

Disappearance of the ACP from the Lisbon Treaty

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In the attached document, prepared in 2004, I pointed out that the Article that makes reference to the ACP countries in the current (now previous) EC/EU Treaties had been omitted from the text of the proposed Lisbon Treaty that replaces them. My document advised the ACP to make an official request to the European Commission and Members of the Convention (representatives of the European Parliament and Member States) to insert a provision concerning the ACP-EC-Cooperation in the Draft/New Constitution in view of the special relationship between the EU and the ACP, historical bounds, responsibilities and mutual interest, as agreed by EC and ACP in Article 55 of the Cotonou Agreement, as follows:

“The objectives of development finance cooperation shall be, through the provision of adequate financial resources and appropriate technical assistance, to support and promote the efforts of the ACP States to achieve the objectives set out in this Agreement on the basis of mutual interest and in a spirit of interdependence”.

In 2004 it would still have been possible for the EC to decide to insert article 179 par. 3 EC in the future Treaty.

Second: The Convention did not consult the ACP about the impact of the disappearance of the reference to the ACP countries from the Lisbon Treaty. This was not according to Article 12 of the ACP-EC-Agreement, to the effect that consultation between the EC and the ACP-states should take place in view of the Coherence of Community policies and their impact on the implementation of the Agreement. Article 12 decides that

‘Where the Community intends, in the exercise of its powers, to take a measure which might affect the interests of the ACP states, as far as this Agreement's objectives are concerned, it shall inform in good time the said States of its intentions. Towards this end, the Commission shall communicate simultaneously to the Secretariat of the ACP states its proposal for such measures. Where necessary, a request for information may also take place on the initiative of the ACP states. At their request, consultations shall be held promptly so that account may be taken of their concerns as to the impact of those measures before any final decision is made.’

The ACP did not make an official request to the EC and did not ask a request for information according to art. 12 ACP-EC Agreement; resulting in the disappearance of the reference to the ACP countries from the Lisbon Treaty.

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DRAFT EU-CONSTITUTION LEAVES OUT ACP-EC-COOPERATION

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In the Draft Constitution for Europe, which shall replace the present EC/EU-Treaties, the article on the ACP-EC-Agreement (art? 179. par.3 EC-Treaty) has been left out.

Art. 179 par. 3 EC-treaty decides:

' The provisions of this Article shall not affect cooperation with the African, Caribbean and Pacific countries in the framework of the ACP-EC Convention. '

Art. 179 par. 3 is a part of the current provisions on Development Cooperation in the EC-Treaty (Title XX) and a part of art. 179 :

Article 179

1. Without prejudice to the other provisions of this Treaty, the Council, acting in accordance with the procedure referred to in Article 251, shall adopt the measures necessary to further the objectives referred to in Article 177. Such measures may take the form of multiannual programmes.

2. The European Investment Bank shall contribute, under the terms laid down in its Statute, to the implementation of the measures referred to in paragraph 1.

3. The provisions of this Article shall not affect cooperation with the African, Caribbean and Pacific countries in the framework of the ACP-EC Convention.

There is no such article in the **Draft Constitution**. Title V of the Draft deals with the External Policy of the Union; Chapter IV deals with the cooperation with Third

Countries and humanitarian aid. Section 1 concerns **Development Cooperation** and **Article III - 219 par. 1 - 3** will replace the current Article 179 EC-Treaty.

Article III - 219 par 2 inserts the current Article 181 EC-Treaty, ends in par. 3 with what is now Article 179 par. 2: *'The European Investment Bank shall contribute, under the terms laid down in its Statute, to the implementation of the measures referred to in paragraph 1.'* and leaves out the current Article 179 par. 3 concerning **the ACP-EC-cooperation**.

Draft EU-Constitution Article III - 219

1. European laws or framework laws shall establish the measures necessary for the implementation of development cooperation policy, which may relate to multiannual cooperation programmes with developing countries or programmes with a thematic approach.
2. The Union may conclude with third countries and competent international organisations any agreement helping to achieve the objectives referred to in Article III - 93. Such agreements shall be negotiated and concluded in accordance with Article III-227.

The first subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.

3. The European Investment Bank shall contribute, under the terms laid down in its Statute, to the implementation of the measures referred to in paragraph 1.

Article 179 par. 3 EC-Treaty (*'the provisions of article 179 shall not affect cooperation with the ACP-countries in the framework of the ACP-EC Convention'*) refers to the **special relationship between the EC/EU and the ACP-countries**, which is the oldest and largest form of cooperation between Europe and countries from the South (ACP) and stood model for later cooperation with other countries. **Historical bounds** between Europe and the ACP-countries give Europe a special responsibility for these countries, which should not be forgotten and should be a part of the next Constitution for Europe. This responsibility stays and is even more urgent, because after 37 years of cooperation 40 of the 79 ACP-countries still belong to the poorest countries in the world. Out of the 48 poorest countries in the world 40 are ACP-countries!! By the Cotonou Agreement signed the 23d of June 2000 the ACP-EC-cooperation has been extended until 2020 with the objectives of poverty eradication, sustainable development and the integration in the world economy of the ACP-countries.

What is the reason for the delete of the current article 179 par.3 EC-Treaty? The following reasons were given by a representative of the European Commission:

Today article 179 par. 3 EC provides for a special form of cooperation with the ACP-countries, which makes it possible to finance the **European Development Fund** outside the framework of the **EU-budget**. The EDF is composed by national contributions of the EC-member states. In a first version of the Draft the Presidium of the Convention took over current Article 179 par. 3, but emphasized that the Convention should examine whether this provision should be deleted, **because a specific policy or different financing is no longer needed**. The final report of the Working Group VII of the Convention, dealing with the external policy of the Union, stated: "***there is large support for making EDF part of the general EU-budget, that is why for the EDF the same procedures will be applied as for other areas where financial support wil be given***". The final report made also clear that this should mean an improvement of the efficiency and more focus on poverty eradication of the EU-development programmes in general, and in no way should it lead to the reduction of the support of the ACP-countries.

A majority of the Convention has supported this approach and Article 179 par. 3 EC was left out of the Draft European Constitution.

Other arguments were: the integration of Cotonou in the normal communitarian framework makes it possible to adjust the support in a better way to the real needs, performance and receive capacity of the ACP-countries, while the process of multiannual programmes will stay in tact. It also helps the European Parliament to fully fulfil its budget tasks conform the general line of the Convention. Further details should be provided for in the institutional agreement concerning the financial perspectives post-2006.

My advice to the ACP is to make an official request to the European Commission and Members of the Convention (representatives of the European Parliament and Member States) to insert a provision concerning the ACP-EC-Cooperation in the Draft/New Constitution in view of the special relationship between the EU and the ACP, historical bounds, responsibilities and mutual interest, as agreed by EC and ACP in Article 55 of the Cotonou Agreement:

"The objectives of development finance cooperation shall be, through the provision of adequate financial resources and appropriate technical assistance, to support and promote the efforts of the ACP States to achieve the objectives set out in this Agreement on the basis of mutual interest and in a spirit of interdependence".

In principle it is possible that the IGC still decide to insert article 179 par. 3 EC in the future European Constitution. As long as the Constitution is not formal accepted it is legally possible. In contrast with the future Convention in the current IGC only the Governments of the Member States have the power to decide. So they have to be approached in order to save article 179 par. 3 EC. However with regard to the political point of view it will not be easy to insert article 179 par. 3 EC in the New Constitution, because almost every delegation in the IGC has stated that they wish to maintain the draft text of the Constitution with as less as possible adjustments, especially for non-institutional issues. **Nor in the IGC at political level nor in the group of legal experts of the IGC the proposition has been made to integrate the ACP-EC-cooperation in the European Constitution.** EU-Commissioner Nielson said during an intervention of the Working Group VII on the External EU-Policy that the cooperation modalities between the EC and the ACP-countries should be revised.

The Convention probably did not consult the ACP. Consultation between the EC and the ACP-states should take place according to Article 12 of the ACP-EC-Agreement in view of the Coherence of Community policies and their impact on the implementation of the Agreement. Article 12 decides that where the Community intends, in the exercise of its powers, to take a measure which might affect the interests of the ACP states, as far as this Agreement's objectives are concerned, it shall inform in good time the said States of its intentions. Towards this end, the Commission shall communicate simultaneously to the Secretariat of the ACP states its proposal for such measures. Where necessary, a request for information may also take place on the initiative of the ACP states. At their request, consultations shall be held promptly so that account may be taken of their concerns as to the impact of those measures before any final decision is made.

EC-TREATY

TITLE XX

DEVELOPMENT COOPERATION

Article 177

1. Community policy in the sphere of development cooperation, which shall be complementary to the policies pursued by the Member States, shall foster:

- The sustainable economic and social development of the developing countries, and more particularly the most disadvantaged among them,
- The smooth and gradual integration of the developing countries into the world

economy,

- The campaign against poverty in the developing countries.

2. Community policy in this area shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms.

3. The Community and the Member States shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organisations.

Article 178

The Community shall take account of the objectives referred to in Article 177 in the policies that it implements which are likely to affect developing countries.

Article 179

1. Without prejudice to the other provisions of this Treaty, the Council, acting in accordance with the procedure referred to in Article 251, shall adopt the measures necessary to further the objectives referred to in Article 177. Such measures may take the form of multiannual programmes.

2. The European Investment Bank shall contribute, under the terms laid down in its Statute, to the implementation of the measures referred to in paragraph 1.

3. The provisions of this Article shall not affect cooperation with the African, Caribbean and Pacific countries in the framework of the ACP-EC Convention.

Article 181

Within their respective spheres of competence, the Community and the Member States shall cooperate with third countries and with the competent international organisations. The arrangements for Community cooperation may be the subject of agreements between the Community and the third parties concerned, which shall be negotiated and concluded in accordance with Article 300.

The previous paragraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.

DRAFT EU-CONSTITUTION

Chapter IV: Cooperation with Third Countries and Humanitarian Aid.

Section 1: Development Cooperation.

Article III - 219

1. European laws or framework laws shall establish the measures necessary for the implementation of development cooperation policy, which may relate to multiannual cooperation programmes with developing countries or programmes with a thematic approach.
2. The Union may conclude with third countries and competent international organisations any agreement helping to achieve the objectives referred to in Article III - 93. Such agreements shall be negotiated and concluded in accordance with Article 111 - 227.

The first subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.

3. The European Investment Bank shall contribute, under the terms laid down in its Statute, to the implementation of the measures referred to in paragraph 1.

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