

Cotonou Infokit

Essential and Fundamental Elements

The Cotonou Agreement introduces good governance as a 'fundamental' element of the partnership, alongside the 'essential elements' of respect for human rights, democratic principles and the rule of law. The distinction between fundamental and essential elements is significant in that any violation of the latter may lead to the suspension of aid. This fiche looks at the basic rules governing ACP-EU cooperation.

The Rules of the Game

In the preamble to the Cotonou Agreement, the parties acknowledge the critical importance of a political environment that is conducive to development, as well as the primary responsibility of the ACP States for creating such an environment.

This explains why ACP-EU cooperation is underpinned by a basic set of political principles and values that each of the parties is supposed to respect. In ACP-EU jargon, these rules of the game include three 'essential elements' (i.e. respect for human rights, democratic principles and the rule of law) and one 'fundamental' element (i.e. good governance).

The Essential Elements

The essential elements underpinning ACP-EU cooperation already existed under the Lomé IV bis Convention. They include respect for:

- human rights and fundamental freedoms, as defined by international law;

- universally recognised democratic principles, relating to the way in which the State organises itself to ensure the legitimacy of its authority and the legality of its actions; it is on the basis of these principles that each country develops its democratic culture;
- the rule of law, in particular the presence of effective and accessible means of seeking legal redress, an independent legal system guaranteeing equality before the law, and an executive that is fully subject to the law.

A violation of any of the essential elements may provide grounds for suspending EU assistance and trade cooperation with the ACP country concerned. With such serious consequences, definitions and decision-making procedures are critical.

Human rights are well defined in various internationally recognised conventions, making monitoring and evaluation relatively straightforward. Judging respect for democratic principles and the rule of law is a more delicate exercise, however. ACP countries are concerned that this may lead to subjective interpretations or to the use of double standards by the EU.

In the past, the imposition of sanctions on ACP States that were seen to violate essential elements was not always based on dialogue or on transparent decision-making. The emphasis that the Cotonou Agreement places on political dialogue should ensure that such sanctions are not enforced unexpectedly. In addition, the Cotonou Agreement maintains and strengthens the 'consultation procedure' introduced in Lomé IV bis, which should provide more guarantees for fair treatment (Article 96). It places more emphasis on the responsibility of the State concerned by focusing on the steps it takes to remedy the situation. It also allows for greater flexibility in the consultation process in order to make

maximum use of dialogue as a tool to solve the crisis. If the consultations, which should last no longer than 60 days, do not lead to a mutually acceptable solution, 'appropriate measures' may then be taken. These should be proportionate to the gravity of the violation and of course in accordance with international law. The suspension of assistance should be a measure of last resort.

However, there is also a provision for dealing with 'cases of special urgency', i.e. particularly serious and flagrant violations of an essential element. The other party is then allowed to take immediate 'appropriate measures'. These measures must be revoked as soon as the grounds on which they were taken cease to apply.

The Fundamental Element

During the Cotonou negotiations, the EU wanted to expand the essential elements to include good governance. The ACP countries felt that this concept was already adequately covered by the existing category of essential elements. They also argued that the complexity of arriving at universal criteria for assessing the standard of governance meant that the suspension clause allowed too much scope for arbitrary opinions.

Under the compromise subsequently reached, good governance is now a 'fundamental' element of the Cotonou Agreement. After lengthy discussion, a definition of the concept of 'good governance' was also agreed (see box).

DEFINING GOOD GOVERNANCE

The Cotonou Agreement (Article 9) defines good governance as 'the transparent and accountable management of human, natural, economic and financial resources for the purposes of equitable and sustainable development'.

It entails clear decision-making procedures on the part of public authorities, transparent and accountable institutions, the primacy of the law in the management and distribution of resources, and building capacity for designing and implementing measures aimed at preventing and combating corruption.

Unlike the situation involving an 'essential element', a State facing governance problems need not fear a suspension of aid, with the notable exception of 'serious cases of corruption'.

The Specific Case of Corruption

A key innovation of the Cotonou Agreement is the explicit reference to corruption as a major development problem. The message of Article 9 is clear: 'serious cases of corruption', including acts of bribery leading to such corruption, may constitute grounds for the suspension of cooperation.

Significantly, these provisions will be applied not only in cases of corruption involving EDF resources, but also in any country in which the EU is financially active and in which corruption forms an obstacle to development. It is thus not confined purely to EU activities.

The inclusion of a corruption clause in the Agreement is intended not just to give an unequivocal sign to aid recipients, but also to raise the level of transparency for European investors and other actors.

The EU and the ACP countries have agreed on a specific procedure for dealing with serious cases of corruption (Article 97). Consultations, requested by either party, can be organised. If these do not result in a solution, appropriate action will be taken that is proportionate to the gravity of the situation. Suspension is a measure of last resort.

However, the emphasis in Article 9 is much more on providing support to states that are seeking to tackle corruption. Thus, good governance is clearly identified as 'an important subject for political dialogue' and a 'focus of support for development strategies', with the European Commission being ready to 'provide support for political, institutional and legal reforms and for building the capacity of public and private actors and civil society in the framework of strategies agreed jointly between the State concerned and the EC'.

Positive Measures

Indeed, the whole political chapter of the Cotonou Agreement is not so much about taking negative action against States that fail to respect basic political principles and values. It is far more about bringing issues out into the open, identifying solutions together through dialogue and actively supporting the promotion of human rights, processes of democratisation, the consolidation of the rule of law and good governance' (see Articles 9 and 33).

In this context, ACP-EU cooperation should be a means of:

- providing support for political, institutional and legal reforms;
- combating corruption;
- assisting the reform, rationalisation and modernisation of the public sector;
- promoting political, administrative, economic and financial decentralisation;
- supporting institutions that are needed to underpin a market economy;
- building the capacity of non-state actors; strengthening structures for information, dialogue and consultation between non-state actors and national authorities, including at regional levels.