EUROPEAN CENTRE FOR DEVELOPMENT POLICY MANAGEMENT
CENTRE EUROPÉEN DE GESTION DES POLITIQUES DE DÉVELOPPEMENT

# The revision of Article 13 on Migration of the Cotonou Partnership Agreement

## What's at stake for the ACP?

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*Article 13 on 'Migration' is a priority issue for European Union (EU) member states in the revision of the Cotonou Partnership Agreement (CPA). However, the ongoing revision process scheduled to be finalised at the end of February 2010 does not seem to be high on anyone's agenda. This is a shame, as surely it is in the interest of both parties to make the most of this framework for ACP-EU relations that will expire in 2020. The CPA is the largest North-South partnership in the world and with its co-decision, joint management and Non-State-Actors participation principles, is regarded by some also as one of the most progressive cooperation frameworks. Its future after 2020 is nevertheless unclear and the current revision is an opportunity to ensure that it remains relevant in a changing context.*

## 1 Background

The current Article 13 of the Cotonou Agreement came into existence in 2000 and was not revised in 2005 (see Annex 1 for text). It builds on the 'Joint declaration on ACP migrant workers and ACP students in the Community' of Annex V of the 1985 Lomé III Convention. The article addresses ACP-EU dialogue on migration, respect for human rights, fair treatment of legally residing ACP nationals, tackling root causes of migration, training of ACP nationals, illegal immigration and readmission.

In this present revision, the parties agreed to update the current provisions to reflect the development of thinking and cooperation in the area in line with the EU's Global Approach[1] and to strengthen the provisions on migration and development. In this vein, the EU and the ACP have both suggested to change the title of the article to 'Migration and Development'.

[1] European Commission 2008. *Strengthening the global approach to migration: increasing coordination, coherence and synergies.http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52008DC0611:EN:NOT*

# 2 Evolving EU policy environment

The backdrop to the current revision is a **widening agenda of EU development cooperation**, whereby an increasing share of official development assistance (ODA) is being allocated to issues of 'global concern', including migration among others, such as climate change and security. This trend represents a danger of instrumentalisation of aid funds for other political goals, but at the same time it is a chance to use aid as leverage to create synergies between different policy areas, as well as for making progress towards Policy Coherence for Development (PCD) in the migration area.

With regard to the first, strategies to **strengthen synergies between migration and development policies** are increasingly understood and developed on the basis of evidence from research on the importance of migration for development countries, be it through remittances, knowledge transfer, investment, social factors, etc. In terms of policy, creating opportunities for legal migration and upholding migrants' rights are clearly conditions for exploiting the full development potential of migration. In addition, research has shown that temporary labour migration is a win-win strategy for sending and receiving countries[2].

The EU has committed itself to make progress on **promoting PCD** and strengthening the link between migration and development.[3] Some moderate progress has been made in terms of development initiatives (i.e. supporting the transfer or remittances, supporting diaspora networks). In terms of EU migration policy, out of four directives on legal migration envisaged in 2005, only the one focusing on recruiting high-skilled migrants (the 'blue card' directive) has been adopted four years later as there was a consensus (at least in old Member States) that the EU badly needed them. One 'mobility partnership'[4] to encourage circular migration was signed with an ACP country, Cape Verde. But there has hardly been any progress in politically difficult areas, like migrants' rights and migration initiatives for low skilled migrants. However, the Spanish, Hungarian and Polish EU Presidencies have committed themselves to (re-)opening the debate on the directive on seasonal workers as proposed in the Commission's 2005 Policy Plan on Legal Migration[5].

To ensure coherence across different dimensions of EU migration policy, the EU adopted the Global Approach to Migration in 2005, covering legal and illegal migration, as well as migration and development. However, in practice, the **EU public debate mostly focuses**

[2] For an overview of current research on the topic see: Vertovec, Steven 2007. *Circular Migration: the way forward in global policy?* Working Paper 4-2007, International Migration Institute, Oxford http://www.imi.ox.ac.uk/pdfs/wp4-circular-migration-policy.pdf.

[3] The Commission reports that progress has been made on dialogue, on brain drain (i.e. blue card directive includes a safeguard calling on Member States not to recruit migrants in certain sectors, but this is not legally binding), through Erasmus Mundus, and Edulink, on circular migration through adopting the blue card directive and signing mobility partnerships, on remittances mainly through several low-cost transfer initiatives by Member States, and on diaspora through facilitating EU-wide diaspora networks. European Commission 2009. *Commission Staff Working Document accompanying the EU 2009 Report on Policy Coherence for Development*. http://ec.europa.eu/development/icenter/repository/SWP_PDF_2009_1137_EN.pdf

[4] Since 2007, the EU has negotiated tailor-made mobility partnerships between the EU and third countries willing to better manage migration flows and to fight illegal migration, in exchange for enhanced possibilities of mobility between their countries and the EU, in terms of legal migration opportunities and of short term movements. Recent Council Conclusions on Mobility Partnerships confirm the value of the instrument in addressing all three dimensions of the Global Approach. In their 2008 ACP Resolution on Migration and Development, ACP countries suggest that mobility partnerships and other legal agreements should *"assist ACP States and Regions in managing intra-ACP migration according to their won priorities and development needs, and create modalities to facilitate legal ACP-EU migration"*.

[5] In addition to the Blue Card and the directive on the conditions of entry and residence of seasonal workers, the Plan proposed a 'directive on the procedures regulating the entry into, the temporary stay and residence of Intra-Corporate Transferees (ICT)' and a 'directive on the conditions of entry and residence of remunerated trainees'

**on 'illegal'[6] immigration**, as is reflected in discussions of Heads of States. Negotiating readmission agreements at multi- and bilateral level remains a high priority. In this context, human rights organisations have criticized Italy's 'Treaty of Friendship' signed with Libya in June 2009, allowing Italian police to deport migrants intercepted at high seas to Libyan shores without considering their asylum claims and protecting rights and dignity of migrants. Southern European countries, that receive the majority of illegal migrants to the EU, are generally more restrictive in their approach at national levels while trying to push ahead with EU cooperation and integration in the migration area aiming at increased burden-sharing, among others through a Common European Asylum System (CEAS), to be in place by 2012. However, as the EU is in the process of renegotiating the Dublin Convention that inter alia sets out that asylum claims need to be assessed in the Member State where migrants first arrive, some Northern countries have got cold feet, fearing a large increase in asylum applications.

The **Lisbon Treaty** brings major changes in the EU migration area, which imply opportunities and dangers for PCD. On the one hand, faster progress in the establishment of a common migration and asylum policy, an increasing role of the European Commission in negotiating agreements with third countries and strengthening of migrants' rights is expected from the reformed decision-making process and mandate of the European Court of Justice. On the other hand, the Treaty may reinforce trends to centralise the management of funds for the internal and external dimensions of EU migration policy under the new Commissioner for Home Affairs. A Migration Support Fund, which would lump issues of security, readmission and cooperation with third countries together under one umbrella, was considered at one point.[7] Such an approach would raise questions for the consistency of the EU's external action and even more so about the chance to uphold PCD in EU migration policy.[8] For the ACP countries it may be important to keep a close eye on these changes and make sure that the revised Article 13 provides a relevant framework to express their views in the new EU set-up that allows them to exploit the opportunities for making more progress on cooperation in the area of migration and development in a rapidly changing global context.

[6] Some experts are critical of the term 'illegal' and prefer irregular, as according to the Universal Declaration of Human Rights (Art 13.2), any person has the right to leave any country and according to the Geneva Convention (Art 31), entering a country with the purpose of asking for asylum is not illegal. In this regard, the 2006 ACP Brussels Declaration on Asylum, Migration and Mobility states that the mobility of ACP nationals should be defended as a human right.

[7] European Commission 2009. *A Reform Agenda for a Global Europe: Reforming the Budget, Changing Europe,* Draft, http://www.euractiv.com/pdf/Draft%20document%20reforming%20the%20budget%20oct%202009.pdf

[8] The migration and asylum thematic programme of the DCI is currently co-programmed by DG DEV and DG JLS and implemented by EuropeAid. Along with all other instruments of EU external action it is under Chapter 4 of the financial perspectives (Europe as a Global Actor) and managed by EuropeAid. Handling all migration programmes – internal and external ones - under Chapter 3 (Citizenship, freedom, security and justice) of the EC's financial perspectives may increase the consistency of EU migration policy, aspects of which are currently being dealt with in DGs Justice, Liberty and Security, External Relations, Development, EuropeAid, Employment, and Trade. But from a PCD perspective, the creation of new thematic instruments could undermine the strive for a more coherent external action. The Commissioner for Home Affairs is guided by specific primary objectives and principles other than the one of the EU's external action and is not part of the external relations group of Commissioners coordinated by the High Representative of the Union for Foreign Affairs and Security Policy (HR).

# 3 Key issues in the revision of Article 13

## 3.1 The overall framework, principles and objectives

Currently, the objective of cooperation is not explicitly mentioned in Article 13. However, the provisions seem to be geared towards protection of rights of migrants, "normalisation" of migration flows and prevention of illegal migration. Both sides want the revised article to reflect a **more positive approach, focussing on maximising the contributions of migration to development and the synergies between migration and development**.

With regard to the overall principles, the current wording states: *"The Parties reaffirm their existing obligations and commitments in international law to ensure respect for human rights and to eliminate all forms of discrimination based particularly on origin, sex, race, language and religion"* (paragraph 1). It has been proposed to strengthen this paragraph, for example by referring explicitly to the Geneva Convention and the "non-refoulement principle". Such an explicit reference seems to be very opportune in the context of heavy criticism that some Member States have attracted recently for insufficient respect for those principles. The Commission has also been accused of failing to take up its role in enforcing them. However, a clearer **distinction** between migration, mobility and development aspects and issues of **forced displacement** should be made**.** In the latter, **international refugee law is applicable and cannot be made conditional**.

Another principle worth mentioning could be the commitment to **Policy Coherence for Development** in migration policies of both parties.

There seems to be an agreement on using the EU's Global Approach as the overall framework for the new article 13, structuring the issues in legal migration, fighting illegal migration and migration and development. However, with regard to the EU's Global Approach itself, one can observe that despite the reference to a 'balanced approach'; actual practice has leant more towards the second area, where the EU interests are similar and most joint EU efforts have been taken.[9] The ACP may want to ensure that this is not reflected in the new article 13 and that **ACP's own priorities, as expressed in ACP statements and declarations** are at the centre of the provisions.[10]

## 3.2 Political dialogue – for what? Realistic scope?

The current Article 13 states that migration *"shall be the subject of in-depth dialogue in the framework of the ACP-EU Partnership"* (paragraph 1).

The 2006 ACP Brussels Declaration on Asylum, Migration and Mobility calls for a platform for the regular exchange of ideas and information at the intra-ACP and ACP-EU levels. The importance of including migration issues in the political dialogue has been reiterated by the EU side in many policy statements since. The latest frameworks for this purpose are so-called 'migration missions'[11] to a partner country, the Partnership for Migration, Mobility and

[9] i.e. 'Return' Directive (2008), European Pact on Immigration and Asylum (2008) with a strong focus on illegal migration, 12 EU readmission agreements have been signed (many more bilaterally), FRONTEX is continuously strengthened, European Border Surveillance System (EUROSUR) is being created, etc.
[10] 2006 Brussels Declaration on Asylum, Migration and Mobility; 2008 Brussels Resolution on Migration and Development.
[11] Between 2007 and 2009 to Cape Verde, Ghana, Mauritania, Senegal, Ethiopia, Nigeria, South Africa, Tanzania

Employment (MME) under the Joint Africa-EU Strategy (JAES), launched in 2007, a cooperation platform on migration with Ethiopia, and the migration dialogue forum with South Africa.[12] The ACP side has expressed concern about aspects of EU Migration Policy a few times, for instance Ministers of the South African Government on the EU's Blue Card directive on labour mobility for skilled migrants[13].

As the ACP is in a good negotiating position on Article 13 due to the strong interest of EU member states in getting stronger readmission paragraphs, they may insist on the right to initiate political dialogue as a Group or in sub-groups on **issues of *their* interest** and **formulate these interests more clearly**, such as possibilities for legal migration for their citizens to the EU, in exchange for dialogue on EU interests in migration control.

In addition, more orientation and detail on the **operationalisation of this principle** may be in the interest of both parties. If the provision is to be exploited to its full potential in the future, parties may want to reflect on the *how* and *when* issues as well, e.g. at national, regional and continental level, in the preparatory phases for new EU migration policies, as privileged dialogue partner, etc.

Another interesting and relevant question that might usefully and opportunely be addressed in the current revision is the **coherence and complementarity** of the political dialogue under Article 13 **with other existing fora for dialogue** between the ACP and the EU on migration, especially the Rabat process and the Tripoli process/ the Migration, Mobility and Employment Partnership of the Joint Africa-EU Strategy. Both sides may need to reflect on how to make the best use of the different frameworks, while ACP-EU cooperation might support ACP regions in formulating common priorities for dialogue.

## *3.3 Legal migration – anything on offer?*

Currently, Article 13 refers to legal migration only in relation to the fair treatment of ACP nationals legally residing or being employed in the EU. In this respect, ACP countries have over the years requested the EU member states to ratify the International Convention on the protection of the rights of all migrant workers and members of their families[14].

In the last decade since Article 13 was drafted the EU made a number of **commitments to offer opportunities for legal immigration and mobility** for nationals from developing countries for work and study purposes, facilitate circular migration, including through the portability of social rights, multiple-entry schemes and support for return. These have recently been confirmed in Council Conclusions.[15]

Over the last decade, two frameworks for mobility from ACP countries to the EU have been established at EU level: **mobility partnerships** and **the 'blue card'** (see section 2). Otherwise, over the years the EU has also negotiated the **temporary movement of workers within its trade agreements**. Most notably the recent Economic Partnership

and Kenya, under Articles 8 and 13 of the CPA.

[12] There is little public information available on what these initiatives have achieved so far, except many public documents referring to their existence.

[13] The South African Finance Minister called the Blue Card "a self-reinforcing, deteriorating spiral". http://www.alertnet.org/thenews/newsdesk/L2683303.htm. The South African Health Minister said, "we cannot afford schemes that seek to cream the very limited health skills we still have in developing countries". http://www.doh.gov.za/docs/pr/2007/pr1026.html

[14] As adopted by the UN General Assembly: Resolution 451158 of 18 December 1990. In force since 1 July 2003.

[15] Council of the European Union 2009. *Council Conclusions on Migration and Development.* http://www.se2009.eu/polopoly_fs/1.25816!menu/standard/file/111585.pdf

Agreement (EPA) with the CARIFORUM countries provided new opportunities for movement in some high-and-medium skilled professions, as well as containing commitments to negotiate 'mutual recognition agreements' for qualifications.

A revised article 13 would reasonably refer to and build on recent commitments and initiatives on legal migration and mobility. Most importantly, these provisions should be **upgraded with the aim of having as strong and binding commitments on legal migration and mobility** as in the area of readmission. Commitments could include for example:

- The **right of both parties to initiate political dialogue on issues of interest** (to be specified);
- The right of both parties to **initiate negotiations towards more comprehensive and balanced circular migration agreements** that are mutually beneficial in line with recent Council Conclusions[16] which recognise that *"legal migration opportunities and circular migration, taking into account their development potential, can constitute a key component of partnerships…"* (paragraph 12).
- The right of both parties to **open exploratory talks on a Mobility Partnership** if ACP countries are interested. Recent Council Conclusions[17] stress that *"a clearly defined, long-term strategic interest for the EU should be a key criteria in the identification and selection of potential partner countries"* (paragraph 6). In the spirit of PCD, the **need and developmental relevance** of a mobility partnership for an ACP country should also be a **criterion**.
- Commitments to negotiate 'mutual recognition agreements' for educational qualifications;
- EU **migration missions to take account of and report on the development dimension** of migration issues and for the ACP to formulate their interests and needs in this area;
- Commitments to assist ACP countries to take advantage of opportunities of legal migration and support **capacity and institutional development** to ACP countries and regions and implementation through development cooperation funds (see below, capacity development);

## *3.4 Illegal migration and readmission*

The current provisions on illegal migration focus on political dialogue, on establishing a **prevention policy**, and on **ensuring that the rights and dignity** of migrants are respected in the return procedure and on **readmission**.

With regards to rights, this paragraph, rather than the chapeau on general principles, would be a more adequate place to state explicitly in a revised article 13 that the modalities on readmission apply **without prejudice to States' obligations vis-à-vis refugees and persons in need of international protection**.

With regard to readmission, the current article commits both parties to cooperation on readmission of their nationals. For the clause to become operational, implementing arrangements concluded bilaterally with member states or the Community must complement it.[18] Regarding non-nationals and stateless persons, this paragraph provides

[16] Council of the European Union 2009. *Council Conclusions on Mobility Partnerships as a tool of the Global Approach to Migration.* http://www.consilium.europa.eu/uedocs/NewsWord/en/jha/111547.doc
[17] ibid
[18] there has been lack of clarity on this aspect and the EC maintained that the provision has always been self-

that the to-be-negotiated complementary agreements will also cover, if deemed necessary by any of the parties, arrangements for their readmission, which will detail the categories of persons covered and the modalities. The current provisions also specify that adequate assistance to implement these agreements will be provided to the ACP States.

The **EU side is asking for significant changes** to this paragraph. These would make the clause on the readmission of nationals **self-executive and binding** for all ACP countries (meaning there will be no more need for complementary bi-lateral agreements), without consideration for their specific capacities and conditions. This would mean an unmanageable obligation for many countries. It may also set a dangerous precedent for other international agreements. The proposal includes more concrete requirements, comprising **deadlines for cooperative action by ACP representations in the EU to establish the country of origin of migrants**.

There are three main issues with this provision: Firstly, the **conditions to be accepted by the ACP Party are very strict and cumbersome**. This ignores the material and logistical reality of these countries and appears to be unmanageable in many circumstances. The burden of proof is put on the ACP country, while it is not very clear according to which procedure and which criteria an ACP country can be requested to cooperate. The assumption that should the requested country not respond within a certain time frame, the person is automatically deemed to be of this nationality and thereby returned to the requested country, might create situations of migrants being returned to countries with which they have no links. These persons will remain stranded there, with the burden being put on the receiving country to find a solution for them or, in the more likely situation, leaving these persons in limbo. That also, seems a rather unreasonable expectation to be put on the 77 ACP countries. Further bi-lateral negotiation of readmission modalities would be more adequate.

Secondly, it would be desirable to **link commitments on readmission closely to other areas of the Global Approach**, especially to **concrete opportunities for increased mobility between ACP and EU** including to open the possibility for significant visa facilitation (which the EU has offered to other regions).

Thirdly, studies have shown that including third country nationals in readmission agreements is counterproductive and rather leads to a 'revolving door effect'.[19] This evidence should be taken into account in the revision of this article. Accordingly, the readmission clause should **cover only nationals of the contracting parties** *"based on the logic of shared responsibility, joint ownership and common interests"*.[20] If dropping the issue of third country nationals is not feasible, *"any severely limited inclusion of non-nationals …*

executive

[19] *"[Third country nationals'] inclusion rests on the assumption that the return of these groups to countries of transit will reduce the number of irregular migrants and rejected asylum seekers on European territory. But the return of irregular migrants and rejected asylum seekers to countries of transit could challenge the principle of sustainable return [...] Return to countries of transit, particularly along the EU's external border, could exacerbate the already desperate situation of irregular migrants [...]. The Commission's Green Paper on a Community Return Policy on Illegal Residents suggested that countries of transit could assist in the return of undocumented irregular migrants or stateless persons [...]. Given the weak asylum and migration regimes in these countries, it seems difficult to envisage that third countries could better determine the identity of returned irregular migrants or develop a more effective return policy than EU Member States. [...] Most transit countries lack the political leverage to persuade other countries of transit or origin to readmit them."* Roig, Annabelle and Thomas Huddleston 2007. *EC Readmission Agreements: A Re-evaluation of the Political Impasse*, European Journal of Migration and Law 9 (2007) 363–387.

[20] ibid

*ought to be founded on evidence of strong and current links to the country of transit".*[21] Such a reservation could be included in the provision.

Adequate assistance to implement these agreements is welcome. However, **assistance should** not only be provided for readmission issues, but **also in the other areas of the Global Approach**. It may be adequate to add a safeguard that aid (ODA) will be allocated according to ACP needs and priorities in line with national development plans, country strategies etc. and not according to EU interests of migration management.

## *3.5 Migration and development*

The current Article 13 reflects an outdated understanding of migration and development, narrowly focusing on addressing poverty-related root causes of migration through **development cooperation and training with the aim of "normalising migratory flows"** (paragraph 1). A modernisation of Article 13 could be guided by the formulation of the EU commitments on migration and development in recent Council Conclusions, which should reflect the latest consensus reached among EU Member States.[22] Examples could include:

*Addressing root causes through development cooperation: Poverty reduction, employment, skills development and training*

This could include

- A commitment to **mainstream migration into the EU's development cooperation** on the basis of national development strategies and plans;
- A commitment to **support the development and implementation of skills development strategies**, the necessary diagnostics and analysis of the labour market;
- A commitment by the **ACP to strive to create a development-friendly environment** that provides incentives for professionals to work in their country, that supports the reintegration of returnees, facilitates the engagement and investments of the diaspora, etc.
- A formulation of **possible joint initiatives**, **instruments or approaches (e.g. temporary labour mobility schemes);**

*Capacity development*

It is key that the provision under Article 13 stresses that the **objective** of support to national institutional capacity development is to **"make migration work for development" in line with the national development strategy**, rather than a reduction in migratory flows or the mere control of migration towards the EU. Such support should aim at holistic multi-sectoral, sustainable and long-term approaches with the Ministries of Education, Trade, Labour, Interior etc., including national and regional economic development strategies that take account of migration, support to research and data collection, labour market analysis, skills development strategies, etc. In addition, ODA support should not be used for control and policing purposes.

In this context, support to issues of **intra-ACP migration**, as taking place under the recently launched intra-ACP Migration Facility 2009-2013, is a priority for the ACP that could be reflected in the new Article 13 while at the same time maintaining the sovereignty and policy autonomy ACP countries and regions.

[21] ibid
[22] Council of the European Union 2009. *Council Conclusions on Migration and Development.* http://www.se2009.eu/polopoly_fs/1.25816!menu/standard/file/111585.pdf

Article 13 could also reflect that both parties strive to take up a **fair share in the global and regional burden of global refugees**.[23] In this spirit, the parties will exchange lessons learned and cooperate to develop and implement best practice in voluntary resettlement programmes.

*Brain drain*

Instead of a general statement on fighting the negative effects of brain drain (which should be included in addressing the root causes of migration), it would be more ambitious to **link brain drain explicitly to circular migration and also consider the positive aspects of brain circulation in line with evidence from research**.[24]

It may also be valuable to include a clause that commits parties to initiate **political dialogue on brain drain**, including on compliance of EU countries with codes of conduct on ethical recruitment and development assistance to support ACP education sector/ skills training (compensation payments for aggressive recruitment from ACP health and education sector).

*Circular migration: See section 3.3. on legal migration*

*Remittances*

This provision would include a commitment to promote transparent, cheaper, faster and more secure flows of remittances to migrants' countries of origin, as well as **to ensure that relevant legislation does not contain provisions hampering the effective use of legal remittances**[25] **channels and a commitment to initiate political dialogue on relevant EU legislation.**

*Diaspora involvement*

ACP Governments may wish to be informed if EU Member States support diaspora in the development of their country, and such initiatives should go along with support to relevant capacity development in the government to cater for sustainable diaspora involvement in the long-term. A cross-reference to Article 80 (Cotonou) may be adequate, which states that *"the Community shall assist ACP States which so request to facilitate the return of qualified ACP nationals resident in developed countries through appropriate re-installation incentives"*.

# 4 Conclusion

Making Article 13 a relevant cooperation framework for another 10 years should be in the interest of both sides, and this revision provides an opportunity for a more balanced text. If the revised article were expected to be a meaningful framework for migration and development, stronger language and commitments on legal migration, on political dialogue, capacity building, brain drain and brain waste, diaspora, the transfer or remittances and

[23] The 2006 ACP Declaration proposed that the EU commits to sharing a bigger burden of global refugees. This would be in line with the Commission's proposal for a joint EU resettlement programme.
[24] See for example: Easterly & Nyarko 2008. *Is the brain drain good for Africa?* http://www.brookings.edu/~/media/Files/rc/papers/2008/03_brain_drain_easterly/03_brain_drain_easterly.pdf
[25] Provisions that require money transfer organisations to inform the local law enforcement authorities if a migrant cannot present a valid residence permit are counter-productive.

intra-ACP migration would be appropriate. In areas where the EU has committed itself to making progress in a number of policy documents, why not re-iterate some of these commitments in the Cotonou Agreement? Also, if readmission and return migration are strong interests of the EU side and the ACP Group is asked to make concessions, the EU side may have to offer equally strong commitments in the areas of legal migration and migration and development, such as on circular migration schemes, to be developed at the request of both sides.

Both sides could make more strategic use of the possibilities for political dialogue on migration. In this context, this revision could be an occasion to reflect on the relation of ACP-EU dialogue with other ongoing processes. In addition, the ACP Group could make better use of Article 12 on PCD, which allows ACP countries to call for consultations if Community policies affect the interests of ACP states.

Letting this revision pass without making an effort to update Article 13 would be disappointing for the partnership as a whole and for the citizens, who are to benefit from this agreement.

# Annex 1

***Article 13 CPA***

*Migration*

*1. The issue of migration shall be the subject of **in-depth dialogue** in the framework of the ACP- EU Partnership. The Parties reaffirm their existing obligations and commitments in international law to ensure respect for human rights and to eliminate all forms of discrimination based particularly on origin, sex, race, language and religion.*

*2. The Parties agree to consider that a partnership implies, with relation to migration, **fair treatment of third country nationals who reside legally** on their territories, integration policy aiming at granting them rights and obligations comparable to those of their citizens, enhancing non-discrimination in economic, social and cultural life and developing measures against racism and xenophobia.*

*3. The treatment accorded by each Member State **to workers of ACP countries legally employed** in its territory, shall be free from any discrimination based on nationality, as regards working conditions, remuneration and dismissal, relative to its own nationals. Further in this regard, each ACP State shall accord comparable non-discriminatory treatment to workers who are nationals of a Member State.*

*4. The Parties consider that strategies aiming at reducing poverty, improving living and working conditions, creating employment and developing training contribute in the long term to normalising migratory flows.*

*The Parties will take account, in the framework of development strategies and national and regional programming, of structural constraints associated with migratory flows with the purpose of **supporting the economic and social development of the regions from which migrants originate and of reducing poverty**.*

*The Community shall support, through national and regional Cooperation programmes, the **training** of ACP nationals in their country of origin, in another ACP country or in a Member State of the European Union. As regards training in a Member State, the Parties shall ensure that such action is geared towards the vocational integration of ACP nationals in their countries of origin.*

*The Parties shall develop cooperation programmes to facilitate the **access of students from ACP States to education**, in particular through the use of new communication technologies.*

*5.(a) In the framework of the political dialogue the Council of Ministers shall examine issues arising from **illegal immigration** with a view to establishing, where appropriate, the means for a prevention policy.*

*(b) In this context the Parties agree in particular to ensure that the rights and dignity of individuals are respected in any procedure initiated to **return** illegal immigrants to their countries of origin. In this connection the authorities concerned shall extend to them the administrative facilities necessary for their return.*

*(c) The Parties further agree that:*

*(i) each Member State of the European Union shall accept the **return of and readmission** of any of its nationals who are illegally present on the territory of an ACP State, at that State's request and without further formalities; each of the ACP States shall accept the return of and readmission of any of its nationals who are illegally present on the territory of a Member State of the European Union, at that Member State's request and without further formalities. The Member States and the ACP States will provide their nationals with appropriate identity documents for such purposes.*

*In respect of the Member States of the European Union, the obligations in this paragraph apply only in respect of those persons who are to be considered their nationals for the Community purposes in accordance with Declaration No 2 to the Treaty establishing the European Community. In respect of ACP States, the obligations in this paragraph apply only in respect of those persons who are considered as their nationals in accordance with their respective legal system.*

*(ii) at the request of a Party, negotiations shall be initiated with ACP States aiming at concluding in good faith and with due regard for the relevant rules of international law, **bilateral agreements governing specific obligations for the readmission and return of their nationals**. These agreements shall also cover, if deemed necessary by any of the Parties, arrangements for the **readmission of third country nationals and stateless persons**. Such agreements will lay down the details about the categories of persons covered by these arrangements as well as the modalities of their readmission and return. Adequate assistance to implement these agreements will be provided tothe ACP States.*

*(iii) for the purposes of this point (c), the term "Parties" shall refer to the Community, any of its Member States and any ACP State.*

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