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2023/0464 (NLE)

Proposal for a

COUNCIL DECISION

on the conclusion, on behalf of the European Union, of the Partnership Agreement between the European Union and its Member States, of the one part, and the Members of the Organisation of African, Caribbean and Pacific States, of the other part

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The present proposal concerns the conclusion of a new Partnership Agreement between the European Union (EU) and its Member States and the Members of the Organisation of African, Caribbean and Pacific States. Formerly known as the “ACP Group of States” (ACP), the group became the Organisation of African, Caribbean and Pacific States (OACPS), an international organisation, in April 2020.

Since 2000, the Cotonou Partnership Agreement has been the framework guiding the relations between the EU and the 79 ACP countries. It is based on political dialogue, and economic, trade and development cooperation. The Agreement, revised in 2005 and 2010, expired at the end of February 2020. However, as partners needed more time to negotiate the successor Partnership Agreement (hereafter referred to as “the Agreement”) and the EU side to complete its internal process to approve the Agreement’s signature, the application of the Cotonou Agreement has been transitionally extended five times: initially until 31 December 2020, and subsequently until 30 November 2021, 30 June 2022, 30 June 2023 and 31 October 2023. The Agreement was signed on 15 November 2023 by the EU and its Member States and by OACPS members¹. Pursuant to Article 98(4) of the Agreement, its provisional application will start on the first day of the second month after the signature. In order to avoid a legal vacuum in the EU-ACP relations, the current Agreement will be subject to a renewal of its extension until 31 December 2023.

A modernised agreement is greatly needed to upgrade the EU-ACP relationship to mirror the new ambition stemming from emerging needs and challenges. More interconnected than ever before, the world has greatly changed since the Cotonou Agreement was adopted, and so have the EU, its partners and their joint aspirations.

Negotiations on a new agreement began in September 2018, shortly after the Council authorised the Commission and the High Representative to open negotiations on, and to negotiate, on behalf of the European Union, the provisions that fall within the competence of the Union, of a Partnership Agreement between the European Union and its Member States, of the one part, and the countries of the African, Caribbean and Pacific Group of States, of the other part and adopted negotiation directives in June 2018. Throughout the negotiations, the Council and the European Parliament were informed regularly. The special committee established by the Council decision authorising the opening of negotiations was consulted throughout the negotiations. The Chief Negotiators initialled the draft text of the Agreement on 15 April 2021, with the exception of the definition of the parties to the Agreement.

The general aim of the Agreement is to establish an ambitious and strengthened political partnership, ushering in new dynamics and going beyond traditional development cooperation. Within the Agreement, each region will be empowered. This will allow the EU and the members of the OACPS to achieve greater ambitions at local, national, regional and international level.

The specific objectives of the new Agreement are to:

¹ In accordance with Regulation 2015/2264 on the phasing out of the derogation of the Irish language, international agreements are only translated in Irish from 1 January 2022.

1. promote, protect and fulfil human rights, democratic principles, the rule of law and good governance, paying particular attention to gender equality;
2. build peaceful and resilient states and societies, tackling ongoing and emerging threats to peace and security;
3. foster human and social development, and in particular to eradicate poverty and address inequalities, ensuring that everyone enjoys a life of dignity and that no one is left behind, with special attention paid to women and girls;
4. mobilise investment, support trade and foster private-sector development, with a view to achieving sustainable and inclusive growth and creating decent jobs for all;
5. combat climate change, protect the environment and ensure the sustainable management of natural resources; and
6. implement a comprehensive and balanced approach to migration, so as to reap the benefits of safe, orderly and regular migration and mobility, stem irregular migration while addressing its root causes, in full respect of international law and in accordance with the Parties' respective competences.

The Commission considers that the objectives set out by the Council in its negotiating directives were attained and that the negotiated text is acceptable to the Union.

- **Consistency with existing policy provisions in the policy area**

The Agreement was negotiated in line with the comprehensive negotiating directives adopted by the Council in June 2018² on the recommendation from the Commission 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, which built on a prior evaluation, an impact assessment, and a communication. All these guiding documents took into account the relevant EU policies and strategies in the various areas concerned, as well as those of the EU's partners including the African Union Agenda 2063, 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 new partnership builds on several internationally agreed standards and targets. The United Nations 2030 Agenda (SDGs), and the Paris Agreement on climate change are at the heart of the Agreement and the partners' future action.

More specifically at a thematic level, the Agreement is fully aligned with existing EU policies:

² The negotiating directives build on prior evaluations, impact assessment, communication and recommendation:

- o 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. COM (2017) 763 final.
- o JOINT COMMUNICATION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL. A renewed partnership with the countries of Africa, the Caribbean and the Pacific. JOIN 2016 (52) final.
- o JOINT STAFF WORKING DOCUMENT. Evaluation of the Cotonou Partnership Agreement. SWD (2016) 250 final.
- o JOINT STAFF WORKING DOCUMENT IMPACT ASSESSMENT accompanying the document JOINT COMMUNICATION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL A renewed partnership with the countries of Africa, the Caribbean and the Pacific. SWD (2016) 380 final. JOIN (2016) 52 final. SWD (2016) 381 final.
- o JOINT CONSULTATION PAPER Towards a new partnership between the European Union and the African, Caribbean and Pacific countries after 2020. JOIN (2015) 33 final.

- In line with the Global Strategy for the European Union’s Foreign and Security Policy³, the Agreement will contribute to building inclusive, peaceful and resilient societies. It fosters a comprehensive and integrated approach to conflict and crises and aims at addressing their root causes, along with new or expanding security threats, such as terrorism, its financing and violent extremism to name but a few. The partnership dialogue will be key in further deepening actions in these fields and, more broadly, in all areas covered by the partnership. Fostering more political cooperation, the Agreement reaffirms the importance of cooperating in international fora, but also of building alliances on the global scene to achieve an effective multilateral system.
- In line with the European Consensus on Development⁴, the Agreement includes comprehensive commitments inspired by, and which will contribute to achieving, the Sustainable Development Goals (SDGs) under the United Nations 2030 Agenda. The Agreement’s people-centred approach takes into account the various, interlinked aspects of sustainable development, whether economic, social, environmental or security-related. All these important dimensions, together with other cross-cutting elements, such as youth, gender equality, good governance and human rights, complement each other and have been given particular importance. Together, partners will work to protect the planet, eradicate poverty in all its forms, tackle inequalities and promote social cohesion.
- In line with the European Green Deal⁵, and the EU environmental policies, the Agreement recognises the need to take urgent action at various level to ensure the planet’s sustainability and counter the serious threat posed by climate change, environmental degradation, and unsustainable use of natural resources. Partners aim to strengthen the global response to climate change, build resilience and play an important role in implementing the Paris Agreement, which will act as an overarching framework guiding the partnership.
- In line with the new Pact on Migration and Asylum⁶, and the EU migration policy, the Agreement adopts a comprehensive and balanced approach, addressing in a coherent manner the various inter-linked dimensions of both legal and irregular migration to foster well-managed migration and mobility.
- The proposal is also fully consistent with other relevant Union policies related to the set priorities, such as energy, education, gender equality, employment, research and innovation and trade.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The legal basis for conclusion of the Agreement is Article 217, in conjunction with Article 218(6)(a) read in conjunction with the second sub-paragraph of Article 218(8) of the Treaty on the Functioning of the European Union.

When adopting its decision authorising the opening of negotiations on a Partnership Agreement with the countries of Africa, the Caribbean and the Pacific (ACP), the Council adapted the title and Article 1 of the recommended decision to the effect that the Partnership

³ [Global Strategy for the European Union’s Foreign and Security Policy](#)

⁴ [European Consensus on Development](#)

⁵ [European Green Deal](#)

⁶ [New Pact on Migration and Asylum](#)

Agreement is determined as "mixed"⁷. In addition, the Representatives of the Governments of the Member States, meeting within the Council, adopted a separate intergovernmental decision authorising the Commission to negotiate on their behalf provisions of the provisional application that fall within Member States' competence⁸. The negotiations were successfully concluded on 15 April 2021, with the exception of the definition of the parties. On 11 June 2021, the Commission made a proposal for a Council Decision on the signature and provisional application of the Partnership Agreement as an EU only Agreement. On 20 July 2023, the Council adopted the decision on the signature and provisional application of the Partnership Agreement as a mixed agreement⁹. Following the decision of the Council, and in order to avoid that the conclusion by the European Union is delayed in the Council, the Commission and the High Representative decided to submit the enclosed draft proposal for conclusion of the Agreement as a mixed agreement.

- **Proportionality**

This initiative directly pursues the Union's objective in external action and contributes to the political priority of 'EU as a stronger global actor'. It is in line with the EU Global Strategy's orientations to engage with others and revamp its external partnerships in a responsible way, in order to attain the EU's external priorities. The proposal strengthens the cooperation with the respective regions, allowing for a more tailored approach and supporting the EU's comprehensive strategy with Africa. The proposed Agreement also facilitates interactions between the various levels of governance.

- **Choice of the instrument**

This proposal is in accordance with Article 218(6) TFEU, which envisages the adoption by the Council of decisions on international agreements. There exists no other legal instrument that could be used in order to achieve the objective expressed in this proposal.

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

- **Ex-post evaluations/fitness checks of existing legislation**

It was important for the EU and its partners to take into account the lessons learned from their longstanding cooperation. As part of the policy preparation for a new Partnership Agreement with African, Caribbean and Pacific States, a number of specific evaluations and consultations were carried out ahead of, and during, the negotiations to both seek public, stakeholders and partners' views and draw conclusions from the EU-ACP cooperation in the past decades. These can be grouped into two categories:

⁷ Council Decision authorising the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy to open negotiations on, and to negotiate, on behalf of the European Union, the provisions that fall within the competence of the Union, of a Partnership Agreement between the European Union and its Member States, of the one part, and the countries of the African, Caribbean and Pacific Group of States, of the other part, ST 9426 2018 INIT.

⁸ Decision of the representatives of the governments of the Member States, meeting within the Council authorising the European Commission to negotiate, on behalf of the Member States, the provisions that fall within the competences of the Member States, of a Partnership Agreement between the European Union and its Member States, of the one part, and the countries of the African, Caribbean and Pacific Group of States, of the other part, ST 9426 2018 INIT.

⁹ Council Decision [as set out in Council document 8371/23 DCL 1] of 20 July 2023 on the signing, on behalf of the European Union, and provisional application of the Partnership Agreement between the European Union, of the one part, and the members of the Organisation of African, Caribbean and Pacific (OACPS) States, of the other part.

- Evaluation of the Cotonou Partnership Agreement (CPA)
- Public consultations

The related conclusions and results were taken into account and are reflected in the proposed Agreement.

- **Impact assessment**

In 2016, an impact assessment (SWD (2016) 0380 final) was published together with a Communication about the EU's future relations with ACP countries (JOIN 2016 (52) final), which served as a basis for the subsequent Commission recommendation for a Council decision authorising the opening of negotiations and the Council negotiating directives. It aimed at determining which type of format was required to best organise and govern relations with partners in Africa, the Caribbean and Pacific. The impact assessment identified various options and a preferred way forward, which was in the end chosen, and can be summarised as follows: *“The preferred option for the EU is that a new partnership between the EU and the ACP countries, in the form of an overarching agreement including a 'roof' listing common values, principles and interests and identifying general principles and avenues for cooperation in the international arena, and three partnerships setting region-specific priorities and actions to implement respectively in Africa, the Caribbean and the Pacific.”*

- **Regulatory fitness and simplification**

Not applicable.

- **Fundamental rights**

One of the objectives of the Agreement is that of promoting and upholding human rights and fundamental freedoms as well as democracy, rule of law and good governance. This is an important aspect given the changing international scene with emerging powers which do not necessarily share these values and principles. In accordance with the EU's Common approach on the use of political clauses, in cases of violation of the essential elements of the Agreement, the Parties shall hold structured and systematic consultations. Where they are unable to reach a mutually acceptable solution, the notifying Party may take appropriate measures.

4. BUDGETARY IMPLICATIONS

The Agreement contains no financial protocol. The EU commits to make available the appropriate level of financial resources in line with its internal regulations and procedures.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The implementation of the Agreement will be monitored through regular partnership dialogue, ref. General Part, Part I, Art. 3 (1). The Regional Protocols contain specific provisions on implementation and monitoring, ref. African Regional Protocol, Part I, Art.6; Caribbean Regional Protocol, Part I, Art. 8 and Pacific Regional Protocol, Part I, Art. 8.

The OACPS-EU Council of Ministers shall oversee the effective and consistent implementation of the Agreement and adopt policy guidelines and take decisions to give effect to specific aspects necessary for the implementation of the provisions of the Agreement, ref. General Part, Part V, art. 88.

- **Detailed explanation of the outcome of the negotiations**

The Agreement establishes an ambitious and strengthened political partnership between the EU and the members of the OACPS, with the objective of generating mutually beneficial outcomes on common interests. It will take the form of an association agreement and be concluded for a period of twenty years.

More strategically, the Agreement extends the scope and scale of partners' cooperation, with the overarching aim of building stronger societies. This renewed partnership is a political achievement and marks a turning point. It shifts dynamics and upgrades partners' relations to tackle the most pressing challenges faced in each region specifically. The Agreement is in tune with the regional and global contexts, but also the latest internationally agreed laws, standards, advances and, most importantly, with peoples' needs.

This creates a coherent framework with partner countries at all political levels, be it national, (sub)-regional or at partnership level with a global dimension. The Agreement advocates effective multilateralism and sets the scene for more political and coordinated actions on the world stage where the partnership's impact can be significant.

Innovative “1 + 3” structure

The EU's relationship with the members of the OACPS has been deepened, but also overhauled to be fit for purpose, bringing the centre of gravity to the three regions. Accordingly, the Agreement now consists of:

1. A **General Part** (the Foundation) common to all signatories and composed of:

Part I - **General provisions**, presenting the general objectives and principles.

Part II - **Strategic priorities**, divided into six key titles:

- Title I - Human rights, democracy, and governance in people-centred and rights-based societies
- Title II - Peace and security
- Title III - Human and social development
- Title IV - Inclusive, sustainable economic growth and development
- Title V - Environmental sustainability and climate change
- Title VI - Migration and mobility

Part III - **Global alliances and international cooperation**, detailing the new political ambitions on the world stage.

Part IV - **Means of cooperation and implementation**, describing the diversified resources to achieve the objectives of the partnership.

Part V - **Institutional framework**, explaining the different settings and partners involved.

Part VI - **Final provisions**, providing details on the application of the Agreement.

Annex I: Return and readmission processes.

Annex II: Operations of the European Investment Bank.

The Agreement establishes the institutional framework that will govern the Partnership Agreement, both at Foundation and regional levels. In particular, the General Part of the Agreement (Foundation), which applies to all signatories, will be managed by the OACPS-EU Council of Ministers (expected to meet every 3 years) supported by a Committee of Ambassadors, possible OACPS-EU Summits (upon joint agreement) and a new OACPS-EU Joint Parliamentary Assembly (JPA - meeting yearly and whose members are also members of the three regional joint parliamentary assemblies).

2. **Three Regional Protocols** are provided for between the countries of each region and the EU respectively. Every protocol is tailor-made to the regions' needs and dynamics and thus fit to address the particular challenges they face. Following this logic, each region will have its own institutional set-up to steer the protocol in question. It includes a Council of Ministers meeting at an interval agreed by the Parties, a Committee of Ambassadors, the possibility of meeting at Heads of State/Government level, and a Joint Parliamentary Assembly:

A. Africa Regional Protocol

With its tailored priorities, detailed specifically according to the region's needs:

- Inclusive and sustainable economic growth and development
- Human and social development
- Environment, natural resources management and climate change
- Peace and security
- Human rights, democracy and governance
- Migration and mobility

And specific governance:

Africa-EU Council of Ministers, Africa-EU Joint Committee; Africa-EU Parliamentary Assembly.

The Africa Protocol will be implemented in coherence and complementarity with the continent-to-continent partnership, taking into account the strategic and political guidance of the AU-EU Summits. It encourages dialogue and cooperation on cross-regional and continental issues with African countries that are not party to the Agreement, with regional economic communities and other relevant actors.

B. Caribbean Regional Protocol

With its tailored priorities, detailed specifically according to the region's needs:

- Inclusive and sustainable economic growth and development
- Environmental sustainability, climate change and sustainable management of natural resources
- Human rights, governance, peace and security
- Human development and social cohesion

And specific governance:

Caribbean-EU Council of Ministers, Caribbean-EU Joint Committee, Caribbean-EU Parliamentary Assembly.

C. Pacific Regional Protocol

With its tailored priorities, detailed specifically according to the region's needs:

- Environmental sustainability and climate change
- Inclusive and sustainable economic development
- Ocean, seas and fisheries
- Security, human rights, democracy and governance
- Human and social development

And specific governance:

Pacific-EU Council of Ministers, Pacific-EU Joint Committee, Pacific-EU Parliamentary Assembly.

People-centred partnership

The Agreement goes beyond its predecessor in various fields and provides an opportunity to play an important role in many areas.

Partners will contribute to the achievement of the Sustainable Development Goals (SDGs) and the fight against climate change, with the 2030 Agenda for Sustainable Development and the Paris Agreement as overarching frameworks guiding the partnership.

The Agreement seeks to create new economic opportunities for all. Special attention is paid to sustainable, inclusive growth and job creation. In particular, stimulating investment and private sector development will be crucial in accelerating sustainable development, to which science, technology, research, innovation and the digital transition will contribute significantly. Cooperation on economic and trade matters will also be improved, facilitating bilateral trade and investment flows, reducing technical barriers to trade, improving government procurement and protecting intellectual property. All existing trade agreements, such as the Economic Partnership Agreements (EPA), will remain in place. Cooperation among partners will contribute to upholding high environmental, social and labour standards.

This goes hand in hand with a renewed focus on climate change and environmental sustainability across a number of areas. Recognising the urgency to act and that climate change and natural degradation pose a serious threat to the attainment of sustainable development, partners have agreed to large-ranging commitments to preserve and protect the planet, its ecosystems and oceans. In line with the Paris Agreement targets, the response to climate change will be strengthened. Joint efforts will be made to address adaptation, mitigation and better tackle natural disasters. This is part of a global, environmental-friendly approach promoting the sustainable development of a blue economy and support the transition towards greener (low-emission/resource efficient) economies.

The cooperation between the EU and members of the OACPS is also rooted in a common set of values and universal principles. Respect for human rights, international law, democratic principles and the ones set out in the Charter of the United Nations constitute the basis for cooperation under the Agreement. They are considered as key issues to ensure other mutual priorities flourish, just like commitments to the rule of law and good governance, which have been strengthened in the Agreement. The same goes for peace and security, where new or emerging threats will be addressed, such as piracy and trafficking in persons, drugs, arms and other illicit goods, as well as cybercrime and threats to cybersecurity, which are essential elements of an integrated approach towards conflict, crisis and their root causes.

The Agreement fosters strengthened cooperation, both sectoral and political, including on foreign policy issues of common interest. These include peacekeeping, terrorism, situations of fragility, death penalty with unprecedented provisions, but also law enforcement and migration and mobility. On the latter, new commitments reflecting a comprehensive and balanced approach address the various inter-linked dimensions of legal and irregular migration in a coherent manner. To foster well-managed migration and mobility, the Agreement promotes strengthened cooperation between partners, relevant agencies and institutions, while also improving return and readmission, with more predictability and enforceability. Common challenges will be better tackled, including the root causes of irregular migration, trafficking and smuggling of migrants.

Human and social development is fostered strongly in the partnership, with the objective of tackling poverty and inequalities, while leaving no-one behind. As recommended in the negotiating directives, stronger commitments have been made within the Agreement to improve gender equality, social services, such as education and health, and social inclusiveness. Partners will cooperate to better address various challenges faced such as food security, rapid population growth and global health crises.

Dialogue has been at the heart of EU-OACPS States relations for years and the new Agreement will further strengthen this important dimension through regular, balanced, comprehensive and substantive partnership dialogue on all areas of this Agreement.

In addition, the Agreement fosters multi-stakeholder cooperation, recognising the importance of youth and various partners including local authorities, civil society organisations and the private sector in shaping a better future. Active engagement in dialogue and cooperation processes, but also collaborative work towards an effective implementation of the Agreement will be key.

All the elements mentioned above are interlinked and will be key in taking our relations to the next level. This means that the Regional Protocols, their interpretation and implementation must respect at all times the provisions and principles contained under the General Part of the Agreement.

Proposal for a

COUNCIL DECISION

on the conclusion, on behalf of the European Union, of the Partnership Agreement between the European Union and its Member States, of the one part, and the Members of the Organisation of African, Caribbean and Pacific States, of the other part

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 217, in conjunction with Article 218(6)(a) and (8), second subparagraph thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

- (1) In accordance with Council Decision [as set out in Council document 8371/23 DCL 1]¹⁰, the Partnership Agreement between the European Union and its Member States and the Members of the Organisation of African, Caribbean and Pacific States (OACPS) ('the Agreement'), was signed on 15 November 2023, subject to its conclusion at a later date.
- (2) The Agreement reflects both the historically close relationship and increasingly strong links developing between the European Union and its Member States and the Members of the Organisation of African, Caribbean and Pacific States (OACPS), and their desire to further strengthen and extend their relations in an ambitious and innovative way. The Agreement redefines the relationship between the EU and its Member States and the Members of the Organisation of African, Caribbean and Pacific States, including the priorities and working methods in the different policy domains to which the Agreement extends.
- (3) The Agreement should be approved on behalf of the European Union.

HAS ADOPTED THIS DECISION:

Article 1

The Partnership Agreement between the European Union and its Member States, of the one part, and the Members of the Organisation of African, Caribbean and Pacific States, of the other part ('the Agreement') is hereby approved on behalf of the Union.

The text of the Agreement is attached to this Decision.

¹⁰ Council Decision [as set out in Council document 8371/23 DCL 1] of 20 July 2023 on the signing, on behalf of the European Union, and provisional application of the Partnership Agreement between the European Union, of the one part, and the members of the Organisation of African, Caribbean and Pacific (OACPS) States, of the other part.

Article 2

The President of the Council shall designate the person or persons empowered to deposit, on behalf of the Union, the instrument of approval provided for in Article 98(2) of the Agreement in order to express the consent of the Union to be bound by the Agreement.

Article 3

This Decision shall enter into force on the day of its adoption.¹¹

Done at Brussels,

For the Council

The President

¹¹ The date of entry into force of the Agreement will be published in the Official Journal of the European Union by the General Secretariat of the Council.