

Evaluation of Coherence and Co-ordination in the Application of Article 96 of the Cotonou Partnership Agreement

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Framework

- Coherence in development relationship means that development cooperation does not produce consequences that are in contradiction with overall foreign policy objectives.
- Co-ordination means that European actors act in a way that aims at united, rather than contradicting objectives.
- In case of violation of the essential political elements of development cooperation relationship – human rights, democracy and the rule of law – and the fundamental element – good governance – one of the Signatory Parties can invite the other party to consultations under Art 96.
- Before Art 96 is invoked, dialogue should be conducted under Art 8.
- If the problems are not solved, “appropriate measures” can be taken. In practice this has always been the case. The measures have often been perceived as “sanctions” by ACP countries.

Cases	Reason for invoking Article 96	Outcomes of consultations
Haiti (2000)	Violations of democratic principles, flawed electoral process in 2000	Relations normalised in 2005
Fiji (2000)	<i>Coup d'état</i> 2000	Relations normalised in 2004
Côte d'Ivoire (2001)	<i>Coup d'état</i> 2000 Civil war, violations of human rights 2004 (consultations not initiated)	Relations normalised in 2002
Liberia (2001)	Violation of democratic principles, human rights and rule of law and corruption 2001	Relations normalised in 2006
Zimbabwe (2002)	Violation of democratic principles, human rights and the rule of law 2002	Measures applicable
Central African Republic (2003)	<i>Coup d'état</i> 2003	Relations normalised in 2005
Guinea-Bissau (2003)	<i>Coup d'état</i> 2003	Relations normalised in 2005
Togo (2004)	Violation of democratic principles and human rights 2004	Measures applicable
Guinea (2004)	Violation of democratic principles 2004	Measures applicable
Mauritania (2005)	<i>Coup d'état</i> 2005	Measures applicable

Methodology

- Statistical analysis of all ACP countries.
- Overview of all ten consultation cases.
- A detailed analysis with field studies, of Fiji, Zimbabwe, Guinea-Bissau and Guinea representing different causes for consultations: gradual deterioration of the situation, coup d'état and flawed electoral process.

Coherence

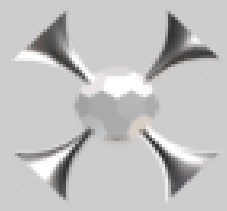
- EU is tolerant with continuing poor human rights records, but sudden deterioration and coups d'état always, and flawed electoral processes almost always, led to consultations.
- In general, EU is consistent in trying to address developing incoherence between the foreign policy goals and development policy goals: When an essential political element of development cooperation relationship is missing, EU systematically tries to address the issue by means of consultation.
- In some cases invoking Art 96 has related to other short-term goals, which can point to inconsistency.

Coordination

- Former colonial powers do not “protect” their ex-colonies, but influence the form and content of appropriate measures.
- The Commission/DG-Dev is not willing to promote Art 96 in cases where prospects of positive impact are low.
- For DG-RELEX “differential treatment of different countries” reflects lack of co-ordination and communication between Country-Specific Working Groups and WGs on horizontal themes of foreign policy.
- The intensity of EU relations with the consultation countries varied.
- With one exception, all of the post-Zimbabwe cases have been conducted in a positive atmosphere of cooperation.

Problems

- Comprehensive approach to human rights, democracy, rule of law and good governance results in long lists of issues on which the ACP government needs to make improvements.
- It is not feasible to invoke the Article as a last resort and lift it only when all problems with regard to the human rights, democracy, rule of law and good governance have been resolved.
- The EU has to negotiate with a partner that has the most powerful position in the country, yet it should not legitimize a coup government.
- Coordination might fail in the implementation phase if the potential disagreements and differences in the approaches are not resolved before the EU proceeds to Art 96. Such differences can result in contradictions between bilateral and common European approaches. The situation is particularly risky if the ACP country in question is not cooperative.
- Difficulties arise if intended incoherence is not understood by the EU actors and stakeholders in the country in question and if the end results are not monitored and reported. It is easy to blame the EU for all the difficulties a target country of appropriate measures is facing.
- Dissenting opinions at the local level erode the effectiveness of the EU approach.
- The point of gravity in the decision-making is in Brussels and the EU capitals, which is unjustified, given that the capacity to assess the feasibility of using of Art 96 to affect the situation is strongest at the local level.
- The visibility and leadership of the EU has not always been clear at the local level.
- No shared understanding of what constitutes Art 8 dialogue, not easily distinguished from normal diplomatic dialogue.
- The linkage of election observation to Art 96 is not clear, even though the issue of free and fair elections has been central in all cases where the Article has been invoked.
- Post-Zimbabwean frustration and a learning process; consultations increasingly seen as a way of normalising relations with EU.
- Commission takes on a political role: it initiates Art 96 only if member states seem willing to approve consultations and appropriate measures – this is unavoidable.



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Recommendations

Observance of principles of co-ordination and coherence

- The EU should continue to use Art 96 systematically in cases of coup d'état.
- Gather and exchange information on countries at risk of abusing the essential elements, and balance short and long-term objectives.
- Observe co-ordination in a systematic manner and communicate clearly and justify decisions to the relevant stakeholder.

Steps to maximise co-ordination and coherence

- The more EU MS have interests in a given ACP country, the more important it is to pay attention to early stage co-ordination; exchange views, inform each other.
- Art 96 should not be used for solving immediate and practical problems of co-operation.

Enabling mechanisms to maximise co-ordination and coherence

- Dialogue under Art 8 should be conducted more explicitly so that the EU and ACP actors know they are participating in such dialogue, perhaps by sending a copy of any Art 8 document to the ACP Secretariat.
- Art 96 and related issues should be discussed in horizontal Working Groups so as to enhance coherence between EU policy on ACP countries and EU external relations in general.
- Election observation should be linked to Art 96 in a more systematic manner: EU should support elections (by observers, e.g.) in all countries where electoral policy has raised concern in the Art 96 consultations.
- The EU should consider using and appointing Special Representatives or Special Envoys to coordinate the EU views represented in Brussels with those represented in the capitals of ACP countries, and also in order to engage in direct high level dialogue with the government in question.

Overcoming constraints in co-ordination and coherence

- Shared careful assessment of the feasibility of using Art 96 to make positive changes.
- Art 96 should not be used when ACP government is uncooperative and if MSs are not all committed beforehand to reflecting the appropriate measures in their bilateral relations/development cooperation.
- Use local level knowledge, (resident representatives, delegation staff, Special Representatives).
- Do not harm the poor by the appropriate measures, the direct and indirect impact of the appropriate measures should be monitored and communicated to the EU actors and different stakeholders at the local level.
- The EU should build on the experience of Guinea-Bissau and Mauritania and support a learning process to see Art 96 consultations as a positive instrument – a carrot rather than a stick.
- The EU should engage the peer group as soon as possible (ACP Secretariat, regional organisations etc).
- Civil society should be informed and invited to dialogue.
- Attention to situations where EU Member States take part in collective action within other international organisations regarding the ACP country in question, particularly as far as the speed of decision-making is concerned.

Measures taken and outcomes in co-ordination and coherence

- If sanctions are adopted as appropriate measures, there should be an exit plan for the worst-case scenario.
- When appropriate measures include sanctions, it would be useful to include specific evaluation clauses for the possibility of restarting consultations in case the measures have not brought about the intended results.

Enhancing coherence between MS bilateral policies and EU decisions

- There should be a shared understanding among the MSs about when the appropriate measures are binding and when they are not.

Côte d'Ivoire		Fiji		Côte d'Ivoire		Liberia		Zimbabwe		Central African Republic		Togo		Republic of Guinea		Mauritania	
Portugal	France	Sweden	Belgium	Spain	Denmark	Greece	Italy	Ireland	Netherlands	Luxembourg	UK	Austria					
Poul Nielsen (DK)										Louis Michel (BE)							
2000		2001		2002		2003		2004		2005		2006					
Signing of the Cotonou Agreement										Mid-term review of the Cotonou Agreement							
<div style="display: flex; justify-content: space-between; align-items: center;"> <div style="width: 15px; height: 10px; background-color: #d9ead3; border: 1px solid black;"></div> EU Presidency </div>													<div style="display: flex; justify-content: space-between; align-items: center;"> <div style="width: 15px; height: 10px; background-color: #fff2cc; border: 1px solid black;"></div> Development Commissioner </div>				