

INSIGHTS INTO THE EU-OACPS NEGOTIATIONS 2018-2021

What are the implications for the future partnership?

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Table of Contents

Background	2
Context for Negotiations	4
The Negotiating Process	7
Internal Dynamics	10
Sticky Issues & Red Lines	14
Outstanding Issues	18
Some Lessons to Be Learned	21
Conclusion	24
Notes	26
Contacts	28

Background



On 3 December 2020, two years and three months after the commencement of formal negotiations,¹ the chief negotiators from the Organisation of African, Caribbean and Pacific States (OACPS) known previously as the ACP Group of States, and the European Union (EU), announced that they had reached a political settlement on the substance and text of a new Agreement. This Agreement was to succeed the Cotonou Partnership Agreement (CPA), and will take the form of a Foundational Agreement (FA) for dealing with matters across the entire OACPS, with three Regional Protocols (RP), one for each of the groups under the OACPS umbrella.² This new CPA will cover relations between both parties for the coming twenty years.

Much is at stake; matters pertaining to development cooperation, economic relations, political engagement and trade³ are all up for modernisation, to reflect both the realities and demands of the 21st century and the expectations of the negotiating parties.

This briefing document reviews the process of the EU-OACPS negotiations, with a view to providing insights on the following issues:

- The challenges and bottlenecks in the process and those issues that have created tension.
- The future roles of the African Union (AU) and OACPS Secretariats in the EU-OACPS relationship, and in Africa's relationship with the EU.
- Areas of unfinished business that could potentially lead to problems of implementation.
- Observations from the negotiation process and lessons learned.



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Context for Negotiations



The CPA,⁴ which has guided the relationship between the EU and the OACPS for the past 20 years, was originally due to expire in February 2020. However, it has been extended several times with transitional arrangements in place, and is now scheduled to end in November 2021. Over the period covered by the Agreement, there have been significant changes on a range of issues, which have influenced both the negotiation objectives of the parties and their positions on certain issues. Some of the changes which have materially affected the negotiating landscape are presented below.

a) Geopolitical realities have evolved; the world has changed and so has Europe. New global actors, including developing countries in the BRICS economies (the group comprising Brazil, Russia, India, China and South Africa), and the MINT group (Mexico, Indonesia, Nigeria and Turkey) have assumed important roles in the international arena commensurate with their growing economic and political power. China, is approaching superpower status and projects its influence and soft power across increasingly large swathes of the world. Many in the OACPS group have important relationships with China, as do many countries in Europe. The membership of the EU has also changed and expanded. It now includes Member States from Eastern Europe who, for the first time, were able to participate in negotiations on the future relationship between the EU and the OACPS. Their views on that relationship are not informed or shaped by the colonial history that many western Europe states share with members of the OACPS group; as a result, they adopt a more pragmatic approach to the relationship.

b) OACPS countries are now more developed. Although poverty remains an issue and in some cases - such as in the Sahel Region of Africa - has increased, with a significant number of the countries within the 79-member group having advanced along the development continuum to achieve Middle Income Country (MIC) status.

Within this group, however, the so-called Small Island Developing States (SIDS) of the Pacific and the Caribbean retain a high degree of vulnerability. Even although the majority of the world's poor currently live in MICs, they are ineligible for concessionary sources of funding and some forms of development support. Some, like South Africa, now command a more visible presence on the global stage. Nigeria will be the world's third-most populous country by 2050, and by then Africa will be home to the world's largest and youngest labour force. The future prospects for several of these countries have changed.

c) Attitudes have changed; there has been a perceptible shift in attitudes on both sides. Both have departed from the donor - recipient asymmetry that had previously characterised the relationship. In these negotiations, Europe spoke of a more equal partnership, while countries of the OACPS were more assertive. The latter have held their own positions and red lines, keen to protect and project their strategic interests and unique characteristics - cultural and otherwise - within the new Agreement. Both parties recognise and acknowledge that the current Agreement, while delivering on development cooperation objectives and global climate change objectives, the SIDS agenda and development finance among others, has not intensified political engagement. This is despite the fact that the two parties in the negotiation together command more than half of the membership of the United Nations General Assembly (UNGA). The failure to deliver fully on the political front has led some EU Member States to view the OACPS as somehow a less valuable partner. Indeed, as both groups prepared for the start of formal negotiations at the end of 2017, some Member States openly questioned the continued value and utility of the EU-OACPS relationship. Instead, they set out a clear preference for direct relations between the EU and OACPS regions and an AU-EU relationship, bypassing the institution of the OACPS in its entirety. Some three years later, these conversations persist. Indeed, discussions on funding for OACPS partners were revived as the scale of the COVID-19 pandemic - and the funds needed to engineer Europe's economic recovery and to support the EU's most-affected countries and regions - became clear and gathered momentum. The EU's budget deficit, given the departure of the UK from the bloc's membership, has added further impetus to such discussions.

d) The mood has changed. Observers following the negotiations that led to the formation of the CPA over 20 years ago, described the process as commanding attention and creating great anticipation and excitement over this advanced model of north-south cooperation that the Agreement promised.

They spoke of a 'flatness' surrounding the current negotiations and the mood as 'decidedly muted'. Indeed, the news of a conclusion to the most recent negotiations is said to have been greeted with a distinct lack of enthusiasm in Brussels.⁵



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The Negotiating Process



It is in the nature of negotiations to expect so-called 'sticky' issues will arise; these will require compromise and accommodation on both sides. The most intractable of these issues are known as 'red lines' in negotiating terms, and usually require political input in finding resolution.

There can also be several routes to arrive at a compromise, one of which is through the machinations of drastically diluted texts that provide temporary fixes to thorny issues. While such measures facilitate a short term compromise process, the issues themselves regularly re-emerge as points of contention later in the process.

The EU-OACPS negotiations proved no different and indeed added their own major complexity, that of the extended period required for the negotiations.

a) **Protracted Negotiations**

The process of the EU-OACPS negotiations has been long and at times arduous. This was not unexpected, given the numbers of players involved,⁶ the various interests at stake and the individual domestic priorities within both groups. The groundwork leading to the start of formal negotiations - at least on the EU side - was lengthy. On 22 November 2016, the European Commission and the Office of the High Representative set out a proposal for a renewed partnership with the OACPS group. This revolved around three topics: the structure of the future relationship; the nature of any possible agreement and issues of geographic coverage.⁷ On 28 November 2016, the EU Ministers of Foreign Affairs commenced discussions on the contours of the future relationship. Discussions continued on 19 May 2017, followed - on 17 December - by a presentation from the Commission of its recommendations for the future partnership. By the following year, on 30 May 2018, the ACP Council of Ministers approved the group's negotiating mandate and appointed Robert Dussey, Togo's Minister of Foreign Affairs, to lead the negotiations on its behalf. On 22 June, the EU Council approved the negotiating mandate and appointed Neven Mimica, Commissioner for International Cooperation and Development as Lead Negotiator.

Formal negotiations commenced on 28 September 2018 in the margins of the UNGA meetings, with the First Round concluding on 14 December. The new year ushered in a period of regional consultations and work on the Regional Protocols.

The Second Round negotiations concluded in Chad on 4 April 2019, followed by further regional consultations and meetings between the Chief Negotiators on 23 May to discuss the outlines of the new EU-OACPS Partnership. EU negotiators were keen to conclude negotiations by July 2019, in anticipation of the usual hiatus in work over the summer in Brussels. They were also eager to secure the conclusion of all other work prior to the assumption of duties by a new Commission President, college of EU Commissioners and Commission officials in November 2019, including that of legal scrubbing and signing. This rush to conclusion was not shared by the OACPS, which felt that the remaining gaps between the parties were too substantive to be so easily or quickly bridged.

b) Delays and Distractions

In any event, momentum in the negotiating process stalled with the handover to new leadership at both the EU and, to a lesser extent, at the OACPS.⁸ While the new European Commission was expected to start its work on 1 November 2019, the installation of the new leadership was delayed by a month; the appointment of several Commissioners was also delayed. This created cascading delays on many fronts, most notably in EU Member States reaching an agreement on the EU's 2021-2027 Multiannual Financial Framework (MFF). This delay created uncertainty over certain crucial elements of the EU-OACPS Agreement that dealt with the financing of various aspects of the Agreement and the financing instruments under which funding would be secured. The incoming EU leadership also had to face a barrage of competing priorities.

These included the negotiating a new relationship with the United Kingdom post-Brexit, the waves of populism sweeping Europe, the politically sensitive issues of migration and security around the Mediterranean and the need to fashion a new pact on migration. There was also the pressing issue of China's continued inroads into Europe via its 'influence by investment strategy' coupled with Europe's urgent need to reassess key partnerships and relationships including that with the United States.

With so many pressing issues at home, in the near neighbourhood and abroad, EU-OACPS negotiations understandably found themselves on the EU's back burner.

c) The COVID-19 Pandemic

In early 2020, Europe and the world was coming to terms with the impending COVID-19 pandemic; its impact, scale and severity could not have been predicted. The pandemic inevitably impacted the normal process of face-to-face negotiations considerably, adding unplanned aspects to the work of negotiators and technical teams on both sides and stretching the time for concluding important work on both the FA and RPs.

Another unavoidable consequence of the pandemic was the reopening of discussions on the MFF and the elements concerning the OACPS. Despite the late stage in the negotiating process, some quarters of the EU saw open calls to discontinue support to the OACPS as a single entity, but not to the regions. Following a hiatus, the negotiations that had paused in early March 2020 resumed in June with a short break in August before restarting again in mid-September.

d) The Negotiating Atmosphere and Trust

The negotiating atmosphere, although generally cordial, was coloured by elements of mistrust and cooler overtones. Individuals on the OACPS side felt that the EU was applying 'wedge diplomacy' in an attempt to undermine the cohesion of the group. In addition they felt that the push for short negotiating timelines and a "take it or leave it" attitude were coercive tactics, designed to ram through agreements that would be detrimental to the interests of the OACPS.⁹ More profound questions of trust emerged when - at the height of the negotiations - the EU published a blacklist of high-risk third countries on charges of money laundering and terrorism financing, which included some OACPS members. This drew sharp protests from the group. Ultimately, rather than accelerating negotiations, on 14 February 2019, the CPA with transitional elements was extended until December 2020 and subsequently twice more; to March 2021 and then to November 2021.

Internal Dynamics



A number of issues, some of which could not have been foreseen, conspired to set both the tone and pace of the negotiations.

a) **Multiple Interests and Lack of Internal Cohesion**

Political differences within the EU, along an east-west axis, affected the process of establishing consensus on the bloc's negotiating positions on a number of issues. These included, among others, the relationships with former colonies, support for middle-income developing countries, the perceived value of the EU-OACPS relationship and the issue of financing. Long-standing EU tensions along a north-south axis were also an influence on the issues of the EU budget, financing and migration, all of which have been bones of contention for southern European countries in recent times. *These fault lines in Europe all played a role in stalling EU consensus at various points during the negotiations.* Internal EU negotiations on the EU's new Pact on Migration spilled over into the EU-OACPS negotiations. Southern EU states were expected to play important roles in the processing of returnees; however, with memories of the 2015 refugee crisis still fresh, these countries were understandably apprehensive about the role envisaged for them under the new Pact. At one point, they were signalling support for the OACPS position as one aligned with their own interests. On the OACPS side, internal divisions there also stood in the way of identifying easy or quick consensus. For example, the latter had agreed that RPs would be subsidiary to the OACPS Foundational Agreement, making a chapeau for the former unnecessary. In so doing, the OACPS sought to underscore the indivisibility of the link between the organisation and each region. This would help resist EU pressure to deepen regionalisation by having the RPs stand on their own in a manner that would denote their independence from the OACPS. This was fundamental for the OACPS in the negotiations. The Pacific Region, however, pushed ahead with an early conclusion of its RP, including a chapeau that broadly set out the Agreement's principles.

Given the previous decision for the new Agreement to be signed in Samoa, there was speculation over whether the Pacific considered it prudent to align their interests with that of the EU on the matter of the chapeau, given the legacy at stake in the naming of the new Agreement. *In any event, there was the sense on both sides that negotiations were taking place as much within the parties as between them. This led one of the interested parties on the OACPS side to observe that, "We should have negotiated with ourselves first". At the same time, on the EU side, there had been a strong sense that the lack of internal cohesion had weakened the EU's external action and negotiating capacities.*¹⁰

b) **Structure of the Negotiations**

The introduction of a greater role for the OACPS regions in implementation of post-Cotonou arrangements added extra layers of consultation and coordination between OACPS Ambassadors in Brussels and the various national and regional entities. This was a time-consuming process, resulting in uneven completion of the RPs with consequences for completing the FA.¹¹



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c) Regionalisation

The negotiations introduced both a significantly enhanced role for the regions in the new Agreement and the concept of greater engagement of OACPS countries with non-OACPS countries within their geographic regions. In the Caribbean, for example, the process envisaged greater engagement of the OACPS with Latin America countries within the framework of Community of Latin America and Caribbean States (CELAC). The economic and political ties between the English-speaking Caribbean countries and those of Latin America - despite their geographic proximity - are neither robust nor deep. While CELAC acts as a hemispheric forum for engagement with the EU, meeting in summits on a bi-yearly basis, it is not one where Caribbean and Latin American countries co-habit naturally nor easily. The Caribbean had met the early push for regionalisation with a certain amount of scepticism. In some respects, it brought back memories of the EU's efforts a decade earlier in pushing for the English-speaking Caribbean to form an alliance with the Dominican Republic and create a new group - the so-called Cariforum - as the basis for negotiating the region's Economic Partnership Agreement (EPA) with the EU. The early years of this alliance were challenging and not without friction. The way forward with this aspect of regionalisation will not be without some challenges, as these new arrangements are put into effect and tested. Mirror arrangements are being put in place in the Pacific to include the insular Pacific and other, larger Pacific countries such as Australia and New Zealand. The difference here, however, are the deep ties - both historic and ongoing - that bind the insular Pacific to its bigger neighbours.¹² African regions are expected to increasingly fall under the umbrella of the AU-EU relationship, particularly once implementation of the African Continental Free Trade Area (AfCFTA) gains traction and momentum. On this issue of regionalisation, OACPS members have raised concerns over the role of non-member countries and the scope of their engagement in the new Agreement.

They are also concerned that the overall goal of regionalisation is to fragment the OACPS, a process seen to have commenced with EU-EPA negotiations with the individual regions.

Together, these initiatives reinforce the view that a systematic dismantling of the institutional role and architecture of the OACPS is being orchestrated by the EU. This sense has been further amplified by the EU's early reluctance to grant the office of the OACPS's Secretary General (SG) with any status in the regional arrangements. This desire for a diminished role for the OACPS secretariat was also thought to be consistent with the EU's focus on Africa, seen as the prize within the group.



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d) Focus on Africa

It has been obvious for some time that the EU's primary focus within the OACPS group is clearly on Africa. Indeed, the new EU Commission President's first overseas visit was to Addis Abeba and the AU, underscoring the geopolitical importance of Africa and its 'priority' status for the EU.¹³ A number of interrelated issues concerning Africa's development, its growing population, migration and the EU's security are vital concerns for Europe. An EU objective of developing a comprehensive strategy for the continent remains challenging, given the separate EU-Africa agreements subsumed under various arrangements. These include the EU-OACPS framework, the EU-AU Joint Partnership Agreement as well as others such as North Africa as part of the European Neighbourhood Policy (ENP) and a potential future Euro-Mediterranean Free Trade Area. Nevertheless, the EU continues to strive for coherence in its overall relations with Africa. There has been talk of a Marshall Plan for Africa and of creating the position of an EU Commissioner for African Affairs. The extension of Cotonou transitional arrangements until November 2021 allows¹⁴ the EU to align outcomes of the AU-EU summit¹⁵ - which will include discussion on both the new EU-AU Joint Strategy and the EU Pact on Migration - with EU-OACPS arrangements under the successor CPA Agreement.

e) The Role of the AU

The negotiation process has also raised important institutional questions, including over the long-term viability and role of the OACPS, particularly given the EU's push for regionalisation and some African Member States seeking to increase the stature of the AU in all relations with the EU. However, there is a realisation within some quarters of the EU that African Member states have not delegated the full authority the AU requires to undertake grand political areas of competence; essential when facing the EU with equal mandates and negotiation strength. This was painfully highlighted when the AU's communique of March 2018, regarding its

intention to negotiate directly with the EU on post-Cotonou arrangements and outside the framework of the OACPS, failed to materialise. This arose because of a lack of political agreement in Africa on both the role of the AU in these negotiations, and the continent's continued engagement with the OACPS. Ultimately, negotiations commenced with the OACPS as originally planned, and EU proponents pushing for a lead AU role were left with a reluctant appreciation of the reliability of the OACPS as a known, safe and reliable partner for some time to come.

f) The Future of the OACPS

The greater the role of the AU in representing the priorities of Africa in relationships with the EU, and the deeper the institutional ties between the EU and the various OACPS regions, the greater the likelihood of a gradually diminishing role for the OACPS in relations between its Member States and the EU, as well as between the institution and its membership. The inability of the OACPS to optimise the Georgetown Agreement¹⁶ to deepen cooperation and strengthen ties among the OACPS regions internally represents a failure at both institutional and membership levels. *During the 20 years of the CPA, the prime focus had been on the relationship with the EU, with few initiatives undertaken to specifically strengthen intra-OACPS ties. Deeper relations between OACPS Member States would today have served the institution in good stead in making the case of its value beyond that of interlocutor with the EU.* While the institution has conducted studies aimed at repositioning the group as a significant actor on the global stage, no actions have been implemented.

Sticky Issues & Red Lines



5.1 Negotiating Red Lines

Agreement between the two parties was easily reached and negotiations were fairly straightforward on a number of issues, including those relating to the environment, trade and economics as well as peace and security. However, it was clear from the experience of CPA implementation over the years that a number of issues remained divisive and would provoke intense discussion during the negotiations. Issues relating to the future role of the OACPS and financing arrangements were expected to be the subject of prolonged discussion. Others, relating to taxation, were known to be vexatious.

The EU return and readmission policy on migration and the OACPS stance on the contextual role of culture, traditions and norms in framing discussions on sexual and reproductive health and human rights were predictably contentious. Indeed, these issues did become early red lines, remaining in bracketed text until the eleventh hour. Ultimately, they required resolution via political fiat and agreement by way of compromise and diluted texts. On these and several others matters, there were no quick or easy wins. At several points, OACPS technical negotiating groups signalled that they had taken discussions as far as they could and that compromise could only be determined at a political level. On matters such as human rights and migration, the OACPS negotiators' suggestion was that these issues - given the overriding competence of national legislation on these topics - be subject to bilateral agreements between the EU and OACPS Member States. Indeed, there is precedence on the EU side for such approaches;¹⁷ for the EU, matters outside the negotiating mandate required a return to the European Council. Negotiators returned to principals on several matters, including the politically thorny issues around the new EU Pact on Migration. Such contentious issues remained in bracketed texts until the end. On these and other difficult issues, after a break of some weeks EU negotiators finally returned to the table in mid-November with significantly watered-down texts. This paved the way for the announcement, on 3 December 2020, that agreement on a successor to the CPA had been reached.



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5.2 Sticky Issues

The spirit of the new Treaty to be signed in Samoa is contained in the chapeau of the Foundation Agreement dealing with the successor Agreement's Strategic Priorities. The text generally reaffirms the 'determination' of the Parties to protect, promote and defend all human rights and fundamental freedoms, democratic principles, strengthen the rule of law and good governance, ensure equality of access and the importance of these values to sustainable development. While there is a *general* agreement around the importance of these values, nevertheless a divide remains on the means and pace of how they will achieve them, as does the overarching importance of cultural traditions and norms as the context for attaining them. Some of these are discussed below:

a) Human Rights and Freedom

The notion of 'shared and common interests and values' may be subject to varying degrees of interpretation and in some cases may contribute to underlying tensions. This was evident in the EU-OACPS negotiations. Some developing countries believe that it is imperative to devote all efforts towards economic growth as the primary priority. They can then use the increased prosperity that results to address those values - such as democracy, human rights and various other freedoms - viewed as worthy and aspirational goals but not on the first tier of priorities. There is also the view that such values should be prescribed by relevant cultural norms and traditions, something that finds resonance among certain OACPS countries. These countries also feel that the EU displays double standards on the values of democracy, governance, human rights and other freedoms, when viewed against the treatment meted out to those EU members who flagrantly flaunt such values and norms. It creates a sense that OACPS countries are being held to higher standards with tougher conditions imposed to exact compliance. These double standards seem to underscore the asymmetric nature of the relationship between the groups, despite EU rhetoric to the contrary. Such sensibilities helped harden sentiments during the negotiations.

b) Rule of Law and Justice

The issue of the death penalty is one where the sides held different positions. Several countries in Africa and the Caribbean still retain the death penalty as part of their penal codes.

c) Human and Citizen Security

The deportation, post sentence, of foreign criminals from the EU was felt by OACPS members to need a proper framework for discussions. This, they felt, should include provisions of appropriate notice and measures to support reintegration.

d) Sexual and Reproductive Health and Rights

Early in the negotiations, it became clear that issues of gender identification and sexual orientation were going to be 'sticky' areas, particularly for some African countries. As a group, the OACPS again emphasised the importance of cultural traditions, norms and values in addressing these issues. Instead of adopting prescribed texts, they chose to emphasise alignment with modes of conduct embodied in the United Nations (UN) Charter, international human rights instruments, conventions and other previously ratified instruments. These included the protocols established by the Beijing Platform for Action and the Program of Action on the International Conference on Population and Development.

e) The Jurisdiction of the ICC

Several African countries have withdrawn from, or are considering withdrawing from, the jurisdiction of the International Criminal Court (ICC) on the basis of perceived discriminatory treatment and bias. This makes the matter of the Court's jurisdiction a politically sensitive issue. Rather than cede ground on the issue of the Court's jurisdiction, OACPS members instead opted to note cooperation with international criminal justice mechanisms, which may include the ICC.

f) Migration

This is an important and sensitive issue for both parties, particularly for the African countries in the OACPS. With Africans fleeing their homelands, pushed by circumstances that range from armed conflict and instability to the effects of climate change, poverty and unemployment. The continent's need for peace, security and job creation is clear. The fact that Africa's population will almost double by 2050 raises the likelihood of increased irregular migration, something that Europe is keen to avoid. For the EU, irregular migration closely correlates with its security. It has also been used repeatedly by populists throughout the Union to create domestic political challenges and tensions. Disagreement within the bloc on new migration policies has exacerbated simmering tensions between those states at the external borders - such as Hungary, Greece, Italy and Spain - and the rest of Europe. *The EU's early insistence on the use of conditions in these negotiations, linking development cooperation and financing on the EU side to the use of best offices and endeavours on contentious issues such as migration, including threats to curtail visas for OACPS government officials were not well received, and stiffened spines.* The matter of return and readmission of migrants deemed to be illegal, and the use of EU transit documentation to enable return, met with strong resistance. Finding common ground on which to seek agreement has proved elusive. On the EU side, there was an awareness that the matter was politically and socially too important to EU Member States to simply gloss it over. OACPS offers to negotiate the matter bilaterally were deemed unrealistic by the EU as being an overly fragmented approach. At one point, EU negotiators seemed to assume that African Member States might leverage consensus on this matter to extract greater financial commitments from the EU. The matter remained contentious and in bracketed texts until the very last minute.

g) International Business/Financial services

Matters pertaining to international taxation and the EU-OECD+ approach to non-cooperative tax jurisdictions were pressing concerns for many Caribbean countries - and others - well before the onset of these negotiations. The subject of financial services became even more contentious when the EU released a new so-called 'blacklist' of high-risk third countries for money laundering and terrorist financing, including some members of the OACPS. The latter felt that the release of the list, and its timing, was coercive, and protested accordingly. They requested space for bilateral consultation and other forms of engagement.

h) Funding the post-Cotonou Agreement

Under the CPA, a standalone, independent financial instrument, the European Development Fund (EDF), provided certainty and predictability on financial arrangements. Under the new Agreement, resources - aside from Africa with an identifiable, well-resourced financing envelope proposed under the MFF - for other OACPS initiatives, including those for the Pacific and Caribbean RPs are yet to be identified. These are subsumed under the newly streamlined Neighbourhood, Development and Internal Cooperation Financial Instrument (NDICI). The separation of these financing arrangements and lack of identifiable resources for the other two OACPS regions imparted a great deal of uncertainty to the negotiation process. To some extent, this also created cracks in the OACPS foundations, by virtue of the differences in treatment between Africa and the other two regions. The question of financing for the OACPS Secretariat and intra-ACP projects, as well as means of cooperation and remaining financial packages remained in the balance until late in the process of the negotiations. Even at that point, specific allocations for the Caribbean and Pacific Regions, the OACPS Secretariat and intra-ACP resources do not form part of the agreement.

Outstanding Issues



The process of the legal scrubbing of texts, preparations for initialling and then signing of the Agreement by the end of this year (2021), has started. There are still concerns that some unfinished business remains and will create difficulties and challenges for implementation. Some of these are outlined below.

1. Compromise and Diluted Texts

The mechanism of diluted texts has allowed compromise by the parties on some of the most contentious issues. However, the very lack of specificity provides ample room for interpretation.

In reality, although agreement was said to have been reached on 3 December 2020, the most contentious issues have been agreed 'in principle' by the EU and the specifics remain vague. This approach, while necessary to conclude the negotiations, offers only a short-term solution. In reality, the issues have only been postponed; their potential to create tension later remains. Negotiators now need to start the process of securing the Agreement of the European Council and the European Parliament, one which is not without its challenges. In the meantime - given that there is still one year remaining until the final signing - there is sufficient time for the EU to bilaterally engage with OACPS capitals. This way, it can seek to secure late wins on the most difficult of issues such as those of migration, return and readmission.

2. The OACPS versus the AU.

The case being made for an increasing role for the AU rather than the OACPS in Africa's relationship with Europe remains a source of contention for some EU and AU Member States and officials. There are some who remain ambivalent about the OACPS, and show a clear preference for engaging directly with the AU on African issues, and with the Caribbean and Pacific through their regional organisations. There is also the sense that engaging Africa via an EU-OACPS relationship is somehow inimical to the AU-EU relationship and represents an obstacle to a comprehensive EU strategy for Africa.

However, some in the European Commission disagree, holding the view that the two negotiation processes are complementary, as the EU seeks to modernise relations with both groups.

Others posit that several African countries have signalled their preference to work through the AU rather than engage with the OACPS. While this may be true, the sense of a binary choice is based on a false premise. It is the case that a sustainable, long-term, future role for the OACPS has yet to be concretely determined by its members. A successor to the CPA has been negotiated, with distinct roles for the OACPS and the AU, and all African countries who were part of the CPA participated in the recently concluded successor negotiations. While there may be some institutional overlap, the AU and OACPS remain different entities. It is also clear that African Member States have not yet reached agreement regarding the overarching role and political competences that they wish to devolve to the AU. In the meantime, African countries will continue to exercise membership in both institutions, and to shape them until such times as it is clear that the usefulness of either organisation has run its course. It is also clear that the OACPS will remain on the institutional landscape, albeit scaled down, reinforcing the regional dimensions of the relationship between the EU and OACPS regions.¹⁸

However, the long-term viability of the OACPS, beyond its role in any new agreement, remains to be determined. At some point, its membership will decide whether or not the Amended Georgetown Agreement provides a compelling basis for the development of an OACPS future beyond that of engagement in the relationship with Europe. Hard questions will be asked on costs versus benefits of the OACPS. With each region now equipped with their own programmes and financing arrangements, some may question the added value of the OACPS framework.

3. Coordination Between the Tiers

Currently, the Brussels-based Committee of Ambassadors (COA) plays an important role between national and regional entities and the EU. However, they have expressed concerns in the past over the EU's penchant for communicating directly with capitals. Regionalisation dilutes not only the central role played by the OACPS, but also that of the COA, who, under the new Agreement are now grouped together with regional and national officials as 'senior officials'. How the interaction between EU officials, the COA, the OACPS, regional and national officials plays out in future will be refined and honed in practice.

4. Regionalisation

Over and above the points already raised, regionalisation adds a further layer of joint institutions to an existing institutional landscape; one which has not always functioned effectively. How these will function and subsequently articulate at the higher foundational level of EU-OACPS joint institutions remains to be seen. For example, attendance by Members of the European Parliament (MEPs) at the Joint Parliamentary Assembly (JPA) in Brussels is notoriously weak, raising questions over the JPA's relevance and usefulness. It is, however, understood that this particular institution will continue, given its sense of importance to the OACPS. The role of non-OACPS countries in the process of regionalisation, and the capacity of regional institutions to manage and report on these new arrangements, will also be tested.

5. European Parliament

The removal of the EDF from consideration as a standalone feature of the new Agreement was seen as important, not only for EU Member States but also the European Parliament, who wished to exercise greater oversight and provide more input into the EU-OACPS relationship. It is understood that the European Parliament will also provide oversight of projects and their financing as they relate to the RPs, replacing the joint systems in place between the OACPS and the European Commission.

EU bureaucracy is notoriously lengthy when it comes to the project approval processes, there is reason to assume that new layers of oversight - while addressing the concerns of MEPs - will likely increase implementation delays.

6. Migration

Issues over undocumented and irregular migrants have not been settled fully. While the principle of return and readmission was heavily debated, and the use of EU travel documents to facilitate deportation was resisted, the EU has supported both Senegal and the Ivory Coast with pilot biometric projects designed to assist in citizen identification. This is an initiative that can also be used to support migration purposes in the future.¹⁹ Funds were provided under the EU Trust Fund for Africa, with an allocation of €60m to develop the systems in the two countries.²⁰ In addition, migration issues are to be discussed at the AU-EU Summit later in 2021, as the EU seeks compatibility between the agreements secured under both the OACPS Foundational Agreement and the African Protocol, as well as decisions taken at the EU-AU Summit.

7. Financing Matters

Financing approaches for the Caribbean and Pacific Regions, Intra-ACP and co-financing of the OACPS Secretariat are still to be agreed. While it has been indicated that funds will be made available, these are not specified in the Agreement and are subsumed under the NDICI instrument, thus leaving uncertainty regarding provisions for these elements.

8. Parties to the Agreement

Up to the date of the declaration of an agreement on a successor to the CPA on 3 December 2020, the long-standing matter of identifying parties to the Agreement on the EU side has yet to be clarified.²¹

Some Lessons to Be Learned

KANANUMI

KEI

KOBAU

MAAFU
VAKAWALETABUA
ISIKELI
NACACILEVU
RITOVA
MATANITOBUA

O IRA
VOLA SA SOLI KINA
ERITANIA

VITI

TOPA 1874

KARABUNI 200
DA PUKADUNA
NA PUKALE KEI
LEWENABUA
DU VITI
PANAALANI W
TIVU DA HANU
VAKA 20
20 JUNE 1947

1. **Negotiations are about Power**

Pronouncements regarding the need to move the OACPS-EU relationship beyond that of donor/recipient did not negate the reality that power asymmetries exist in the relationship and that power plays would be used to exert leverage in the negotiations. For example, the EU leveraged the threat of interrupting visa processing for government officials to extract best efforts from OACPS countries on the issue of return and readmission. Even well into the final rounds of the negotiations, matters of obvious importance to the OACPS - such as the critical one of financing for several elements - had not yet been settled. Indeed, linking compliance in other contentious areas - such as sexual and reproductive health and rights - with development cooperation and financing arrangements provided the EU with opportunities to exert pressure. OACPS countries used their own red lines on non-negotiable matters as bargaining chips to negotiate more acceptable terms in other areas. On such matters, OACPS countries proved more assertive than expected. At their own level, regions were proactive. In an attempt to weaken the levers of EU power, they gave early notice that the RPs would be based on respect for national laws and applicable agreements, on the concepts of the sovereign equality of states and restraint from using of coercive and unilateral measures. By applying this universally recognised language, the regions left little room for ambiguity over the parameters within which implementation would occur.

2. **The Perception of Power is Important**

Some members on the EU team suggested that it would be in the OACPS's interest to complete negotiations before the beginning of the German Presidency of the Council of the European Union in July 2020. This was because of concerns that negotiations could potentially become more inflexible, making resolution on contentious issues more difficult.

The OACPS's view was different; it believed that the German Presidency increased the likelihood for reaching agreement, given the weight of Germany's stature and influence in the EU, easing the path to consensus. Ultimately, negotiations under the German Presidency were considered to be fair and balanced, and agreement was reached in December 2020 in the closing days of the Presidency.

3. **Internal coherence matters**

On both sides, conflicting and diverging interests within the parties created challenges in establishing consensus, making the work of the negotiators more difficult. Even where texts had been agreed, some EU Member States were pressing EU negotiators to reopen the discussions.

4. **Preparation matters**

The EU had meticulously laid the groundwork for the negotiations years before they commenced. It was determined to have them wrapped up prior to the scheduled change in EU leadership in November 2019. The OACPS did not engage in a similar robust and systematic preparatory programme, something that became clear at the early stages leading up to the negotiations. The OACPS found itself on the back foot, reactive to the EU rather than being able to set out its own positions, although the gap narrowed over time. The EU lost momentum as a result of several factors that have already been described, allowing the OACPS negotiating machinery to kick into gear. Even so, the scoping of the divergent interests within the OACPS, the scripting of texts to aid in defining institutional positions and the articulation of fallback positions would all have been valuable to the organisation.

5. The Cultural Context matters

The notion of shared values is important, in that it cements partnerships around common ideas and norms. However, these negotiations underscored the need to recognise differences in cultural contexts within which such values find their expression and the pace at which meaningful change can be introduced and sustained.

6. Balancing National and Regional Objectivities

The EU-OACPS negotiations has highlighted the difficulties in balancing widely disparate national and regional priorities around the notion of common positions or priorities. The greater the number of bodies – and interests – involved, the more divergent and protracted the negotiating process becomes.

7. The Importance of Flexibility and Compromise

Contentious issues for both sides remained firmly squared in bracketed texts until late in the negotiations. Ultimately, however, the spirit of compromise, flexibility and common purpose allowed parties at all levels of the process – technical and political, in the regions and in Brussels – to move forward. They did so in a manner that finally allowed for the Chief Negotiators to declare that consensus on the shape of a successor to the CPA was now in hand.



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Conclusion



Despite its shortcomings, the legacy of the Cotonou Partnership Agreement will be that of its stature as a model for North-South development cooperation. A new chapter in the relationship between Europe, Africa and the Caribbean and Pacific group of countries is now being written. The future relationship between the parties will be less centralised and more differentiated. It will be interesting to see how the Successor Agreement fares, how the many new features and mechanisms perform and if indeed it emerges as an instrument of development cooperation fit for purpose in these modern times. The OACPS, for so long the pivot around which the relationship with Europe circled, will be further shaped, refined and determined over time. Assuming all goes well, the new Partnership Agreement,²² accompanied by various Annexes and Declarations, will be initialled and signed by the end of 2021 and will come into force once ratified by the required numbers. Implementation may revive some old challenges and uncover new ones, given the number of areas covered by the Agreement - in principle, on the EU side; however, this is 'par for the course'. Following three years in the making, the EU, Africa, the Caribbean and the Pacific will together embark on a journey under a new Partnership Agreement, which will guide their relationship for a further twenty years.



**THE FUTURE
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CENTRALISED AND
MORE DIFFERENTIATED.**

1 Negotiations on a successor Treaty commenced on the margins of the United Nations General Assembly on September 18th, 2018.

2 The Regional Protocols outline regional specific elements of the relationship with the EU while maintaining subsidiary status to the Foundational Agreement.

3 Trade has to some extent been subsumed under Economic Partnership Agreements (EPAs) previously negotiated between the EU and the six regions of the OACPS, but the need to reinforce benefits was part of the discussions during the negotiations, and it is expected that language to that effect will make its way into the new Agreement.

4 The Cotonou Partnership Agreement (CPA) signed in Cotonou on 23 June 2000, is a comprehensive partnership agreement between the EU and 79 countries in Africa, the Pacific and the Caribbean. At its core, the CPA speaks to international cooperation and development.

5 Personal Communication, senior personnel at a European political think tank.

6 Negotiations involved the herculean task of attempting to reconcile the interests of 79-member states on the OACPS side and 27 on that of the EU.

7 European Council: Timelines for steps towards a new EU-ACP Partnership after 2020. [\[link\]](#)

8 A New OACPS Secretary General H.E. Georges Rebelo Pinto Chikoti of Angola and Assistant Secretaries General (ASGs) were appointed for 5-year terms (2020-2025) in December 2019 at the 110th Session of the ACP Council of Ministers Meeting in Nairobi, Kenya. The new SG took up his post on March 2, 2020. The process of installing new EU leadership commenced in July with the appointment of Charles Michel as President of the EU Council with a two-and-a-half-year term commencing December 2019. Ursula von der Leyen and Joseph Borrell were

appointed as President of the Commission and High Representative of the Union for Foreign Affairs and Security Policy respectively, for 5-year terms from December 2019 – October 2024.

9 Personal communications OACPS official.

10 Personal communications OACPS and EU officials.

11 The Pacific Region, for example, moved swiftly to conclude its RP well in advance of that of the other regions.

12 It was not unusual for example, for the author, in her previous capacity as Director General of the Organisation for Caribbean States to find herself sitting across the table from Australian officials negotiating climate change elements on behalf of the Pacific Islands in the framework of the Alliance for Small Island Developing States (AOSIS) This always seemed odd, given that negotiations on Climate Change in the wider framework of the UN Conference of Parties responsible for negotiations would see Australia seated with other members of the Developed Country groupings while the SIDS groups and other Developing Countries would be negotiating as often times opposing and different parties.

13 The recent EU support for the African WTO candidate, while a break from America's support for the South Korean candidate, was nonetheless consistent with the EU support for Africa.

14 There was some concern at the time of writing that while transitional arrangements had been extended financing arrangements to cover the extension had not been secured.

15 The EU-AU Summit scheduled for March 2020 was rescheduled to 2021.

16 The Georgetown Agreement was signed in 1975 with several purposes, one of which was to create a sense of unity and solidarity among the countries of the ACP in their relationship with Europe. The Agreement was amended and adopted on 9 December 2019, at which time the ACP group became formally, the OACPS.

17 When the EU negotiated the EPAs with the Caribbean, for example, the movement of persons associated with the professional and cultural industries (Mode 4 travel facilitation) was negotiated. Caribbean countries discovered, years later, that the competence for this type of travel lay with individual EU member states who required bilateral negotiations on the matter of visa waivers and or temporary work permits.

18 Three years ago, discussions centred around the size and functionality of the OACPS which would emerge in a new agreement and if the institution would be a 'large' or 'light' umbrella. Today the answer to that question is clear.

19 While member states welcome this as being vital in dealing with instances of the issuance of fake passports especially given the role which tribal leaders also play in the certification process, there is recognition that it can also serve the purpose of identification of illegal migrants. There has been some concern that such projects can support government repression.

20 Natalia Drozdiak. EU Funds Biometric Tech used for returning African Migrants. Bloomberg. November 10, 2020. [link]

21 In this case the parties to the Agreement can be the EU Commission or EU Member States.

22 The decision had been taken previously that the new Partnership Agreement would be signed in Samoa in which case, as per convention, the agreement would be named after the place of its signing. Given the ongoing pandemic this decision may change.

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