

**COTONOU  
ARTICLE 96**

# **Suspension of Development Cooperation:**

## **An Instrument to Promote Human Rights and Democracy?**

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# Contents

1.	<b>Introduction</b>	<b>1</b>
2.	<b>Historical overview</b>	<b>2</b>
3.	<b>Procedure for Article 96 consultations</b>	<b>6</b>
4.	<b>Article 8 on political dialogue</b>	<b>7</b>
5.	<b>Analysis</b>	<b>8</b>
	5.1 Interests	9
	5.2 Institutions	10
	5.3 Norms	11
6.	<b>Conclusions and prospects</b>	<b>12</b>
	6.1 Factors determining whether the EU is likely to call for Article 96 consultations	12
	6.2 Factors determining whether consultations are a success or a failure	12
	6.3 Areas for improvement	14
	<b>Bibliography</b>	<b>15</b>
	<b>Annex</b>	<b>16</b>



# 1. Introduction

This paper looks at the European Union's suspension of development cooperation with countries perceived to have violated the principles of human rights, respect for the rule of law and democratic principles as laid out in the ACP-EU Partnership Agreement. In particular, it answers the following questions: Under what conditions did the EU suspend development cooperation in response to such violations between 1989 and 2001, and what factors have contributed to the success (increased respect for human rights, the rule of law and democratic principles) or failure (continued violations) of this instrument?

These questions are relevant for policymakers, since the application of Article 96 of the Cotonou Agreement<sup>1</sup> (Article 366a in the Lomé Convention) has led to considerable tension between the EU and the African, Caribbean and Pacific (ACP) countries over the past years. Whereas the EU tends to see Article 96 as an important and potentially positive instrument to enforce the "essential elements" of the Cotonou Agreement (namely, respect for human rights, the rule of law and democracy), the ACP side tends to view use of the article as a "sanction" and "punishment" which is not conducive to overall relations between the two sides. The ACP countries much prefer to discuss issues of concern in relation to the essential elements in the framework of Article 8 in the spirit of dialogue.

The application of Article 96 and related provisions was one of the issues reviewed during the recent mid-term review of the Cotonou Agreement. Academic analysis related to the article has thus far focused mainly on development of the legal instruments rather than on their application.<sup>2</sup> Therefore, a comprehensive and up-to-date review and a better understanding of the application of Article 366a and Article 96 (or the non-application thereof) is timely and relevant, from both a policy and a scientific point of view.

This paper first provides a short historical overview of the origins of the Lomé and Cotonou Agreements and the inclusion of a human rights clause in these documents. It also sets out how the Article 96 consultation procedure works in practice and discusses the differences between Article 96 and Article 8 on political dialogue. The paper then moves on to its

main purpose: to analyse all potential cases of suspension of development cooperation for the period between 1989 and 2001. To that end, a variety of sources were consulted and various research techniques used. First, apart from analysing relevant policy documents and literature, a number of interviews were conducted with EU officials involved in decision making on cases of (non)suspension of development assistance in this period. Second, statistical data were analysed for countries where, according to NGO reports, human rights or democratic principles were violated during 1989-2001. The advantage of statistical analysis is that it allows us to test the validity of a variety of explanations for hundreds of cases (including the less well publicised cases).

This comparative research over time and across cases analyses what factors made it more or less likely that cooperation was indeed suspended. It is hypothesised that EU reactions to human rights violations can largely be explained by norms, institutions and interests (in that sequence). This is measured by statistically comparing what triggered or mitigated an EU reaction: norms (the degree of human rights violations), institutions (was there a formal agreement in place) or interests (whether the country concerned was a former colony of one of the EU Member States, the magnitude of its trade relations and its strategic importance to the EU).

The main finding of the analysis is that norms tended to trump interests in the period under investigation. Thus, the human rights clause is not an empty shell. As the level of human rights violations increased, the likelihood that the EU would suspend its cooperation increased as well, regardless of economic or strategic interests in the country concerned. Whether a country was a former colony of one of the EU Member States or not was not of significance, although certain former colonial powers managed to shield their former protectorates more than others. This finding is surprising since it runs counter to the frequently alleged gap between human rights rhetoric and practice.

The paper concludes by discussing a number of factors that contribute to the "success" or "failure" of Article 96 consultations. It reveals the paradox that development cooperation is most likely to be withheld from those countries where the use of this foreign policy instrument is least likely to have an impact. Consultations are mainly "successful" (in

## Notes

- 1 The Cotonou Agreement is the ACP-EU Partnership Agreement which was signed in Cotonou, Benin, on 23 June 2000. It covers aid, trade and political cooperation.
- 2 For an overview of the history and legal provisions of the Lomé Convention, see Hoffmeister (1998), Arts (1997), Kamminga (1989). For a comparison of the Cotonou Agreement with the Lomé Conventions, see Elgström (2000), Martenczuk (2000:461-487).

terms of leading to behavioural change by the government) in cases where the government is willing to cooperate and cares for its population, or where it is highly dependent on EU assistance. With some exceptions, this first condition is unlikely to be met, since consultations are usually started following coups d'état or fraudulent elections. The limitations of the consultation procedure must therefore be acknowledged. In fact, the EU has tended to impose other sanctions on the worst violators, often following UN Security Council resolutions. With the growing "toolbox" of EU foreign policy instruments, in particular the new European Security Strategy and the European Security and Defence Policy (ESDP), EU reactions to violations of human rights and the rule of law are likely to become more sophisticated in the future.

## 2. Historical overview

One of the most important EU instruments for development assistance has been the Lomé Convention, which was followed by the ACP-EU Partnership Agreement, signed in Cotonou, Benin, on 23 June 2000 - after lengthy negotiations and significant alterations of the originally proposed text.<sup>3</sup> After the mid-term review of Lomé IV in 1995,<sup>4</sup> a provision was added for taking so-called "appropriate measures" if the principles of human rights and democracy were violated (Articles 5 and 366a). A specific provision on trade and labour standards was also included at that time (Title II, Chapter 5, Article 50).

Before the 1995 review, human rights were mentioned only in the preamble.<sup>5</sup> This review thus marked the first time that respect for human rights, democratic principles and the rule of law became essential elements of the ACP-EU development partnership. From that time on, ACP countries that did not comply with these criteria risked the suspension of allocated funds. Suspensions are a serious blow to most target countries because assistance is typically granted over five-year periods, and short term assistance is difficult to obtain. Humanitarian aid, which is paid from a different budget, typically continues in such cases.<sup>6</sup> Thus since 1995, the EU could open consultation procedures calling for a transition period during which the country in question must present a programme demonstrating a commitment to the conditions (general principles) agreed upon in Article 9 of the Cotonou Agreement (ex-Article 5 Lomé IV).

A separate internal agreement on the implementation of Cotonou sets out the procedures to be followed for suspending cooperation under Articles 96 and 97 of the agreement. These provisions are largely identical to those in Lomé IV, including the provision that the Council shall act by qualified majority when deciding on partial suspension or appropriate measures, but by unanimity for full suspension.<sup>7</sup> However, the Council agreed on implementation measures for Article 366a only in March 1999, meaning that effectively the consultation procedure could be invoked only after that date.<sup>8</sup> The result was a rapid increase in the number of countries invited for such consultations from March 1999 onwards. The availability of legal instruments rather than the level of human rights violations is thus an important explanation for the frequent recourse to Article 96 between 1999 and 2004 compared to its infrequent use between 1995 and 1999.

The concept of good governance as a "fundamental element" was introduced in the ACP-EU Agreement with Cotonou. After lengthy negotiations and resistance from ACP states to the introduction of such a "nebulous" concept, the partners to the Cotonou Agreement formulated an additional criterion for cooperation, namely 'transparent and accountable governance' (Article 9).<sup>9</sup> Good governance is a "fundamental" element, not an "essential" element for cooperation. Liberia was the first country to be called to consultations because of a perceived breach of the good governance article.<sup>10</sup> Liberia was also the first case in which the Council considered that alleged

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### Notes

- 3 The text of the agreement is published in O.J. L317, 15.12.2000, p. 1.
- 4 Lomé IV was signed in Mauritius on 4 November 1995 (O.J. L 156, 29.5.1998, p.1).
- 5 Arts (1997), Kamminga (1989).
- 6 The Council resolution of 28 November 1991 on human rights, democracy and development which, 'while confirming that in all cases humanitarian and emergency aid would continue to be made available', stated that in response to violations of human rights, 'the Community and the Member States may adjust co-operation activities with a view to ensuring that development aid benefits more directly the poorest sections of the population in the country' (Official Journal No. C242 (1992), Subject: Aid to Sudan. Commission answer to the question, 21 September, p. 19).
- 7 Article 3 of the Internal Agreement in conjunction with the Annex to the Agreement. Council Decision 00/771/E.C., OJ L317, 15/12/00, pp. 375-381. See Martenczuk (2000:486).
- 8 Interview record 10, 14 January 2000. Council decision 1999/214/E.C. of 11 March 1999, O.J. L 75, 20 March 1999, p. 32.
- 9 See Elgström (2000:191) for an analysis of why ACP states accepted the compromise in the end.

involvement in human rights violations in a neighbouring country justified taking "appropriate measures", although not all Member States wished to spell this out explicitly.<sup>11</sup> The Council's action, in accordance with the findings of the UN Panel of Experts pursuant to Security Council Resolution 1306 (2000), was based on information about Liberian rebel forces' alleged human rights violations in Sierra Leone.

Though the Cotonou Agreement is essentially an intergovernmental one, it grants NGOs and other non-state actors a relatively important role in development cooperation (Articles 4 through 7). Their role consists in particular of being informed and consulted on development strategies. Non-state actors have therefore been working with the EU and ACP countries to define their "involvement" in the implementation of the Cotonou Agreement.<sup>12</sup> This is still a sensitive area for some ACP governments.

The Article 96 consult *ultimum remedium*. A first exchange of views is possible under Article 8 which provides for "political dialogue". Originally, ACP countries feared that such dialogue would focus on their shortcomings and that Article 8 would turn out to be merely a prelude for additional conditionality, albeit with a nicer label.<sup>13</sup> In fact, some confusion and disagreement still exists about how this article is to be used. Whereas some EU Member States see it as a precursor to Article 96 consultations, the prevailing view is that it should be more of an ongoing political dialogue *in situ*, involving both state and non-state

actors, on all matters of mutual concern. In the spring of 2001, dialogue under Article 8 was held with Kenya, Zimbabwe and Mozambique. The increased frequency of employment of Article 8 has led ACP countries to request a debate on its interpretation. They feel that calls for such dialogue are not always made in the spirit of partnership underlined in the Cotonou Agreement. The ACP-EU Council of Ministers subsequently adopted a paper setting out a common understanding of "political dialogue".

The Commission has traditionally distinguished between countries in conflict and countries under Article 96 consultations.<sup>14</sup> Article 11(4) of the Cotonou Agreement states that particular attention shall be paid to 'preventing a diversion of funds for belligerent purposes'. Countries in conflict are thus given only part of the assistance funds reserved for them (it is disputed how large this part should be). A list of countries in conflict is maintained and revised according to the evolution of conflicts or peace efforts, as reflected in the positions adopted by the EU.

Although Cotonou is a partnership agreement, and the financial and trade benefits for the ACP side are obvious, one may wonder what led the ACP to agree to the insertion of political conditionality into the agreement. This is partly explained by the fact that the negotiations with the EU were obviously asymmetric, with the EU holding the dominant positions and the purse. Nevertheless, Elgström (2001) states that an analysis based solely on material power resources cannot explain the outcome, and that we need instead to look at the impact of norms and identities. EU enlargement has diminished the number of former colonial powers in the EU and subsequently brought a shift in regional interests. Also, compared to earlier agreements the Cotonou Agreement gives increased weight to concerns of human rights, democracy, good governance and the need to comply with World Trade Organization standards.<sup>15</sup>

According to many EU officials, the evolution and enhanced availability of legal instruments to impose sanctions or start consultations within the Lomé and Cotonou framework has led to a more proactive and transparent EU policy.<sup>16</sup> Since the adoption of the implementation measures and the signing of the Cotonou Agreement, we have indeed witnessed the increased use of Article 96 procedures. Between 1989 and 2002 the EU suspended development coopera-

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#### Notes

- 10 Council decision on opening consultations with Liberia under Articles 96 and 97 under the Cotonou Agreement, 23 July 2001.
- 11 UN document S/2000/1195.
- 12 On July 6 and 7, 2001, the Belgian presidency organised a conference in Brussels on the participation of non-state actors in implementation of the Cotonou Agreement. Representatives of ACP civil society adopted a plan of action and a declaration seeking to define their role.
- 13 Elgström (2000: 191).
- 14 Communication on Co-operation with ACP Countries in Armed Conflicts of 28 May 1999 in which the Commission informed Member States of measures it had taken to enhance the control of Community funds and outlined policy options as a framework for further discussion on EU policies towards ACP countries involved in armed conflict. See also Commission Communication on Conflict Prevention, Management and Resolution in Africa of 14 May 2001.
- 15 See also Dickson (2000).
- 16 Interview record 1, 17 January 2000; record 35, 17 February 2000; record 10, 14 January 2000; record 21, 6 December 1999; record 8, 14 January 2000.

tion with the countries listed in Table 1.<sup>17</sup> It is important to note that suspension of development aid before 1996 was often handled in informal ways, for instance, by a letter from the Commissioner and without formal approval by the Council (e.g. in

Equatorial Guinea in 1992). Such instances were not published in the *Official Journal of the EU* and are traceable only through interviews and reviews of secondary literature. There were 26 cases over this period, of which nine were consultations.

**Table 1: EU suspension of development cooperation (1989-2002)**

Target	Year	Reference
Burundi	1993	Crawford (1998, p. 160).
Burundi	1997	Interview with EU country desk officer.
Centr. Afr. Republic	1991	EU-ACP Cooperation in 1998, DG Development, Brussels. 1991-97.
Comoros	2000	Proposal for a Council decision concluding consultations with the Comoros under Article 366a of the Lomé Convention and taking appropriate measures (COM/99/0695 final). Consultations were opened by a Council decision of 12/7/1999 and closed by a Council decision of 14/02/2000.
Congo	1997	Humanitarian assistance resumed on a conditional basis through NGOs, aid remains suspended, 15/9/1997, European report nr. 2251, 17/9/1997.
Cote d'Ivoire	2000	Communication from the Commission to the Council on the opening of consultations with Cote d'Ivoire pursuant to Article 366a of the Lomé Convention, 13/1/2000. Consultations were opened by a Council decision of 14/1/2000 and closed by a Council decision of 16/06/2000.
Cote d'Ivoire	2001	Opening of consultations under Article 96 of the Cotonou Agreement. Consultations began 21/2/2001 and were closed in June 2001.
Djibouti	1991	Rural development programme was stopped due to armed conflict in 1991 (EU-ACP Cooperation 1998, p. 54).
Equatorial Guinea	1992	Marin, the EC commissioner for development aid, refused to continue development aid to the country in 1992 (this decision was never formally adopted by the Council), which led to a de facto suspension. This was redressed only in 1997, after the president of Equatorial Guinea asked the Commission to open consultation procedures. This was decided during a Council meeting, but no official decision was published (interview with official, 10/12/1999).
Fiji	2000	Consultations opened on 19 October in accordance with the procedure laid out in Article 96 of the Cotonou Agreement and closed in June 2001 (press release, Brussels 26-10-00, Press 399, Nr. 12476-00).
Gambia	1994	Declaration 3 of 12/10/1994 by the Council (suspension of military cooperation and balance-of-payment aid). Resumed in 1997. Gijs de Vries (Dutch MEP at the time) wrote in a 1998 speech that EU aid to Gambia was suspended. EFP Bulletin Doc. 94/228, Memorandum to the Plenary Session of the 49th UN General Assembly (on behalf of the EU and Austria), 27/9/1994, New York, Presidency: Germany states in par.13.13: 'The European Union stresses the need for a rapid return of constitutional democracy to the Gambia and the urgency of setting up a time-table for this objective, as outlined in the démarche delivered to the Gambian Government on 12 August 1994.'
Guinea-Bissau	1998	Following the military overthrow of 1998 which led to a period of civil war, traditional development actions were stopped and directed towards humanitarian operations (EU-ACP Cooperation 1998, p. 73).
Guinea-Bissau	1999	Consultations were opened by a Council decision of 19/7/1999 and closed by a Council Decision of 6/12/1999. Communication from the Commission to the Council <i>Concernant l'ouverture de consultations avec la Guinée-Bissau au titre de l'article 366 bis de la Convention de Lomé</i> . Brussels, 9/7/1999. Com (1999) 361 final, COM(1999)491 final.

Target	Year	Reference
Guinea-Equatorial	1994	The Commission proposed to suspend aid in the Council of 22/12/1992. Aid was frozen between 1991 and 1995, and resumed in July 1997. Crawford (1998, p. 160), speaks of suspension of development aid. Regarding EU-ACP cooperation in 1998, no money was received under the 8 <sup>th</sup> EDF programme (tables p. 193). Dialogue resumed in 1996 with human rights and democracy as essential elements.
Haiti	1991	Inter Press Service, 13/2/1992. De Vries 1998:7.
Haiti	2000	Consultations opened 26/9/2000 in accordance with the procedure laid down in Article 96 of the Cotonou Agreement and closed by a Council decision of 29/1/2000. Press release, Brussels (28/9/2000), Press 342, Nr. 11706-00. Declaration by the Presidency on 12 July: 'The EU... could be compelled to reconsider its policy in Haiti, in particular in the field of co-operation and development, should the democratic process be called into question. Under the Lomé Convention, this would imply application of the provisions of Article 366a, including partial or full suspension of aid.'
Kenya	1991	Official Journal no. C066 p. 69, 3/4/1996: 'The Commission, together with all other major donors, has suspended all balance of payments support to Kenya since 1991 due to lack of progress in the political and economic fields.' Discussions on resumption were held by the Council in May and June 1997.
Liberia	1990	Interview with EC official: Diplomatic mission was closed in 1990. Until 1994, only humanitarian aid was provided, but no EDF funds. There was no formal decision to suspend aid.
Liberia	2001	Opening of consultations under Articles 96 and 97 of the Cotonou Agreement, Council decision 23/7/2001.
Niger	1996	Aid suspended for a period of six months by a Council declaration of 29/1/1996. EU aid suspended under Lomé IV, according to De Vries (1998, p.7) and based on written question nr. E-1735/96. Interview with EC official: notification of suspension of development cooperation by the President of the Council of General Affairs, 8/9/1996, for 6 months, with the exception of humanitarian aid.
Niger	1999	Communication from the Commission to the Council on conclusion of consultations with Niger pursuant to Article 366a of the Lomé Convention and the taking of appropriate steps (COM/COM/0350 final).
Nigeria	1995	Council common position, 4/12/1995; prolonged until June 1999. Reuter EC Report. 13/11/1995. Africa Review World of Information, February 1997.
Rwanda	1994	Official Journal no. L283 p. 1, 29/10/1994, Council decision of 24/10/1994 concerning the common position adopted by the Council on the basis of Article J.2 of the Treaty on European Union on the objectives and priorities of the EU vis-à-vis Rwanda.
Sudan	1990	Official Journal no. C183 p. 12, 20/7/1992. Decision of the Commission in March 1990 not to continue aid under Lomé IV, humanitarian aid was continued.
Togo	1992	Official Journal no. C371 p. 209, 8/12/1997. Resolution on the situation in Togo: 'Notes that co-operation between the European Union and Togo, which was suspended in 1992, has been gradually and progressively resuming since 1995, and considers that a complete resumption of co-operation is dependent on the organization in Togo of genuinely transparent and fair elections in 1998.' Interview with official, 6/12/1999. Consultations were opened by a Council decision of 13/7/1998 and closed 15/12/1998.
Zimbabwe	2002	Council decision of 18/2/2002 (2002/148/EC) concluding consultations with Zimbabwe under Article 96 of the ACP-EU Partnership Agreement, Official Journal L 050 , 21/02/2002 P. 0064 - 0065. Regulation (EC) No 310/2002 concerning certain restrictive measures with respect to Zimbabwe.

### 3. Procedure for Article 96 consultations

How does recourse to Article 96 work in practice? Before going into the consultation procedure, it is important to understand its legal basis. Article 96 provides that 'consultations shall begin no later than 15 days after the invitation and shall continue for a period established by mutual agreement, depending on the nature and gravity of the violation. In any case, the consultations shall last no longer than 60 days.' Furthermore, 'if the consultations do not lead to a solution acceptable to both Parties, if consultation is refused, or in cases of special urgency, appropriate measures may be taken. These measures shall be revoked as soon as the reasons for taking them have disappeared.'

As stated earlier, Article 96 is used with discernment and as an *ultimum remedium*. Initiation of Article 96 consultations is based on case-by-case assessment, where account is taken of progress made or deteriorations observed, appropriate timing, and the country-specific historical and political context. The rationale for initiating Article 96 consultations is to remedy problems related to a breach of the essential elements (Article 9) and to uphold the credibility of the ACP-EU Partnership Agreement. Although Article 96 includes the possibility of imposing sanctions, the primary objective of the consultations is to agree on measures to improve the situation in the country concerned. It is often stressed that Article 96 should not be seen as a punitive measure, but ACP countries are nonetheless sensitive to this aspect. A good example of the way the article is meant to be used is last year's consultations with Togo, which were called at the request of the Togolese government to overcome the impasse created as a result of the appropriate measures already in place. In this case the consultations gave rise to a revitalisation of the political dialogue in the country.<sup>18</sup>

Before the EU decides to invoke Article 96 a general discussion on the political situation is held in relevant Council working parties, often the Africa or Latin America Working Party, which fall under the so-called "second pillar" of the EU Common Foreign and Security Policy (CFSP). Sometimes problems arise through the refusal by the European Development Fund (EDF) Committee (which falls under the first

"Community" pillar) to give an opinion on a country strategy paper. Though this Committee is entitled to take technical rather than political decisions, it caused substantial delays in the disbursement of assistance funds to Sudan and Eritrea in 2002.

If the geographical working party of the Council considers that the political situation should have implications for development cooperation, the matter is discussed in the ACP working party, often on the basis of an information note from the Commission on the state of play of development cooperation. The decision to start consultations is taken on the basis of a proposal from the Commission. Usually the Commission takes the initiative, but sometimes the Council explicitly requests it to do so, as was the case for Zimbabwe.

The ACP working party discusses and possibly amends the proposal by the Commission for a Council Decision, which has a draft letter to the authorities of the country in case attached to it, and prepares for the decision making by the Committee of Permanent Representatives (COREPER) and subsequently the Council of Ministers. This often takes at least two rounds of discussions at the working party level, depending on the political sensitivity of the issues at hand. Whereas in theory qualified majority voting is required, in practice the Council usually does not vote on such proposals (though delegations and in particular the presidency will have made the calculation in the back of their minds).

Once the country in question has accepted that consultations should take place, a meeting is organised in Brussels. The EU is represented by the troika and the ACP side by the country in question, together with a number of friendly countries of its choice, regional organisations such as the African Union and members of the ACP Secretariat. The EU side usually asks a number of questions, giving the ACP side the opportunity to state its point of view, and attempts are made to agree on a list of commitments and a timetable to fulfil them. Depending on the situation in question, the EU would normally not take steps until the consultations are completed (unless steps were already in place on the basis of the Lomé Convention).

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#### Notes

- <sup>18</sup> The case of Togo is discussed in the paper by Lydie Mbangou (2005) published by ECDPM in this series. See: Mbangou, Lydie (2005) Recent cases of Article 96 consultations. (Discussion Paper No. 64C), Maastricht: ECDPM.

Consultations are completed within a fixed period set by the Cotonou Agreement (originally 60, now 120 days) during which an estimation is made of the degree to which the country concerned has fulfilled the commitments entered into during the consultations. Identical to the process of initiating consultations, the formal completion of the consultations typically starts at the initiative of the Commission on the basis of an information note. The ACP working party then prepares a draft letter for adoption by COREPER/Council. The European Parliament is informed by the Council of the commencement and completion of the consultations, but is not directly involved in the decision-making process.

Sometimes (usually in cases of the worst violations) suspension of development cooperation is only one of the measures imposed as a result of a violation of human rights and democratic principles. The EU has imposed more severe sanctions, such as arms embargoes, financial sanctions and travel restrictions, on quite a few ACP countries in the past: Angola (1997), Burundi (1996), Ethiopia/Eritrea (2000), Haiti (1993), Liberia (1992, 2001), Nigeria (1995), Rwanda (1994), Sierra Leone (1997), Somalia (1992), Sudan (1996), Zaire (1993), Zimbabwe (2001). These measures were typically but not always (as in the case of Nigeria and Zimbabwe) imposed following UN Security Council resolutions. EU decision making on such stronger restrictive measures are a story apart in terms of procedure and practice.<sup>19</sup>

## 4. Article 8 on political dialogue

Political dialogue is a natural and indispensable component of the EU-ACP partnership. Article 8 constitutes a general commitment to such a dialogue, during which all the aims and objectives of the partnership agreement can be addressed, as well as any other issues of mutual concern, between the EU on the one side and the ACP group or an individual ACP country on the other side. Article 8 dialogue thus encompasses Community, CFSP and third-pillar dimensions and consequently includes a broad range of issues related to the overall objective of poverty eradication.

It is clear that political dialogue already exists through the regular contacts between the EU and the ACP countries, but Article 8 implies that this dialogue be reinforced and become more regular. The dialogues currently pursued by the EU have an ongoing character without explicit time limits and are conducted in a flexible manner. Article 8 dialogue can be formal or informal, conducted within and outside the institutional framework, both at national and regional levels. Regarding the national level, the dialogue is pursued in a country-specific manner, with Member States and Commission representatives in the ACP capitals playing an important role in the process.

Article 8 is not primarily a preventive instrument. However, in some cases, the parties may be able to prevent the need for Article 96 consultations by initiating a discussion of problems at an earlier stage under Article 8. The initial fear shared by some ACP states of political dialogue under Article 8 being merely a prelude to Article 96 consultations seems to have been mitigated somewhat over time.

We could summarise the distinction between Article 8 and Article 96 as follows:

- preventive rather than reactive in terms of serious situations that have tended to lead to Article 96/97 consultations;
- positive rather than negative measures;
- concerning important issues of *mutual* interest;
- dialogue rather than monologue;
- continuous application rather than ad hoc and limited to the two-month period, with an oppor-

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### Notes

<sup>19</sup> See De Vries and Hazelzet (2005) and Hazelzet (2001).

tunity to discuss *structural* political problems and violations of the essential elements of the Cotonou Agreement;

- political versus legal judgement;
- no formal decision needed to invoke political dialogue under Article 8, in contrast to Articles 96 and 97;
- flexibility of Article 8 procedures, depending on the specific needs/issues of the country in case, in contrast to the inflexibility of procedures set out in Articles 96 and 97;
- Article 8 can involve non-state actors (not just parties to the Cotonou Agreement);
- can address both governments that are *willing* and those that are *less willing* to cooperate (but success can be mainly expected with the former).

**Table 2. Level of sanctions applied**

Level of sanctions applied	Countries affected	
	Number	Percentage
Free trade maintained	102	41%
Slight closure	51	21%
Substantial closure	37	15%
Smart (targeted) sanctions	43	17%
Total closure	13	5%
<b>Total</b>	<b>246</b>	<b>100%</b>

Note: Conclusions are drawn from the statistical analysis in Hazelzet (2001) and not from the simple tables presented in this paper for the sake of readability.

## 5. Analysis

Under what conditions does the EU impose sanctions such as the suspension of development cooperation in reaction to human rights violations? The main schools of thought in international relations (realism, institutionalism and constructivism) would argue, respectively, that either interests, institutions or norms explain variation across targets in EU reactions to human rights violations.<sup>20</sup>

To assess how soft or harsh EU reactions to human rights violations have been in the 1990s, I conducted a statistical analysis to compare (*inter alia*) EU reactions to almost 500 cases of human rights violations from 1989 to 2000<sup>21</sup> in a number of countries.<sup>22</sup> I measured EU interests by looking at a number of characteristics of the target country, such as gross national product (GNP) per capita, trade importance, population size, strategic importance (oil/nuclear weapons) as well as whether it was a former colony of one of the EU Member States. Adherence to human rights norms was measured through the Freedom House database (1989-2000), which is based on an annual comparative assessment of the state of political rights and civil liberties in 192 countries. Institutionalisation was measured by whether or not a country had an agreement with the EU with a human rights clause. The type of sanction was measured on a four-point scale ranging from "no reaction" to "total embargo" (the sanctions/"sticks" scale) and from no to unimpeded trade and development cooperation (the incentives/"carrots" scale).<sup>23</sup> As Table 2 below shows, of the 246 cases assessed in the statistical analysis, 144 countries experienced some kind of measure imposed on them by the EU in response to human rights violations, while free trade was maintained with 102 of them. Statistical analysis showed that to explain the variation in reactions to human rights violations across targets, adherence to liberal norms mattered most, whereas interests had little or no explanatory value.

### Notes

20 See for instance Risse (2000) and Crawford and Klotz (1999) on constructivist arguments, Martin (1992, 2000) on institutionalist arguments and Drezner on realist arguments (1999).

21 For a full discussion of this analysis see Hazelzet (2001, 2004).

22 In addition to the ACP countries mentioned in table 1, three non-ACP countries were included in the analysis, namely Burma, Romania and Tajikistan, since the EU suspended development cooperation with these countries at various points during 1989-2001.

23 See tables 1 and 2 in the annex for the scales. For a detailed account of the methodology and measurements used, including the variables in the statistical analysis through STATA and SPSS programs, see Hazelzet (2001).

## 5.1 Interests

A first finding of the analysis is that the **level of respect for human rights or regime type was not significant for the granting of EU development cooperation** in the period under consideration. Therefore, we must look elsewhere for how the EU decides to whom to grant development aid. The granting of EU aid appears to be related to other characteristics of a country, namely, its being a former colony, GNP per capita, relative trade importance and population size. Aid was generally found to be provided to those in need, rather than to "friendly" regimes.

### *Are countries more or less likely to be sanctioned if they are former colonies?*

As the Cotonou Agreement and the preceding Lomé Agreement were originally mainly concluded with former colonies of EU Member States, the question arises of whether the status of being a former colony affects the EU's treatment of countries when human rights violations have occurred. Here, the tests conducted indicate that contrary to common belief, **former colonies were, in general, not shielded from economic sanctions, but rather were likely to be subject to harsher sanctions** in response to human rights violations than countries that had not been colonies. This finding can perhaps be explained by the fact that statistically, former colonies showed a tendency to be less democratic than countries which had not been colonies. This suggests the possibility that the fact that a country has a dictatorial regime, rather than a past colonial relationship with an EU country, determines how the EU reacts if human rights are violated.

### *Are all former colonies treated the same?*

The analysis also addressed the question of whether all former colonies are treated the same, or whether there is truth in the sometimes voiced suggestion that the French are keen to shield their former colonies from sanctions and the British are disposed to be tough on theirs. When decisions on the curtailing of EU development aid towards ACP countries were still taken by unanimity in the Council, Member States could block the application of sanctions. Since qualified majority voting was introduced, they could appeal to their colleagues to soften or intensify the measures proposed by the European Commission for countries with which they had strong links.

Here, contrary to what might be expected, the data indicates that former French and British colonies were no more or less likely to be sanctioned than other countries which had not been former European colonies. However, former colonies of other European colonial powers (Belgium, Netherlands, Portugal) did experience sanctions more often than other countries. Nevertheless, overall for former colonies as a group (British, French, Belgian, Dutch and Portuguese) there was little difference in treatment compared to countries which had not been colonies.

The finding that there are some differences in the treatment of former colonies by the EU was confirmed by the analysis of the degree of sanctions applied to different categories of countries (table 3). Here, the common allegation that France tries to protect her former colonies and prefers silent diplomacy over biting measures did find some empirical support. This was inconclusive, however, given that dif-

**Table 3. Likelihood of sanctions for different categories of countries<sup>24</sup>**

Level of sanctions applied	Countries which were never colonies		Former French colonies		Former British colonies		Other former European colonies		
	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Percentage
Free trade maintained	61	49%	16	49%	20	35%	5	17%	27%
Slight closure	24	19%	8	23%	16	28%	3	10%	
Substantial closure	16	13%	9	26%	7	12%	5	17%	73%
Smart (targeted) sanctions	16	13%	0	0%	13	23%	14	47%	
Total closure	7	6%	2	6%	1	2%	3	10%	
	124	100%	35	100%	57	100%	30	100%	

#### Notes

<sup>24</sup> This table is a simple presentation of the number of cases in each category. The analysis presented is based on a more complex categorisation (see Hazelzet 2001).

ferent tests produced different results. **No strong link could be established between the status of being a former French or British colony and the level of sanctions applied**, and the same percentage (31%) of former French colonies experienced a serious form of sanction as countries that had never been colonies. Only slightly more British colonies (37%) experienced the same level of serious sanctions.

However, this is different for other former, non-French and non-British (i.e. Belgian, Dutch or Portuguese) colonies. Of these, 73% were found to have experienced a serious form of sanction in the analysis conducted. This shows a clear difference in the EU's response to human rights violations in different categories of former colonies (in the period assessed). **Countries which had been occupied by European powers other than France and Britain were sanctioned more severely.** This is an indication that those punished more harshly found themselves relatively undefended in the Council by their former colonisers, whereas France and, to a lesser extent, Britain, made efforts to protect their former colonies from harsh sanctions. The data analysed and the interviews conducted for this study confirm this idea to an extent, as they suggest that especially between 1995 and 1998, former French protectorates were still relatively shielded from negative measures despite human rights violations,<sup>25</sup> while during that same period, former British colonies were punished more severely,<sup>26</sup> and countries which had been occupied by other European powers were sanctioned most harshly.

## 5.2 Institutions

### *Is the EU less likely to impose sanctions on countries with which it has institutionalised relations?*

The data analysed for this study supports the idea that the level of institutionalisation of relations between a country and the EU plays a role in the EU's decision to apply sanctions. The tests found that the **EU tends to impose a lower level of sanctions on countries with which it has a special agreement that includes a human rights clause**, and that the more the relationship between the EU and the country is institutionalised, the lower the probability that harsh sanctions would be imposed on the country concerned.

This is not to say that the human rights clauses included in agreements are nothing more than rhetoric. As Table 4 below indicates, half of the countries with an agreement experienced some type of sanction imposed by the EU.

However, countries with an agreement tended to be sanctioned in a softer manner than those without. As Table 5 shows, 85% of all total embargoes and 65% of smart sanctions were imposed on countries with which the EU had no institutionalised relationship, which means that only 15% and 35%, respectively, of countries with which the EU had an agreement experienced total embargoes and smart (targeted) sanctions.

**Table 4. Application of sanctions to countries with and without an agreement**

Level of sanctions applied	Countries with which the EU has an agreement			Countries with which the EU has no agreement		
	Number	Percentage		Number	Percentage	
Free trade maintained	61	61	50%	41	41	33%
Slight closure	23	61	50%	28	83	67%
Substantial closure	21			16		
Smart (targeted) sanctions	15			28		
Total closure	2			11		
	122	122	100%	124	124	100%

Notes

- 25 Various interviews confirm this. Among others, interview record 1, 17/01/00; record 35, 17/02/00; record 8, 14/01/00; record 10, 14/01/00; record 67, 23/12/99. There are also cases in which France was more active: interview record 4, 14/02/00; record 21, 6/12/99.
- 26 Confirmed by interviews: record 6, 22/3/00; record 11, 16/12/99; record 12, 22/3/00; record 33, 28/01/00.

**Table 5. Levels of sanctions applied to countries with and without an agreement**

Level of sanctions applied	Countries with which the EU has an agreement		Countries with which the EU has no agreement		Total	
	Number	Percentage	Number	Percentage	Number	Percentage
Free trade maintained	61	60%	41	40%	102	100%
Slight closure	23	45%	28	55%	51	100%
Substantial closure	21	57%	16	43%	37	100%
Smart (targeted) sanctions	15	35%	28	65%	43	100%
Total closure	2	15%	11	85%	13	100%

### 5.3 Norms

#### *Under what conditions does the EU impose sanctions in response to human rights violations?*

As mentioned above, a possible explanation for the difference in treatment of former European colonies and countries that were never colonies is that former colonies statistically were found to have higher levels of human rights violations than countries that were not former colonies. As a result, any relationship that seems to exist between colonies and the level of sanctions applied could be spurious. In fact, as indicated in Table 6, on a scale of freedom as defined in the Freedom House database, former colonies score worse (lower) than countries that were not colonies; and among the ex-colonies, former French colonies have the lowest average freedom score.

**Table 6. Comparison of average level of freedom across former colonies**

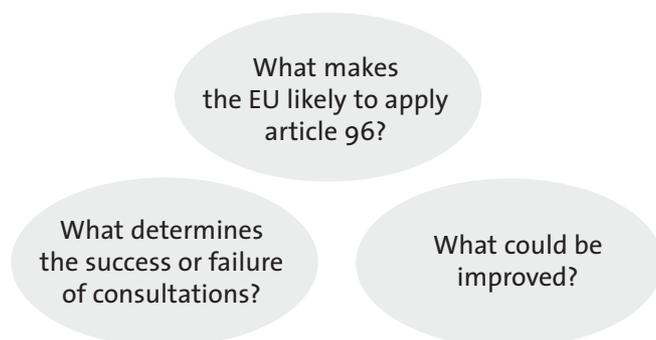
Country	Mean level of freedom on a scale from 0 to 1	Number of countries
Not a former colony	0.70	124
Former colony	0.38	121
Former French colony	0.24	34
Former British colony	0.44	57
Other former colony	0.43	30

Note: The average level of freedom is measured on a scale from 0 to 1, with a totalitarian dictatorship scoring 0 and full democracy scoring 1.

This finding is interesting, as the statistical analysis (multivariate regression analysis) indicates that in the 1990s, **overall the level of human rights violations was a more important determinant for EU sanctions than the level of economic or strategic importance of a country.** While this is not to say that being an ally or of strategic importance to the EU or an EU Member State did not matter, human rights violators did tend to be subject to sanctions despite their economic and strategic importance. While it is a fact that unimportant trading partners were often subject to relatively severe measures, the analysis indicates that the EU did not shield important trading countries from negative measures. Thus, calls from the EU to respect human rights were more than rhetoric. However, one should keep in mind of course that the most important trading partners of the EU tend to be liberal democracies, which are unlikely to evoke negative foreign reactions to their domestic policies in the first place.

## 6. Conclusions and prospects

The previous section analysed the conditions under which the EU, in general, resorted to negative measures during the 1990s. What can we conclude are the factors that determine whether the EU is likely to call for Article 96 consultations? And what makes such consultations a "success" or "failure"?



### 6.1 Factors determining whether the EU is likely to call for Article 96 consultations

I argued and sought to demonstrate that **three factors largely explain EU reactions to human rights violations: norms, institutions and interests** (in that sequence). In the past, Article 96 (and before it Article 366a) was mainly applied in reaction to a coup d'état or sudden deterioration of political and human rights situations. In other words, the EU tended to react in an ad hoc fashion, rather than in a systematic manner to violations or problems. In cases where the political situation was precarious, such as during a civil war, or when a country was on the verge of a peace agreement (as, for instance, with Sudan and Eritrea), the EU usually decided to walk the road of silent diplomacy, possibly with the carrot of a signature on a country strategy paper in hand.

If one compares all EU reactions to human rights violations in the 1990s (hence not only to human rights abuses in ACP countries) to cases in which the EU did not react, we find that **human rights violators were sanctioned regardless of whether they had institutionalised relations with the EU in the form of a formal agreement**, although measures imposed against countries with an agreement tended to be slightly softer. Also, the EU on average did not caress its for-

mer colonies, though the treatment of some former French protectorates showed an opposite trend compared to the treatment of former colonies of other European countries.<sup>27</sup> Finally, **EU sanctions tended to be harsher for more serious human rights violations**, often despite the economic importance of the country concerned.

### 6.2 Factors determining whether consultations are a success or a failure

Success in these cases is usually defined in terms of reaching a stated goal, which is typically a change in the attitude of the target regime. However, a number of methodological difficulties arise in trying to isolate the effects of outside measures on a target regime's behaviour from other developments affecting the regime's performance.<sup>28</sup> That said, it appears from the qualitative analysis that success and failure are, firstly, **in large part determined by the attitude of the target government** and, secondly, **by the level of dependence on EU development cooperation**.

Some countries are simply more dependent on development aid than others. In this respect, the EU has much more leverage with a country such as Niger than with, for instance, Nigeria. Also, certain governments simply do not care about their population, regardless of the level of development cooperation they enjoy. Examples of these are Zimbabwe and Haiti at the time of EU sanctions. We could thus speak of a paradox: **development cooperation is most likely to be suspended for those countries for which such pressure is least likely to have effect**, even if dependence on EU financial and economic assistance is high.

In a number of cases, the **constructive attitude of the ACP state concerned has led to a successful closure of consultations**, at least initially (e.g. in Niger and Cote d'Ivoire). The EU together with the ACP state concerned held **intensive discussions** - both in Brussels and *sur place* - on the basis of a **list of commitments** to be undertaken in the area of human rights, democracy, the rule of law and, as was the case for Liberia, good governance. In other cases, the **governments concerned were less willing to bring their country back on track** to democracy (such as Zimbabwe or Haiti), or were only partially committed to addressing the concerns raised by the EU (such as Fiji). In those cases, the EU saw no other option than

#### Notes

<sup>27</sup> A notable exception seems to be Niger, where a coup d'état followed the looting of a French cultural centre and where France opposed the leadership that subsequently took power.

<sup>28</sup> See Hazelzet (2004).

to impose **appropriate measures**, to put pressure on the governments concerned to fulfil their obligations under the Cotonou Agreement.

Notwithstanding the above-mentioned caveats, the **EU can influence the attitude of the (ACP) government concerned** through its approach. Posing conditions, yet assisting in fulfilling them through a combination of carrots and sticks, can bear fruits. The government's interest in cooperating with the EU is the key to success. Regular contacts, in Brussels and *sur place* certainly are conducive to successful consultations. Taking away prejudice against the Article 96 procedure helps too. Careful preparation of consultations and informal discussion of what the EU expects the government to do also facilitate the consultations. It is important to set clear benchmarks, to assist the country in meeting the criteria and to ensure that the benchmarks set are in the power of the government to achieve. Liberia in 2001 is a case in point in this respect. Reformist elements within the Liberian administration were approached and proved to be willing to cooperate, but since Charles Taylor remained in power, it proved impossible for the reformists to follow through. Finally, the importance of a proper and independent monitoring mechanism cannot be overstated (see the case of Togo as discussed in Mbangi 2005).

We could point to a number of additional facilitating factors which have helped to make a success of consultations. In all successful cases, the EU was committed to review the situation on a regular basis, and to continue the political dialogue. It also, for ethical reasons, did not withdraw humanitarian assistance in support of the people in the country concerned. Problematic cases in this regard were Zimbabwe and Haiti, where the governments did not facilitate, and even politicised, humanitarian assistance. An additional facilitating factor for successful consultations has been the resumption of development cooperation as soon as respect for human rights, democracy and the rule of law is restored, as for instance was the case with Comoros. Finally, it seems that participation of friends of the ACP country invited for consultations in the process as moderators has played an important role in their successful conclusion.

#### **Box 1. Factors that can positively influence a consultation procedure**

##### **Steps the EU can take to positively influence a government with which it is conducting a consultation procedure:**

- Posing conditions, but assisting in fulfilling them through a combination of carrots and sticks;
- Regular contact in Brussels and *sur place*;
- Reducing prejudice on the Article 96 procedure;
- Careful preparation of consultations;
- Informal discussions on what the EU expects the government to do;
- Setting clear and realistic benchmarks that are in the power of the government to achieve, and assisting the country in meeting them;
- Reaching out to reformists within the government;
- Setting up a proper and independent monitoring mechanism.

##### **Additional facilitating factors that have in the past helped to make a success of consultations:**

- The commitment to review the situation on a regular basis;
- The commitment to continue the political dialogue;
- The decision not to withdraw humanitarian assistance in support of the people in the country concerned for ethical reasons;
- The resumption of development cooperation as soon as respect for human rights, democracy and the rule of law is restored;
- The role of moderator played by friends of the concerned ACP country.

### 6.3 Areas for improvement

An important step to improve Article 96 consultation procedures is to **be more transparent and better explain EU policy and procedures**. This concerns both actors that are directly implicated and those not directly involved in the consultations (such as civil society organisations, opposition parties, opinion leaders and the European Parliament).<sup>29</sup> It is also important to clarify that the procedure is not primarily or only meant to "punish", but is rather a way to get a country back on the track of democracy as set out in the Cotonou Agreement. Thereto **clear and realistic benchmarks and time frames** should be agreed and monitored.

On the one hand we can state that the evolution and enhanced availability of legal instruments to impose sanctions or start consultations within first the Lomé and then the Cotonou framework has led to more proactive and transparent EU policy. It has been in the interest as well as in the nature of the EU to develop relations with third countries on the basis of clear rules and agreements. Here, we see the important explanatory power of institutions. Until the late 1990s it was extremely difficult to discern how the EU in fact reacted to violations of human rights and democracy, and why. EU reactions were more arbitrary and less transparent at that time. After implementing measures were adopted in March 1999, there was a sharp increase in the use of the Article 96/97 instrument. The application of Article 97 in the case of Liberia saw the Cotonou Agreement starting to be used to a fuller extent. Liberia was also the first case in which the Council considered that alleged involvement in human rights violations in a neighbouring country (Sierra Leone) justified taking "appropriate measures".

On the other hand, the increasing institutionalisation of relations has brought a certain rigidity to EU foreign policy responses. Obviously the suspension of development assistance is only one instrument in the toolbox at the EU's disposal - and it is one that until recently was a measure of last resort. With the adoption of the European Security Strategy and the growing maturity of the European Security and Defence Policy, more tailor-made reactions are likely to violations of human rights and the rule of law, including to violent conflicts. This increased flexibility in EU reactions is all the more important given the paradox that the use of development cooperation as a foreign policy instrument is likely to be successful only if a country is willing to cooperate (which turns it into an unlikely target) or if it is highly dependent on EU assistance. The European Security Strategy envisages a link be made to EU international cooperation and a country's willingness to respect human rights and international law. For those regimes that are unwilling to cooperate, and which do not have the best interests of their population at heart, the limits of the Cotonou Agreement should be acknowledged and other measures considered, while staying within the framework of international law. The EU is increasingly well-equipped and well-placed to do just that.

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#### Notes

- <sup>29</sup> The European Parliament decided to ban the members of the Zimbabwean Parliament from participating in the EU-ACP Joint Parliamentary Assembly in November 2002, since these individuals appeared on the visa-ban list of the EU. However, bilateral agreements on diplomatic immunity made it impossible for the Council to block these individuals entry, as had been the case for other international conferences that had taken place in EU Member States.

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# Annex

**Table 1: The sanctions/sticks scale**

Negative Measures		
0	free trade	no reaction; unconditional relationships;
1	slight closure	(1) public démarches or joint declarations (2) change in the content of cooperation programmes or the channels used; (4) deferment of the holding of a joint committee meeting; (5) suspension of high-level bilateral contact; denial of import licenses for weapons.
2	substantial economic closure	(2) deferment of signatures or decisions needed to implement cooperation; (3) reduction of cultural, scientific or technical cooperation programmes; (6) postponement of new projects; (7) refusal to act on partner's initiatives; suspension trade preferences; suspension or freezing of development aid; visa ban or flight ban; prohibition of extension guarantees, insurance, credits by EXIM bank.
3	military closure/ "smart sanctions"	(9) suspension of arms sales and/or the suspension of military cooperation; visa and flight ban; financial sanctions; embargo on strategic products such as oil, diamonds; combination of measures listed above.
4	total closure	(8) comprehensive trade embargoes (10) suspension of [economic and military] cooperation with the states concerned.

**Table 2. The incentives/carrots scale**

Positive Measures		
0	unconditional cooperation	no special measures/ business as usual despite human rights violations; confidential démarches;
1	slight opening	public démarches or joint declarations; "critical dialogue"; provision humanitarian/emergency aid; continuation (certain) economic relationships/ suspension of (certain) sanctions.
2	substantial opening	"intensified dialogue": extra diplomatic efforts; stepping up of humanitarian aid (through NGOs mainly) or election support, lifting of (certain) sanctions; proposal for cooperation agreement with human rights clause, aid under Meda, Phare, Tacis programmes (or US equivalent).
3	conditional cooperation	conclusion of partnership and cooperation agreement (or equivalent) with human rights clause, including financial support and benefits.

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