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Proposal for a

COUNCIL DECISION

on the signing, on behalf of the European Union, and provisional application of the Partnership Agreement between the European Union, of the one part, and the members of the Organisation of African, Caribbean and Pacific (OACPS) States, of the other part

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The present proposal concerns the signature and provisional application of a new Partnership Agreement between the European Union (EU) and members of the Organisation of African, Caribbean and Pacific States. Formerly known as the "ACP Group of States" (ACP), the group became the Organisation of African, Caribbean and Pacific States (OACPS), an international organisation, in April 2020.

Since 2000, the Cotonou Partnership Agreement has been the framework guiding the relations between the EU and the 79 ACP countries. It is based on political dialogue, and economic, trade and development cooperation. The Agreement, revised in 2005 and 2010, expired end of February 2020. However, as partners needed more time to negotiate the successor Partnership Agreement, the application of the Cotonou Agreement was transitionally extended twice. First, until 31 December 2020 and a second time until 30 November 2021 or until the provisional application of the new Partnership Agreement (hereafter referred to as "the Agreement"), whichever comes first.

A modernised agreement is greatly needed to upgrade the EU-ACP relationship to mirror the new ambitions stemming from emerging needs and challenges. More interconnected than ever before, the world has greatly changed since the Cotonou Agreement was adopted, and so have the EU, its partners and their joint aspirations.

Negotiations on a new Agreement began in September 2018, shortly after the Council authorised the Commission and the High Representative to open negotiations on, and to negotiate, on behalf of the European Union, the provisions that fall within the competence of the Union, of a Partnership Agreement between the European Union and its Member States, of the one part, and the countries of the African, Caribbean and Pacific Group of States, of the other part and adopted negotiation directives in June 2018. Throughout the negotiations, the Council was informed regularly. The special committee established by the Council decision authorising the opening of negotiations was consulted throughout the negotiations. The chief negotiators initialled the draft text of the agreement on 15th of April 2021, with the exception of the definition of the parties to the Agreement.

The general aim of the Agreement is to establish an ambitious and strengthened political partnership, ushering in new dynamics and going beyond traditional development cooperation. Within the Agreement, each region will be empowered. This will allow the EU and the members of the OACPS to achieve greater ambitions at local, national, regional and international level.

The specific objectives of the new Agreement are to:

1. promote, protect and fulfil human rights, democratic principles, the rule of law and good governance, paying particular attention to gender equality;
2. build peaceful and resilient states and societies, tackling ongoing and emerging threats to peace and security;
3. foster human and social development, and in particular to eradicate poverty and address inequalities, ensuring that everyone enjoys a life of dignity and that no one is left behind, with special attention paid to women and girls;

4. mobilise investment, support trade and foster private-sector development, with a view to achieving sustainable and inclusive growth and creating decent jobs for all;

5. combat climate change, protect the environment and ensure the sustainable management of natural resources; and

6. implement a comprehensive and balanced approach to migration, so as to reap the benefits of safe, orderly and regular migration and mobility, stem irregular migration while addressing its root causes, in full respect of international law and in accordance with the Parties' respective competences.

The Commission considers that the objectives set out by the Council in its negotiating directives were attained and that the negotiated text is acceptable to the Union.

- **Consistency with existing policy provisions in the policy area**

The Agreement was negotiated in line with the comprehensive negotiating directives adopted by the Council in June 2018[1] on the recommendation from the Commission for a Council decision authorising the opening of negotiations on a Partnership Agreement between the European Union and countries of the African, Caribbean and Pacific Group of States, which builds on a prior evaluation, an impact assessment and a communication. All these guiding documents took into account the relevant EU policies and strategies in the various areas concerned, as well as those of the partners including the African Union Agenda 2063, the 2007 Joint Africa-EU Strategy (JAES), the 2012 Joint Caribbean EU Partnership Strategy, and the 2006 Strategy for a Strengthened Partnership with the Pacific Islands.

The new partnership builds on several internationally agreed standards and targets. The United Nations 2030 Agenda (SDGs), and the Paris Agreement on climate change are at the heart of the Agreement and the partners' future action.

More specifically at a thematic level, the Agreement is fully aligned with existing EU policies:

- In line with the Global Strategy for the European Union's Foreign and Security Policy[2], the Agreement will contribute to building inclusive, peaceful and resilient societies. It fosters a comprehensive and integrated approach to conflict and crises and aims at addressing their root causes, along with new or expanding security threats, such as terrorism, its financing and violent extremism to name but a few.

[1] The negotiating directives build on prior evaluation, impact assessment, communication and a recommendation, with the following specific references:
- Recommendation for a COUNCIL DECISION authorising the opening of negotiations on a Partnership Agreement between the European Union and countries of the African, Caribbean and Pacific Group of States. COM (2017) 763 final.
- JOINT COMMUNICATION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL. A renewed partnership with the countries of Africa, the Caribbean and the Pacific. JOIN 2016 (52) final.
- JOINT STAFF WORKING DOCUMENT. Evaluation of the Cotonou Partnership Agreement. SWD (2016) 250 final.
- JOINT STAFF WORKING DOCUMENT IMPACT ASSESSMENT accompanying the document JOINT COMMUNICATION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL A renewed partnership with the countries of Africa, the Caribbean and the Pacific. SWD (2016) 380 final. JOIN (2016) 52 final. SWD (2016) 381 final.
- JOINT CONSULTATION PAPER Towards a new partnership between the European Union and the African, Caribbean and Pacific countries after 2020. JOIN (2015) 33 final.

[2] Global Strategy for the European Union's Foreign and Security Policy

Political dialogue will be key in further deepening actions in these fields and, more broadly, in all areas covered by the partnership. Fostering more political cooperation, the Agreement reaffirms the importance of cooperating in international fora, but also of building alliances on the global scene to achieve an effective multilateral system.

- In line with the European Consensus on Development[3], the Agreement includes comprehensive commitments inspired by, and which will contribute to achieving, the Sustainable Development Goals (SDGs) under the United Nations 2030 Agenda. The Agreement's people-centered approach takes into account the various, interlinked aspects of sustainable development, whether economic, social, environmental or security-related. All these important dimensions, together with other cross-cuttings elements, such as youth, gender equality, good governance and human rights, complement each other and have been given particular importance. Together, partners will work to protect the planet, eradicate poverty in all its forms, tackle inequalities and promote social cohesion.
- In line with the European Green Deal[4], and the EU environmental policies, the Agreement recognises the need to take urgent action at various level to ensure the planet's sustainability and counter the serious threat posed by climate change, environmental degradation, and unsustainable use of natural resources. Partners aim to strengthen the global response to climate change, build resilience and play an important role in implementing the Paris Agreement, which will act as an overarching framework guiding the partnership.
- In line with the new Pact on Migration and Asylum[5], and the EU migration policy, the Agreement adopts a comprehensive and balanced approach, addressing in a coherent manner the various inter-linked dimensions of both legal and irregular migration to foster well-managed migration and mobility.

The proposal is also fully consistent with other relevant Union policies related to the set priorities, such as energy, education, gender equality, employment, research and innovation and trade.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The legal basis for conclusion of the Agreement is Article 217, in conjunction with Article218(5) and the second subparagraph of Article 218(8) of the Treaty on the Functioning of the European Union.

In accordance with the Treaties, the Commission makes a proposal for the signature and provisional application of an agreement of the Union only.[6]

• Proportionality

This initiative pursues directly the Union's objective in external action and contributes to the political priority of 'EU as a stronger global actor'. It is in line with the EU Global Strategy's orientations to engage with others and revamp its external partnerships in a responsible way, in order to attain the EU's external priorities. The proposal strengthens the cooperation with

3 European Consensus on Development
4 European Green Deal
5 New Pact on Migration and Asylum
6 In accordance with Regulation 2015/2264 on the phasing out of the derogation of the Irish language, international agreements are only translated in Irish from 1 January 2022.

the respective regions, allowing for a more tailored approach and supporting the EU 'One Africa Approach'. The proposed Agreement also facilitates interactions between the various levels of governance.

- **Choice of the instrument**

This proposal is in accordance with Article 218(5) TFEU, which envisages the adoption by the Council of decisions on international agreements. There exists no other legal instrument that could be used in order to achieve the objective expressed in this proposal.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

It was important for the EU and its partners to take into account the lessons learned from their longstanding cooperation. As part of the policy preparation for a new Partnership Agreement with African, Caribbean and Pacific countries, a number of specific evaluations and consultations were carried out ahead of, and during, the negotiations to both seek public, stakeholders and partners' views and draw conclusions from the EU-ACP cooperation in the past decades. These can be grouped into two categories:

- Evaluation of the Cotonou Partnership Agreement (CPA)
- Public consultations

The related conclusions and results were taken into account and are reflected in the proposed Agreement.

- **Impact assessment**

In 2016, an impact assessment (SWD (2016) 0380 final) was published together with a Communication about the EU's future relations with ACP countries (JOIN 2016 (52) final), which served as a basis for the subsequent recommendation and negotiating directives. It aimed at determining which type of format is required to best organise and govern relations with partners in Africa, the Caribbean and Pacific. The impact assessment identified various options and a preferred way forward, which was in the end chosen, and can be summarised as follows: "*The preferred option for the EU is that a new partnership between the EU and the ACP countries, in the form of an overarching agreement including a 'roof' listing common values, principles and interests and identifying general principles and avenues for cooperation in the international arena, and three partnerships setting region-specific priorities and actions to implement respectively in Africa, the Caribbean and the Pacific.*"

- **Regulatory fitness and simplification**

Not applicable.

- **Fundamental rights**

One of the objectives of the Agreement is that of promoting and upholding human rights and fundamental freedoms as well as democracy, rule of law and good governance. This is an important aspect given the changing international scene with emerging powers which do not necessarily share these values and principles. In accordance with the EU's Common approach on the use of political clauses, in cases of violation of the essential elements of the Agreement, the Parties shall hold structured and systematic consultations. Where they are unable to reach a mutually acceptable solution, the notifying Party may take appropiate measures.

4. BUDGETARY IMPLICATIONS

The Agreement contains no financial protocol. The EU commits to make available the appropriate level of financial resources in line with its internal regulations and procedures.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The implementation of the Agreement will be monitored through regular partnership dialogue, ref. General Part, Part I, Art. 3(1). The Regional Protocols contain specific provisions on implementation and monitoring, ref. African Regional Protocol, Part I, Art.6; Caribbean Regional Protocol, Part I, Art. 8 and Pacific Regional Protocol, Part I, Art. 8.

The OACPS-EU Council of Ministers shall oversee the effective and consistent implementation of the Agreement and adopt policy guidelines and take decisions to give effect to specific aspects necessary for the implementation of the provisions of the Agreement, ref. General Part, Part V, Art. 88.

- **Detailed explanation of the outcome of the negotiations**

The Agreement establishes an ambitious and strengthened political partnership between the EU and the members of the OACPS, with the objective of generating mutually beneficial outcomes on common interests. It will take the form of an association agreement and be concluded for a period of twenty years.

More strategically, the Agreement extends the scope and scale of partners' cooperation, with the overarching aim of building stronger societies. This new partnership is a political achievement and marks a turning point. It shifts dynamics and upgrades partners' relations to tackle the most pressing challenges faced in each region specifically. The Agreement is in tune with the regional and global contexts, but also the latest internationally agreed laws, standards, advances and, most importantly, with peoples' needs.

This creates a coherent framework with partner countries at all political levels, be it national, (sub)-regional or at partnership level with a global dimension. The Agreement advocates effective multilateralism and sets the scene for more political and coordinated actions on the world stage where the group's impact can be significant.

Innovative "1 + 3" structure

The EU's relationship with the members of the OACPS has been deepened, but also overhauled to be fit for purpose, bringing the centre of gravity to the three regions. Accordingly, the Agreement now consists of:

1. A **General Part** (the Foundation) common to all countries and composed of:

Part I - **General provisions**, presenting the general objectives and principles.

Part II - **Strategic priorities**, divided into six key titles:

- Title I - Human rights, democracy, and governance in people-centred and rights-based societies
- Title II - Peace and security
- Title III - Human and social development

- Title IV - Inclusive, sustainable economic growth and development
- Title V - Environmental sustainability and climate change

Title VI - Migration and mobility

Part III - **Global alliances and international cooperation**, detailing the new political ambitions on the world stage.

Part IV - **Means of cooperation and implementation**, describing the diversified resources to achieve the objectives of the partnership.

Part V - **Institutional framework**, explaining the different settings and partners involved.

Part VI - **Final provisions**, providing details on the application of the Agreement.

Annex I: Return and readmission processes.

Annexe II: Operations of the European Investment Bank.

EU Declaration on means of cooperation and implementation.

The Agreement will be governed differently, at either partnership or regional level, according to the matters and format concerned. In particular, this General Part of the Agreement, which applies to all countries, will be managed by the OACPS-EU Council of ministers (expected to meet every 3 years) supported by a Committee of Ambassadors, possible OACPS-EU Summits (upon joint agreement) and a new OACPS-EU Joint Parliamentary Assembly (JPA - meeting yearly and whose members are also members of the three regional joint parliamentary assemblies).

2. **Three Regional Protocols** are provided for between the countries of each region and the EU respectively. Every protocol is tailor-made to the regions' needs and dynamics and thus fit to address the particular challenges faced. Following this logic, each region will have its own institutional set-up to steer the protocol in question. It includes a Council of Ministers meeting at an interval agreed by the Parties, a Committee of Ambassadors, the possibility of meeting at Heads of State/Government level, and a Joint Parliamentary Assembly:

A. Africa Regional Protocol

With its tailored priorities, detailed specifically according to the region's needs:

- Inclusive and sustainable economic growth and development
- Human and social development
- Environment, natural resources management and climate change
- Peace and security
- Human rights, democracy and governance
- Migration and mobility

And specific governance:

Africa-EU Council of Ministers, Africa-EU Joint Committee; Africa-EU Parliamentary Assembly.

This will foster a *common approach towards Africa.* The protocol will act as the legal basis (an association agreement, similar to the ones concluded between the EU and

North African countries) and the political guidance will build on the outcome of African Union-European Union Summits.

B. Caribbean Regional Protocol

With its tailored priorities, detailed specifically according to the region's needs:

- Inclusive and sustainable economic growth and development
- Environmental sustainability, climate change and sustainable management of natural resources
- Human rights, governance, peace and security
- Human development and social cohesion

And specific governance:

Caribbean-EU Council of Ministers, Caribbean-EU Joint Committee, Caribbean-EU Parliamentary Assembly.

C. Pacific Regional Protocol

With its tailored priorities, detailed specifically according to the region's needs:

- Environmental sustainability and climate change
- Inclusive and sustainable economic development
- Ocean, seas and fisheries
- Security, human rights, democracy and governance
- Human and social development

And specific governance:

Pacific-EU Council of Ministers, Pacific-EU Joint Committee, Pacific-EU Parliamentary Assembly.

People-centred partnership

The Agreement goes beyond its predecessor in various fields and provides an opportunity to play an important role in many areas.

Partners will contribute to the achievement of the Sustainable Development Goals (SDGs) and the fight against climate change, with the 2030 Agenda for Sustainable Development and the Paris Agreement as overarching frameworks guiding the partnership.

The Agreement seeks to create new economic opportunities for all. Special attention is paid to sustainable, inclusive growth and job creation. In particular, stimulating investment and private sector development will be crucial in accelerating sustainable development, to which science, technology, research, innovation and the digital transition will contribute significantly. Cooperation on economic and trade matters will also be improved, facilitating bilateral trade and investment flows, reducing technical barriers to trade, improving government procurement and protecting intellectual property. All existing trade agreements, such as the Economic Partnership Agreements (EPA), will remain in place. Cooperation among partners will contribute to upholding high environmental, social and labour standards.

This goes hand in hand with a renewed focus on climate change and environmental sustainability across a number of areas. Recognising the urgency to act and that climate

change and natural degradation pose a serious threat to the attainment of sustainable development, partners have agreed to large-ranging commitments to preserve and protect the planet, its ecosystems and oceans. In line with the Paris Agreement targets, the response to climate change will be strengthened. Joint efforts will be made to address adaptation, mitigation and better tackle natural disasters. This is part of a global, environmentally-friendly approach promoting the sustainable development of a blue economy and support the transition towards greener (low-emission/resource efficient) economies.

The cooperation between the EU and members of the OACPS is also rooted in a common set of values and universal principles. Respect for human rights, international law, democratic principles and the ones set out in the Charter of the United Nations constitute the basis for cooperation under the Agreement. They are considered as key issues to ensure other mutual priorities flourish, just like commitments to the rule of law and good governance, which have been strengthened in the Agreement. The same goes for peace and security, where new or emerging threats will be addressed, such as piracy and trafficking in persons, drugs, arms and other illicit goods, as well as cybercrime and threats to cybersecurity, which are essential elements of an integrated approach towards conflict, crisis and their root causes.

The Agreement fosters strenghtened cooperation, both sectoral and political, including on foreign policy issues of common interest. These include peacekeeping, terrorism, situations of fragility, death penalty with unprecedented provisons, but also law enforcement and migration and mobility. On the latter, new commitments reflecting a comprehensive and balanced approach address the various inter-linked dimensions of legal and irregular migration in a coherent manner. To foster well-managed migration and mobility, the Agreement promotes strengthened cooperation between partners, relevant agencies and institutions, while also improving return and readmission, with major predictability and enforceability. Common challenges will be better tackled, including the root causes of irregular migration, trafficking and smuggling of migrants.

Human and social development is fostered strongly in the Partnership, with the objective of tackling poverty and inequalities, while leaving no-one behind. As recommended in the negotiating directives stronger commitments have been made within the Agreement to improve gender equality, social services, such as education and health, and social inclusiveness. Partners will cooperate to better address various challenges faced such as food security, rapid population growth and global health crises.

Partnership dialogue has been at the heart of EU-OACPS States relations for years and the new Agreement will further strengthen this important dimension. It concerns all subjects covered in the Agreement, but also broader topics of common interest.

In addition, the negotiated text fosters multi-stakeholder cooperation, recognising the importance of youth and various partners including local authorities, civil society organisations and the private sector in shaping a better future. Active engagement in partnership dialogue and cooperation processes, but also collaborative work towards an effective implementation of the Agreement will be key.

All the elements mentioned above are interlinked and will be key in taking our relations to the next level. This means that the Regional Protocols, their interpretation and implementation must respect at all times the provisions and principles contained under the General Part of the Agreement.

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on the signing, on behalf of the European Union, and provisional application of the Partnership Agreement between the European Union, of the one part, and the members of the Organisation of African, Caribbean and Pacific (OACPS) States, of the other part

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 217, in conjunction with Article 218(5) and (8), second subparagraph thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) On 21 June 2018, the Council authorised the Commission and the High Representative of the Union for Foreign Affairs and Security Policy to open negotiations on, and to negotiate, on behalf of the Union, the provisions that fall within the competence of the Union, of a Partnership Agreement between the European Union and its Member States, of the one part, and the countries of the African, Carribean and Pacific Group of States, of the other part.

(2) The negotiations on a Partnership Agreement between the European Union, of the one part, and the members of the Organisation of African, Caribbean and Pacific States, of the other part ('the Agreement') were successfully concluded on 15th April 2021 with the exception of the definition of the parties to the Agreement.

(3) The Agreement reflects both the historically close relationship and increasingly strong links developing between the European Union and the members of the Organisation of ACP states, and their desire to further strengthen and extend their relations in an ambitious and innovative way. The Agreement redefines the relationship between the EU and the members of the Organisation of African, Carribean and Pacific States, including the priorities and working methods in the different policy domains to which the Agreement extends.

(4) The Agreement should therefore be signed on behalf of the European Union in accordance with Article 98 of the Agreement, subject to its conclusion at a later date.

(5) The Cotonou Agreement will continue to transitionally apply until 30 November 2021 at the latest. If the Agreement does not enter into force from 1 December 2021, the cooperation between the Union and the members of the Organisation of African, Carribean and Pacific States will fall to a level that is neither desirable nor in the Union interest, causing disruptions in the relationship between the Union and the members of

the Organisation of African, Carribean and Pacific States. To limit such disruption, the Agreement should be applied provisionally.

HAS ADOPTED THIS DECISION:

Article 1

The signing of the Partnership Agreement between the European Union, of the one part, and the members of the Organisation of African, Carribean and Pacific States, of the other part, is hereby approved on behalf of the Union, subject to the conclusion of the said Agreement.

The text of the Agreement to be signed is attached to this Decision.

Article 2

The EU Declaration on means of cooperation and implementation attached to this Decision shall be approved on behalf of the Union.

Article 3

The Council Secretariat General shall establish the instrument of full powers to sign the Agreement, subject to its conclusion, for the person(s) indicated by the negotiator of the Agreement.

Article 4

Pending its entry into force, the Agreement shall be applied provisionally in accordance with Article 98(4) of the Agreement as of the date provided for therein.

Article 5

This Decision shall enter into force on the day following that of its adoption.

Done at Brussels,

For the Council
The President