

DISCUSSION PAPER No. 289

ACP-EU relations: The end of preferences? A PERSONAL ASSESSMENT OF THE POST-COTONOU AGREEMENT

OACPS-EU

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December 2020

Launched in 2018, negotiations for a post-Cotonou agreement between the European Union (EU) and the African, Caribbean and Pacific (ACP) states have just been concluded. The new treaty retains certain features of the Lomé and Cotonou conventions, but its structure and contents are substantially altered.

The new agreement is regionalised, with separate protocols for Africa, the Caribbean and the Pacific. Its core objectives are political: human rights and peace and security remain high on the agenda, whereas sensitive issues like migration and sexual and reproductive health and rights are also dealt with.

Environment and climate change will receive priority attention in future cooperation, alongside investment for growth and jobs. A striking change is the termination of the European Development Fund (EDF), now part of the EU budget, which means that EU financial assistance will lose its contractual character. The Africa protocol gives ample space to the continental agenda of the African Union (AU) and acknowledges the political guidance of EU-AU summits. It offers to reconcile the ACP-EU legal framework with the continent to continent approach pursued between the EU and the AU.

The ACP-EU partnership has gradually evolved from a preferential relationship towards a reciprocal, interest-driven partnership. Set against a gloomy global environment, its renewal for 20 years embodies the partners' geopolitical solidarity and their commitment to multilateralism.

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Acronyms

ACP	African, Caribbean and Pacific countries
AEC	African Economic Community
AfCFTA	African Continental Free Trade Area
AU	African Union
CAADP	Comprehensive Africa Agricultural Development Plan
DFIs	Development Finance Institutions
DG	Director-General
ECDPM	European Centre for Development Policy Management
EDF	European Development Fund
EEIP	European External Investment Plan
EPAs	Economic Partnership Agreements
EU	European Union
MFF	Multi-annual Financial Framework
NAP	National Adaptation Plans
NDC	Nationally Determined Contributions
NDICI	Neighbourhood, Development and International Cooperation Instrument
OACPS	Organisation of the ACP States
PCD	Policy Coherence for Development
PIDA	Programme for Infrastructure Development in Africa
SDGs	Sustainable Development Goals
SRHR	Sexual and Reproductive Health and Rights
UK	United Kingdom
UN	United Nations

Introduction

Launched in September 2018, the negotiations for a post-Cotonou agreement reached a political agreement on the 3rd of December 2020. The new treaty between the European Union (EU) and the OACPS¹ states should be initialled early in the new year and formally signed some time in 2021. What will it contain? According to the draft texts agreed by the chief negotiators², a number of features of the previous Lomé and Cotonou conventions will be retained in the new agreement; yet, its structure and contents will be substantially altered.

The legacy of Lomé and Cotonou

After two and a half years of talks, the conclusion of a new agreement is a political achievement that confirms the special place of the ACP in the EU's external relations and the resilience of a 50-years old partnership. Many features of the previous Lomé and Cotonou agreements will be retained in the new one:

Aside from the British exit, the geographical coverage of the agreement remains quite stable, with 27 European and 79 ACP states. At the time of signing Cotonou in 2000, the EU had only 15 member countries. The accession of 13 new members and the departure of the UK have undoubtedly changed the priorities of the EU and its internal balance, while rendering external negotiations more complex. Meanwhile, no change in membership is expected on the ACP side³.

Like Cotonou, the new agreement is concluded for 20 years, and it could be prolonged for 5 extra years through silent procedure (F98)⁴. The mid-term review that is scheduled for 2030 will coincide with the target-date for the SDGs adopted by the UN in 2015. It will thus be an opportunity to update the agreement in the light of any new commitments that would have been made on the global scene.

The treaty's essential elements remain the same as under Cotonou: respect for Human Rights, democratic principles and the rule of law constitute the essential elements (F9.7)⁵, whereas good governance, including the fight against corruption, is defined as a fundamental element (F12.8). Breaching any of these can trigger formal consultations that may lead to «appropriate measures», i.e. sanctions of some kind (F100.4).

The agreement remains very comprehensive and covers a wide-ranging list of areas for cooperation: it deals with political dialogue, trade, financial and technical cooperation, but also all the aspects of development that are included under the SDGs. New topics of concern have been added such as the digital economy, cybersecurity, the

¹ In parallel to the negotiations, the ACP Group amended its charter, the Georgetown Agreement, and turned itself into an "Organisation of the ACP States" (OACPS). Out of convenience, the usual ACP acronym is retained in this paper to designate the member countries of the organisation and their group.

² EC 2020

³ The accession of South Sudan, which became independent in 2011, and the end of the «qualified membership» status that applied to South Africa since 1995 are the only notable changes on the ACP side. Cuba remains a member of the OACPS group but as before does not sign up to the Treaty.

⁴ References correspond to a provisional numbering of the articles of the main treaty (Foundation, F) and its regional protocols A, C and P, based on the draft consolidated text of 15 October 2020 seen by the author. The full text should be publicly available in the coming weeks.

⁵ The fight against the proliferation of weapons of mass destruction (WMD) is also identified as an essential element of the agreement (F18.1, ex Art 11B Cotonou).

fight against drugs, organised crime and trafficking, data protection and a full-fledged title on migration. The result is a rather long and enumerative text, from which it is difficult to extract priorities.

Given the many domains it covers, the ACP-EU agreement will most certainly remain a mixed agreement, binding on the EU and each of its member states. Yet its exact legal nature is still to be decided. Its ratification will therefore take time, possibly up to 3 years on the European side. This is why a provisional application is foreseen in 2021, that will provide a legal base for the joint institutions. Continuity will also be ensured for the trade regime, which is now governed by the Economic Partnership Agreements (EPAs), while from 2021 onwards, the management of aid will follow EU internal budget rules (see below, financial cooperation).

Trade matters will only feature indirectly in the new treaty. ACP-EU trade relations are no longer handled in a collective manner, but through the “Economic Partnership Agreements” (EPAs), i.e. preferential free-trade deals that have been concluded between the EU and some 50 ACP countries or groupings since 2009. In the years ahead, the parties will mainly focus on implementing the EPAs that have already been signed and encouraging more ACP countries to join in. EPAs are open-ended arrangements. The post-Cotonou partnership remains the framework within which EPAs are concluded, and can be deepened in the future. The essential elements of the partnership therefore apply to all EPAs (F50.6). All in all, the conclusion of the new agreement will not alter, but rather consolidate the trade regimes that apply between the parties.

While tariffs and customs matters are extensively dealt with under the EPAs, trade-related aspects are generally not. They remain an important area for trade cooperation and receive due attention in the new agreement: trade in services, intellectual property, technical and phyto-sanitary barriers, competition policy and access to public procurement, all such matters call for intensified dialogue and cooperation between the parties. Both sides also agree that protection can be justified to uphold a high degree of environmental and social standards (F49.3).

The new agreement retains the joint institutions that were established under the previous conventions: a joint Council of Ministers, a joint Committee of Ambassadors or Senior Officials and a joint Parliamentary Assembly. However, the agreement now provides for those instances to operate at two different levels: a plenary format when the dialogue involves the EU and the entire ACP group, and a regional format when specific African, Caribbean or Pacific issues will be dealt with (see infra, regionalisation of the agreement).

In their new agreement, the EU and the OACPS strongly reaffirm the commitments they have made in the multilateral arena while making specific references to many of them. At the outset, the SDGs of Agenda 2030 and the Paris Climate Change Agreement are said to constitute the « overarching framework » guiding the partnership (F1). Throughout the agreement and its thematic chapters, there are no less than 35 references to existing multilateral agreements or protocols.

Both sides are committed to supporting multilateralism and resolved to join forces in international fora (F1.5, F76-77). In a period during which multilateralism is often challenged, the capacity of the ACP-EU partnership to mobilise more than 100 countries is a valuable asset which was illustrated in the past, for instance in Doha (2001) and Paris (2015).

Compared to the previous conventions, the promotion of regional and continental integration does not come out so visibly in the foundation, where its mentions are mostly incidental (preamble 22, F2.7, F50.5, F50.7). The matter comes out more openly in the 3 regional protocols for Africa, the Caribbean and the Pacific (A3, C4, P4). This would tend to confirm that the potential for economic integration lies mainly at sub-regional and continental level, while prospects for all-ACP regional cooperation remain limited.

Building on the Cotonou agreement, the new treaty strongly reaffirms gender equality as a central objective of cooperation as well as a cross-cutting theme (F2.5, F10, F36), that will be replicated in each of the regional protocols (A39, C32 & 49, P39.2, P50).

While the treaty is concluded between governments, it does provide ample space for non-state actors and stakeholders: private operators, local authorities, civil society are expected to take an active part in the dialogue with each partner country and should be involved as much as possible in the implementation of cooperation programmes (F2.8, F3.4, F5 defining the “actors”, F11 & F94).

Renovating the partnership

The overall international context has considerably changed since 2000, and public expectations vis-à-vis North-South cooperation are not what they used to be. This is reflected in the new agreement, whose structure, priorities and contents differ from the previous Lomé and Cotonou conventions.

The new treaty has been regionalised. It consists of a “foundation” part pertaining to the entire ACP membership, followed by three regional protocols dealing respectively with Africa, the Caribbean and the Pacific. Regionalising the partnership was a key objective on the EU side, who was keen to differentiate the priorities of its cooperation with the three regional blocks. But the idea did not go down easily on the ACP side, who feared the prospect of their group being dismantled. To safeguard the integrity of their group, ACP negotiators insisted to feed substance into the foundation part of the agreement and to make it prevail over the regional protocols. When the latter were eventually negotiated, each region had many priorities to bring to the table; this resulted in lengthy texts being agreed in each of the regional pillars. The final outcome is somewhat ambiguous: many duplications can be observed between the foundation and the geographical protocols, and it is unclear where the “centre of gravity” of the new partnership lies. Is it puzzling to come across four different titles devoted to Human Rights: a common one and one in each of the regional protocols.

Regionalising the treaty will naturally affect the functioning of its joint institutions (the Council of Ministers, the Committee of Ambassadors and the Parliamentary Assembly), which will operate at all-ACP and at the regional level. Regional bodies will have more business and meet more often than the plenary ACP-EU Council. Yet, the hierarchy between them is spelt in full in the text (F6): regional Councils will report to the plenary one, and cannot amend their protocol without its assent (F98.5). Parliamentary dialogue should take place first and foremost within the regional parliamentary committees (F93); however, it is upon the insistence of the ACP and of the European Parliament that an all-ACP Parliamentary Assembly was maintained in the new agreement (F89).

Partnership is the new leitmotiv, more visible even than in the Cotonou agreement. Throughout the new treaty, “partnership dialogue” has replaced “political dialogue” and sometimes “policy dialogue”. In an attempt to show that the EU and the ACP are equal partners, most provisions of the agreement are drafted symmetrically. Even on subjects such as policy coherence for development or development finance, the two parties commit together, rather than the EU undertaking to support the efforts of the ACP⁶. In a similar vein, the concept of a “genuine partnership” appears at the start of the regional protocols, assorted with ambitious qualifications: equality of partners, reciprocity, mutual respect and accountability, shared ownership.

⁶ There are only two subjects where the commitments of the EU differ from those of the ACP: the readmission of illegal migrants (F73) and the mobilisation of development assistance (F81).

Looking at the agreed texts, one cannot help concluding that the ACP-EU partnership has become more and more political in terms of themes and approach. Trade and aid aspects, which dominated the partnership at the time of the Lomé conventions, have lost much of their weight and gradually shifted to technical parts of the agreement, alongside a lengthy catalogue of thematic sectors. During the negotiations, the most thorny issues have all been of a political nature: migration, reproductive health, institutions, non-execution clause.

This shift in emphasis can best be observed at the very beginning of the treaty (F1). Where the Cotonou agreement started with “promote the development of the ACP States”, the new one sets out to “establish a strengthened political partnership”. When it comes to spelling out the objectives of the new partnership: human development, and in particular the eradication of poverty, comes in fourth position, after human rights and democracy (nr1), peace and security (nr2), and investment and growth (nr3).

The language used in the new agreement is not always binding; at times, its provisions sound rather like statements of intent, akin to UN resolutions. In many areas, the parties recall or reaffirm commitments which have been made earlier or elsewhere, recognise the importance of this or that aspect or agree to intensify their dialogue, without necessarily committing to new actions. On the most sensitive matters, the compromise is of an exploratory nature: “the parties shall explore ways to cooperate in order to promote...”(F74).

The priority areas for cooperation will naturally differ depending on the country or region concerned. The agreement and its protocols, which contain an open-ended list of possible domains, lay a new emphasis on environmental and climate change issues, inspired by the commitments made at the COP 21 in Paris and the European “Green Deal” project (F43, F49.3, F54 to 59)⁷. Digital transition comes out as a subject on its own. In the light of recent pandemics, the articles dealing with health insist on preventing new threats and cooperating to fight global health crises (F29, A32, C44).

In the new treaty, economic development seems to prevail over human development, as is evident from the regional protocols. Priority goes to promoting investment and the role of the private sector as engines for growth. As governments are called upon to provide a favourable business climate, public finance, including EU aid, should be used in “innovative ways” in the form of blending and bank guarantees (F41.3 & 83.2, A13.4, C11.4, P15.2).

At the crossroads between demography and women’s rights, the question of Sexual and Reproductive Health and Rights (SRHR) has been amongst the thorniest to be dealt with, due to deep divergence of views between the EU and the ACP, but also within the EU itself. The compromise formula that was reached in the final stages of the negotiations may not fully meet the expectations of those member States and civil society actors which are most engaged on the matter; yet, in setting sexuality and reproductive health in terms of human rights, it may provide a useful starting point for deepening the dialogue between the parties on a topic that remains highly sensitive on both sides of the table (F36, replicated in the regional protocols).

Migration appears as the main new challenge in the agreement; it was also the most contentious subject during the negotiations. Migration warranted one single article in the text of Cotonou (Art13). It is now given its own title (14 articles) and a specific annex in the foundation, and another distinct title in the Africa protocol (7 articles). The root causes of migration and the relationship between migration and development are touched upon, but not really built upon. The agreement is mainly focussed on managing migration flows and fighting irregular migration and trafficking. While the EU side was seeking firm ACP commitments to assist in the repatriation and readmission of

⁷ Fighting against climate change already featured in the text of Cotonou since 2010 (Art 11B). The commitments of the parties become much more specific in the new agreement, which refers to Nationally Determined Contributions (NDC) and National Adaptation Plans (NAP). Climate and environment top the agenda in the Pacific protocol.

illegal migrants⁸, the ACP emphasised the economic impact and the facilitation of legal migration. Beyond general principles, it was unlikely that detailed, operational commitments on regulating migration flows could be made collectively by 79+27 countries. In its newly proposed “European Pact on Migration and Asylum”, the EU reiterates its intention to seek bilateral readmission agreements with the countries of origin and transit. A similar call for concluding bilateral agreements already featured in Cotonou (Art 13.5.c), and it appears again in the new agreement (Annex B & A77.2).

Ensuring Policy Coherence for Development (PCD) remains an important objective of the new agreement, but the obligation to inform and the consultation mechanism that featured in previous conventions (Cotonou Art 12 & 38A) have been watered down. There remains a general commitment – applicable to both the EU and the ACP - to inform, and where appropriate to consult the other parties when measures are envisaged that could significantly affect them (F4). Regularly used in the 1980s and 90s to protect ACP interests, the Art 12 mechanism had unfortunately fallen into disuse since 2000; it was not activated by the ACP on important occasions for them such as the start of Brexit negotiations or the preparation of the new EU Multi-annual Financial Framework (MFF) 2021-2027.

Financial cooperation

Compared to the previous agreements, the most striking change is the termination of the European Development Fund (EDF) which had been for over 60 years the main source of finance for ACP-EU cooperation. In future, the “means of cooperation” will be incorporated in the EU general budget. They will not form part of the negotiation, and financial cooperation will thus lose its contractual character. No financial amounts will feature in the agreement, nor in its annexes. The whole sections and annexes of Lomé/Cotonou that dealt with managing financial cooperation disappear. ACP-EU financial cooperation, which used to rely on a system of “joint management” between the European Commission and the beneficiary country with extensive powers vested on the National Authorizing Officer, will henceforth be governed by EU internal rules, namely the general budget and Neighbourhood, Development and International Cooperation Instrument (NDICI) regulations.

As regards financial cooperation, the new agreement limits itself to a short section of 5 articles (“Means of cooperation and implementation”) whereby the EU commits to “*making available the appropriate level of financial resources in line with its internal regulations and procedures*” (F81). In recalling the principles of predictability, dialogue and ownership (F81.8 & 9), the agreement strives to reassure the ACP but it does not offer them much of a say in the matter. Seen from an ACP perspective, the fate of financial cooperation will no longer result from negotiations with its European partners, but from internal EU discussions on its new cooperation instrument NDICI. In a unilateral declaration (Annex D), the EU undertakes to “*communicate at the earliest opportunity and insofar as its internal regulations and procedures allow, an indicative allocation for each of the three regions A, C and P*” and subsequently national and regional envelopes⁹.

With the EU decision to merge the EDF into its general budget, the financial aspects of the partnership will become considerably thinner. From an ACP standpoint, this represents a set-back from previous agreements. Predictability of financial support is largely lost. Aid programming and management rules are not established jointly any more, and can be changed by the EU *ad libitum*. Management responsibilities that used to be shared are now concentrated

⁸ In Cotonou Art 13, the ACP states had already committed to accept « the return and readmission of any of their nationals illegally present in an EU member state... without further formalities”. It seems that this provision has neither been implemented nor called upon since 2000, even in crisis situations (La Valette, 2015).

⁹ At the time of concluding ACP-EU negotiations, EU discussions are still ongoing on the Financial Framework 2021-27 and its new development instrument NDICI. The author’s own calculations for geographical allocations foreseen for sub-Saharan Africa, Caribbean and the Pacific are in the range of 27,5 billions Euros for the next 7 years. The 11th EDF amounted to 29,1 billions Euros for 2014-2020.

in the hands of the European Commission¹⁰. In all respects, the new system of financial cooperation, which aligns itself on that applied to non-ACP developing countries, will be much less “partenarial” than before.

While not being specific about the resources that the EU will mobilise, the financial chapter firmly calls for diversifying resources in support of the partnership: the mobilisation of domestic fiscal revenue by the ACP states, private investments flows, remittances by emigrants, blending and bank guarantees should supplement classical ODA grants (F82 & 83). Building on the Juncker European External Investment Plan (EEIP) and the various trust-funds established since 2015, co-financing and blending schemes with Banks and Development Finance Institutions (DFIs) are set to gain weight¹¹ and could gradually replace grant aid for the more advanced ACP countries.

ACP-EU and Europe-Africa relations

The ACP-EU agreement and its Africa protocol are binding on the whole of sub-Saharan Africa, but they do not include the countries of North Africa which have concluded separate bilateral agreements with the EU. Even before the start of the negotiations, the question arose of reconciling the ACP-EU legal framework with the « continent to continent » approach pursued with the African Union (AU) since 2007, and which gathered speed under the Juncker Commission.

The decision made to « regionalise » the ACP-EU agreement was precisely aimed at resolving this challenge: an Africa protocol, covering 49 of the 55 African states, would naturally capture the priorities of the entire continent, and in particular the continental integration agenda of the African Union. At a more political level, the EU-AU dialogue and its joint strategies would guide ACP-EU cooperation in sub-Saharan Africa, while involving at the same time the countries of North Africa.

Serious tensions had emerged in 2018, following an attempt by the AU Commission to take the lead in the negotiations with the EU in a strictly African framework. This initiative was resisted by the countries of North Africa and a majority of ACP States, all intent on maintaining their negotiations with Europe in the usual intergovernmental framework rather than through the African Union. The episode generated frustrations on both sides and resulted in a lack of collaboration between African representations in Brussels and Addis-Ababa during the ACP-EU negotiations. For its part, the EU constantly pleaded for a constructive approach that would reconcile the Panafrican and the ACP tracks.

Reading through the Africa protocol is reassuring. The text of the protocol gives ample space to the continental agenda of the African Union and contains no less than 34 references to AU instruments and strategies. The role and competences of the African Union are thus fully recognised in the political domain (peace and security, human rights, governance) as well as its economic integration plans (African Economic Community - AEC, African Continental Free Trade Area (AfCFTA), Comprehensive Africa Agricultural Development Plan (CAADP), Programme for Infrastructure Development in Africa (PIDA), etc...).

From the outset of the Africa protocol, the ACP-EU agreement and the EU-AU dialogue are connected in a constructive fashion. *“The parties agree to ensure coherence and complementarity between this protocol and the continent-to-continent partnership as defined in successive AU-EU Summits and related outcome documents” (A3).*

¹⁰ In its proposal for the NDICI regulation, the Commission has introduced certain management modalities that featured in the EDF, notably as regards the programming dialogue and the carry-over of unused credits.

¹¹ The ACP-EU agreement does not provide details on how co-financing, blending and bank guarantees will work in practice. The use of these instruments will be defined in the internal NDICI regulation, with the respective roles of the Commission and the financial institutions.

“The parties shall take account of the strategic and political guidance of the AU-EU Summits in their cooperation and implementation of this protocol” (A4). In inserting these links in their Africa protocol, the signatories to the ACP-EU treaty award a legal recognition to the continent-to-continent partnership and acknowledge the political pre-eminence of the AU-EU Summit.

ACP cooperation and the panafrican agenda are expected to complement each other in accordance with the subsidiarity principle. The AU will be the reference framework on all issues of a continental or trans-regional nature (A3.5), whereas the bulk of cooperation will continue to take place at the level of countries and sub-regions (A6). Programming will thus need to allocate available resources between these different levels¹².

The 6 priority areas for cooperation in the Africa protocol are exactly the same as those in the foundation part, albeit ordered differently. Economic aspects will dominate cooperation with Africa, with a strong emphasis on promoting investment and the role of the private sector. Building on the experience of the Juncker Plan (EEIP) of 2018, blending and bank guarantees will be used to try and trigger additional resource flows (A13.4). On the trade front, priority will go to implementing the EPAs, as this will contribute to regional integration and support the gradual establishment of the African continental Free Trade Area (A16). With its lengthy catalogue of economic sectors, from agriculture to tourism and space industry, the Africa protocol reflects the ambitions of the continent for the coming twenty years of a structural transformation that will create jobs and growth.

As a means to associate the African Union and the regional economic communities to the operation of the agreement, an observer status is foreseen in the final chapter (F103). This possibility could also be of interest for the countries of North Africa (A3.5).

For the EU and for all African States, the coincidence between the signing of the new ACP-EU agreement and the next EU-AU Summit, both scheduled to take place mid 2021, represents a golden opportunity; it should be used to highlight the synergy between these two complementary frameworks.

Conclusion

The structure of the new agreement and the manner in which it was negotiated suggest that the relationship has profoundly changed since the time of Lomé and Cotonou: partners have gradually moved from an asymmetrical, preferential relationship centred on the development of the ACP towards a reciprocal, interest-driven partnership aimed at serving their respective concerns; from a cooperation agreement to a political dialogue framework.

Since Cotonou, the preferential dimension of the Lomé conventions has been gradually eroded, while the relationship between Europe and the ACP lost its “uniqueness”: the ACP-EU trade regime was profoundly overhauled to comply with free-trade rules; with the termination of the EDF and the end of joint management, aid is no longer at the heart of the partnership. In many respects, the treatment granted to ACP countries is no different from that applied to other developing regions. The ACP-EU relation, which has long been a model, finds itself practically “normalised”.

¹² In the past, country programmes absorbed 80 % of EDF resources and regional cooperation around 15 %. European funding to the African Union came mostly from the EDF and from a specific “panafrican” instrument established in the EU budget. From 2021, these two sources will be merged in the new NDICI instrument.

As a regionalised treaty gives more autonomy to each of the three regions, Africa's growing weight in the Union's external relations will become more visible. Without the overall ACP framework, the Caribbean and the Pacific would struggle to make themselves heard.

For negotiators to have succeeded in reaching agreement despite the severe political, economic and sanitary upheavals surrounding their negotiations is a remarkable achievement. Safeguarding a structured long-term relationship between the EU-27 and the 79 ACP States is particularly valuable in troubled times. In a tense international context, the conclusion of the new agreement embodies the "geopolitical" solidarity that exists between the parties and reaffirms their confidence in multilateralism.

Under their new agreement, the EU and the ACP will project their partnership "beyond trade", and also "beyond aid". They share common values and common objectives; they maintain a structured dialogue; and they can build upon a long experience of cooperating in all areas. It is on those bases that they now re-engage to try and progress towards the Sustainable Development Goals.

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This publication benefits from the structural support by ECDPM’s institutional partners: The Netherlands, Belgium, Estonia, Finland, Ireland, Luxembourg, Sweden, Switzerland, Denmark and Austria.

ISSN1571-7577

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