prosperous and resilient states and societies; 2) accelerating progress towards the attainment of the Sustainable Development Goals; 3) building effective alliances in international settings with a view to driving global action forward. These objectives are translated into more specific goals for each of the priority areas.

So as to progress towards these objectives, the long-term relationship that has evolved substantially throughout, needs again to be overhauled to be fit for purpose. This should occur in full respect of keeping and building on the very strong basis laid over time. In this regard, it is of utmost importance to fully take into account the strengthened regional frameworks and trends that have emerged across Africa, the Caribbean and the Pacific.

It is therefore the objective to obtain a new agreement that consists of three regional compacts based on a common foundation. The centre of gravity will be on the regional compacts, setting region-specific priorities towards countries in Africa, the Caribbean and the Pacific. The common foundation, applicable to all members of the Partnership, will list general objectives, principles and priorities, and enable increased cooperation at international level.

The regional compacts will be protocols to the agreement, providing for a comprehensive legal framework of the relations. At the same time, the agreement will allow for a flexible adjustment to changing circumstances through the application of a simplified procedure to revise the three regional compacts. The strengthened role of the (sub)-regional organisations will have to be recognised and catered for within the Partnership, particularly towards the governance of the regional compacts.

The Partnership will be open to different degrees to the involvement or adhesion of other countries, which share the same values and contribute to meeting the objectives. This is particularly relevant, for instance, to allow strengthening the 'Africa as one' approach, whilst respecting the existing bilateral association agreements with North African countries. The role of civil society as well as the private sector will be strengthened, not only within the Partnership but also as crucial actors to achieving inclusive sustainable development in their respective countries and regions. The institutional set-up will reflect this evolution and be made lighter and more streamlined.

Note that the comprehensive agreement sought, frames the relations with the partner countries at all political levels, be it national, (sub)-regional or at the level of the Partnership, and that the national level remains the one with most traction, also in view of the subsidiarity principle. Similar to other agreements it will not be limited in time, but will foresee the possibility to be terminated upon request of one of the Parties.

The partner countries have expressed their ambition to obtain a renewed legally binding partnership agreement with the EU, building on the basis laid down in the current CPA. Additionally, during outreach missions partner countries expressed general appreciation for the proposed strengthened regional approach.

It is in the interest of the EU and the partners to conclude the negotiations timely in order to avoid a political vacuum after 2020.

It is necessary to set up a negotiating team, composed of the Commission and the High Representative of the Union for Foreign Affairs and Security Policy. The negotiating team should be headed by the Commission in association with the High Representative. In particular, the negotiating team will, in addition to the relevant Commission services, also include the European External Action Service.

Pursuant to Article 18, paragraph 4, TEU, the High Representative/Vice President will ensure the consistency and coordination of the Union's external action in relation to these complex negotiations

Consistency with existing policy provisions in the policy area

The current proposal for a comprehensive agreement is fully consistent with related EU policies.

In line with the Global Strategy on the EU's Foreign and Security Policy, it seeks to promote a number of universal and indivisible values, an integrated approach to conflicts and crises, and specific measures aimed at combatting terrorism and countering radicalisation, ultimately contributing to building peaceful, stable, well-governed and resilient states and societies. Furthermore, it highlights the need to build effective alliances in international settings, with the underlying principle of multilateralism. Finally, it seeks to preserve and enhance the crucial role of dialogue at all political levels. In line with the revised European Consensus on Development, the attainment of the Sustainable Development Goals (SDGs), and particularly poverty eradication, will be placed at the heart of the new partnership.

The proposal also builds on existing strategies (including subsequent developments) for relations between the EU and various ACP regions – most notably the 2007 Joint Africa-EU Strategy (JAES), the 2012 Joint Caribbean EU Partnership Strategy, and the 2006 Strategy for a Strengthened Partnership with the Pacific Islands. The three proposed Compacts, in fact, will replace and upgrade these strategies.

In line with existing provisions on trade policy, it seeks to create new economic opportunities for sustainable growth, blue and green and small and medium-sized businesses (SMEs) and to bolster foreign direct investment.

In line with existing provisions on migration policy, it presents a comprehensive and rights-based approach to migration and mobility. This will aim at better organising legal migration, fostering well-managed mobility, maximising its development impact as well as preventing and combatting irregular migration, eradicating trafficking in human beings and establishing a mechanism for effective return and readmission.

In line with existing provisions on environmental policy, it highlights the need to take urgent and accelerated action to fight environmental degradation and climate change, which pose major threats to the attainment of the SDGs and, in some cases, to the survival of entire populations.

The proposal is also fully consistent with a number of other relevant Union policies related to the set priorities, such as energy, education, employment and research and innovation.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

Legal basis

The classification of an international agreement can only be determined at the end of the negotiations on the basis of the content and purposes of the agreement. Therefore the Commission submits its recommendation for a Council decision to open negotiations on the basis of Article 218 (3) and (4) TFEU, which is the procedural legal basis.

Subsidiarity

Europe faces a number of challenges and opportunities, in the short and long term which demand collective action and concerted effort across a range of internal and external policies. The EU, with its broad set of policies and instruments, is well placed to confront such challenges and seize the opportunities ahead.

Action at EU level has an added value, in terms of political and economic leverage. The global network of EU delegations for instance ensures a presence in countries where many Member States are not represented. The EU level is particularly suited to build strategic alliances with the large number of members of the Partnership so as to drive global action forward in line with EU interests. It should also be noted that some policy areas, most notably trade, are exclusively the competence of the EU.

The proposal, moreover, extends the internal EU commitment to the principle of subsidiarity to the Partnership. With a view to avoiding duplication or overlap of different frameworks and structures, it is foreseen that action is taken at the most appropriate political level.

Proportionality

This initiative pursues directly the Union's objective in external action as per Article 21 of the Treaty on European Union and contributes to the political priority of 'EU as a stronger global actor'. It is in line with the EU Global Strategy stipulation to engage with others and revamp its external partnerships in a responsible way, as to attain EU's external priorities. The proposal does not create new structures or imposes supplementary burdens on the EU, on the contrary it streamlines existing institutions, procedures and instruments and facilitates interactions between the various levels of governance¹.

¹ See as well 'Why the EU should act', Impact assessment, SWD(2016) 380 final, pp18

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

Ex-post evaluations/fitness checks of existing legislation

An in-depth evaluation assessed the performance of the first 15 years of the CPA.

Good progress was recorded as regards political dialogue at national and regional level, which helped reinforce the essential elements in ACP countries. The CPA increased mutual understanding and cooperation on security issues and provided a first step for deepened cooperation on migration, which paved the way for the Rabat, Khartoum and Valletta processes. Trade exchanges substantially increased – and the EPAs have been a main deliverable of the agreement. Additionally, major progress was made in human and social development and in macro-economic stabilisation in ACP countries.

The evaluation also highlighted how efforts were still needed to fully achieve the CPA objectives. Moreover, while these objectives remain relevant, they only address part of the major changes that have occurred in the global context in recent years. The evaluation concluded that the general objectives needed to be reviewed in light of the new challenges and opportunities for the EU and its partners. A review of the institutional architecture was also recommended, so as to increase coherence between different policy frameworks and to streamline decisions.

Stakeholder consultations

A wide range of stakeholders was consulted.

A first round of consultations was launched, including a public consultation and exchange with EU delegations. The outcomes of this round fed into the evaluation of the CPA and the Impact Assessment, which informed the November 2016 Joint Communication. A second round of consultations took place following the release of the 2016 Communication, this time focusing primarily on decision makers. The emerging view was the need to strengthen those provisions that enable a more effective promotion of vital EU interests (particularly on migration and investment). General consensus was seen on the need to take account of new regional dynamics and avoid overlap between different policy and legal frameworks. However, there were differences in relation to the degree of regionalisation that should take place – and in a few cases some voices were critical of the added value of having a legally binding agreement.

The European Parliament was consulted on various occasions and informed regularly, before and after the release of the Joint Communication. The October 2016 resolution emphasised the need for a renewed legally binding agreement with three strengthened regional partnerships, fully in line with the current proposal.

As regards outreach to the countries in Africa, the Caribbean and the Pacific, the 2016 ACP Head of States summit in Papua New Guinea concluded in its Waigani communiqué to seek a renewed legally binding partnership with the EU, building on the basis laid by the CPA, deepen political dialogue and increase international cooperation.

In addition, Commissioner Mimica and two high-level facilitators (Louis Michel and Pascal Lamy) undertook outreach missions in Africa, the Caribbean and the Pacific. The overall conclusion is that the EU proposed approach was met positively, particularly the shift of emphasis to the three regions and their specific priorities. At the same time, the importance of preserving ACP cohesion was highlighted by numerous interlocutors. Importantly, major

emphasis was placed on the need to significantly enhance investment opportunities and facilitate private sector development.

Collection and use of expertise

The current proposal has benefited from engagement with external expertise. A series of roundtables with experts was held along with a review of the existing academic literature which informed both the General Evaluation of the CPA, the Impact Assessment, the Communication and the Recommendation.

Impact assessment

Of the future options that emerged from the consultation process only those that were likely to achieve (most of) the EU objectives were subject to a full analysis in the impact assessment. The current CPA constituted the baseline against which all the options were assessed.

A systematic analysis of various impacts of each of the options led to the conclusion that the EU's objectives are best pursued through an agreement consisting of a general part applicable to all and three strong regional partnerships. This option was seen as enabling the preservation of all the positive aspects of the current CPA whilst facilitating the establishment of the right conditions for the EU to meet its new objectives. These include more effectively pursuing its political and economic interests, increasing its impact in the international arena, and improving the prospects of implementing Agenda 2030. Moreover, by taking into account deepened regionalisation dynamics, the preferred option was seen as the most suited to tailor actions to different circumstances.

The Impact Assessment received a positive opinion by the Regulatory Scrutiny Board in July 2016. The current proposal is fully in line with the option recommended in the Impact Assessment, as further specified in the Joint Communication adopted in November 2016.

Fundamental rights

One of the objectives of the proposed partnership, fully consistent with EU treaty provisions, is that of promoting human rights and fundamental freedoms (as well as democracy, rule of law and good governance). Should the legally binding nature of the partnership be abandoned, these commitments would be lost – and this would be undesirable, given the changing international scene with emerging powers not necessarily sharing these values and principles. The current proposal also gives the possibility to better anchor fundamental rights and political dialogue to regional frameworks and systems.

4. BUDGETARY IMPLICATIONS

This initiative is not expected to have significant new budgetary implications – though it should be noted that the amount of resources available to finance EU external action will be decided upon in the context of the Multiannual Financial Framework (MFF) review.

In terms of financial instruments, the European Development Fund (EDF) has been the main one to support initiatives in ACP countries and regions. The EDF is an extra-budgetary fund financed by direct contributions from EU Member States.

5. OTHER ELEMENTS

Implementation plans and monitoring, evaluation and reporting arrangements

The current proposal foresees to adopt implementation plans at the different levels of dialogue. The proposal also foresees a system to monitor progress, using specific indicators and measurable outcomes, drawing mostly on existing initiatives.

Detailed explanation of the specific provisions of the proposal

The current proposal foresees the adoption of one agreement with the following main components:

- A general part applicable to all members of the Partnership, consisting of the foundation (including overarching objectives and principles, strategic priorities and provisions on international cooperation), the institutional framework, the means of cooperation, and the final provisions.
- Separate regional compacts, including specific objectives and priorities for respectively countries in Africa, the Caribbean and the Pacific. These three compacts, in the form of protocols attached to the general part of the agreement, will replace the existing regional partnerships.

Foundation

Part 1 (General Provisions) presents the general objectives and principles. The aim is that of adopting a framework agreement that allows the EU to best advance its strategic interests, with Agenda 2030 on Sustainable Development at its heart. Three overarching objectives are introduced that are then spelt out in six priority areas. International cooperation is a priority treated separately. The section on principles reflects widely accepted norms in EU external relations as well as in international cooperation: multilateralism, multi-stakeholder approaches, complementarity and subsidiarity, mutual accountability. Particular emphasis is given to political dialogue and policy coherence for development.

Part 2 (Shared Priorities) expands on the six priority areas. The sections on 'Human rights, fundamental freedoms, democracy, rule of law and good governance' (Title I), 'Peace, security and justice' (Title IV), 'Migration and mobility' (Title V) build on the CPA and are consistent with existing provisions in EU external relations. More specifically, the section on migration, taking a right-based approach and highlighting the beneficial aspects of well-managed migration, calls on partner countries to establish more effective mechanisms for return and readmission policies. The sections on 'Inclusive sustainable economic development' (Title II), 'Environment and climate change' (Title III), 'Human development and dignity' (Title VI) introduce some significant changes vis-a-vis the CPA, not least because of the adoption of Agenda 2030. In this sense, there is a strong commitment by the Parties to take concrete measures to reach the SDGs, and when possible to even go beyond them. Major emphasis is placed on foreign direct investment and private sector development, with a view to generating new economic opportunities and more and better jobs for everybody.

Part 3 (International Cooperation) presents the principles and mechanisms underpinning the action of the EU and members of the partnership when they will seek to cooperate in the international arena. To achieve results, both ministerial meetings and specific coordination mechanisms in key international organisations and venues will have to be strengthened or created. A possibility to involve other interested actors is also foreseen.

EU-Africa Compact

Section 1 (Basis for Cooperation) presents the objectives and principles for the EU-Africa Compact, which go beyond and integrates the existing Joint Africa-EU Partnership (JAES). The objective is that of enhancing the political dimension in the relations between EU and African countries by agreeing on a new broadened single guiding document and operationalising it within the legal framework of the renewed partnership with sub-Saharan countries, whilst preserving the current Association Agreements with countries in North Africa.

Section 2 (Strategic Priorities) identifies a number of concrete measures that the EU and African countries will take in the six priorities areas. Some significant changes are introduced on 'Inclusive sustainable economic development' (Title III) and on 'Mobility and migration' (Title V). As for economic development, the current proposal recommends a series of actions on key vectors which are deemed to be conducive to greater flows of investment and to private sector development. As for migration, the current proposal highlights the positive contribution that legal mobility can bring to both sending and receiving countries, yet it also foresees more stringent mechanisms to guarantee that countries respond more swiftly to readmission requests, as well as provisions to intensify cooperation on border management and combat human trafficking. The EU-Africa Compact also lists a number of concrete measures in the areas of peace and security, particularly the fight against terrorism (Title I), 'Human rights and democratic governance (Title II), Human Development and dignity' (Title IV) and 'Climate change and environmental sustainability' (Title VI). Such measures are certainly meant to achieve the SDGs but they also embrace the visions that the EU and the AU have put forward in their most recent strategic documents (Agenda 2063 for Africa; Global Strategy on the EU's Foreign and Security Policy and European Consensus on Development).

The *institutional set-up* of the EU-Africa Compact is underpinned by a revised framework, mainly building on existing dialogue platforms with a more prominent role assigned to the African Union (AU).

EU-Caribbean Compact

Section 1 (Basis for Cooperation) presents the objectives and principles for the EU-Caribbean Compact, which builds on and replaces the Joint Caribbean EU Partnership Strategy. Importantly, it recognises the Caribbean's close links with the Outermost Regions (ORs) and the Overseas Countries and Territories (OCTs).

Section 2 (Strategic Priorities) identifies a number of concrete measures that EU and Caribbean countries will take in the four priority areas. Highlighting the crucial importance of regional cooperation, the focus will be on four issues: impact of climate change on natural resources, with significant attention being placed on environmental sustainability and disaster management (Title I); need to concentrate efforts on key strategic sectors, linked to blue growth, energy and tourism (Title II); promotion of human security, with specific emphasis on organised crime and (gender-based and gangs) violence, as well as setting up mechanisms in the area of tax policy in line with global standards (Title III); inequality and gender equality, as well as the specific situation of Haiti as the only LDC in the region (Title IV).

The *institutional set-up* of the EU-Caribbean is underpinned by a revised institutional framework (discussed in Part III of the General Part), mainly building on existing dialogue platforms.

EU-Pacific Compact

Section 1 (Basis for Cooperation) presents the objectives and principles for the new EU-Pacific Compact. Importantly, it recognises the EU's special links with the Overseas Countries and Territories (OCTs).

Section 2 (Strategic Priorities) identifies a number of concrete measures that EU and Pacific countries will take in the four priority areas. Reflecting the specificities of the region, and taking into account the crucial importance of regional cooperation, the focus will be on four issues: climate change and sustainable management of natural resources, including ocean governance and disaster management (Title I); a targeted number of strategic sectors, particularly fisheries, sustainable energy, blue growth economy and tourism (Title II); promotion of human rights and conflict prevention activities, as well as setting up mechanisms on tax policies including the issue of tax heavens (Title III); human development and social cohesion, addressing different types of vulnerabilities (Title IV).

The *institutional set-up* of the EU-Pacific Compact is underpinned by a revised institutional framework (discussed in Part III of the General Part), mainly building on existing dialogue platforms.

Diversified cooperation

This Part is devoted to the means of cooperation, both financial and non-financial, to fulfil the general and specific objectives set out both in the Foundation and in three Compacts. It is stated that cooperation is to be diversified so as to reflect a variety of circumstances across countries and regions. It is reiterated the commitment of the EU to provide an adequate amount of development assistance to those most in need and enhance its effectiveness in line with internationally agreed principles. Equally, it is emphasised the need for ACP countries to mobilise domestic public and private resources and launch reforms of their tax policies, including combatting illicit financial flows. The EU will also seek to more effectively engage with middle-income countries (MICs), so as to address vulnerability and in-country inequalities but at the same time create additional opportunities for EU business and citizens and foster cooperation for the achievement of the SDGs in their respective regions as well as globally.

Institutional framework

This Part deals with the actors of the partnership and the institutional set-up, for both the partnership level and the three Compacts. In terms of actors, it is reaffirmed that states are the primary interlocutors for the EU, though national governments must make further efforts to better involve national parliaments and local state authorities. At the same time, it is proposed to strengthen the role of regional and continental organisations, in both managing and implementing the three regional compacts. It is also proposed to strengthen the role of civil society as well as the private sector not only within the Partnership but also as crucial actors to achieving inclusive sustainable development in their respective countries and regions. The new institutional set-up reflects the strengthened political nature of the partnership, as well the shift of the centre of gravity towards the three regions. It streamlines and reduces the operational impact of the existing structures and builds mainly on existing regional political dialogue platforms.

Procedural aspects

The Commission makes this Recommendation and its annex public immediately after its adoption. The Commission recommends that the negotiating directives be made public immediately after their adoption.

Recommendation for a

COUNCIL DECISION

authorising the opening of negotiations on a Partnership Agreement between the European Union and countries of the African, Caribbean and Pacific Group of States

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 218(3) and (4) thereof;

Having regard to the recommendation from the European Commission;

Noting that Article 218 TFEU provides for the single procedure to be followed for negotiating agreements between the Union and third countries;

Whereas negotiations should be opened with a view to concluding a renewed Partnership Agreement with African, Caribbean and Pacific countries;

Whereas the envisaged Partnership Agreement between the European Union and countries of the Africa, Caribbean and Pacific Group of States covers a wide spectrum of policies, including foreign policy issues; the consistency of the Union's external action should be ensured throughout by the High Representative pursuant to art 18 (4) TEU.

HAS ADOPTED THIS DECISION:

Article 1

Authorises the Commission and the High Representative to negotiate, on behalf of the Union a Partnership Agreement with countries of the African, Caribbean and Pacific Group of States.

The Commission shall be the head of the negotiating team. It shall also comprise the High Representative of the Union for Foreign Affairs and Security Policy.

Article 2

The negotiating directives are set out in the Annex and will be made public upon adoption.

Article 3

The negotiations shall be conducted in consultation with the [name of the special committee to be inserted by the Council].

Article 4

This Decision is addressed to the Commission.

Done at Strasbourg,

*For the Council
The President*