



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

EVALUATION OF COORDINATION AND COHERENCE  
IN THE APPLICATION OF ARTICLE 96 OF  
THE COTONOU PARTNERSHIP AGREEMENT

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# **Evaluation of Coordination and Coherence in the Application of Article 96 of the Cotonou Partnership Agreement**

**Liisa Laakso, Timo Kivimäki and Maaria Seppänen  
(CTS – Conflict Transformation Service)**

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# Foreword

The group of Heads of the EU Member States' development cooperation evaluation services and the European Commission (EURES) have agreed to carry out a series of joint evaluation studies aimed at establishing the degree of application and impact, in terms of development cooperation, of the principles of *coordination*, *complementarity* and *coherence* which are enshrined in the Maastricht Treaty. An initial report was published in 2004.<sup>1</sup> In 2005, a series of six evaluation studies was launched, each dealing with a specific aspect of the potential impact of the 3Cs. The studies are carried out in a decentralized fashion, with a lead agency and a steering group being responsible for each study:

<i>Evaluation study</i>	<i>Lead Agency</i>
Common Foreign and Security Policy/Development – The use of Cotonou Partnership Agreement's Article 96	The Netherlands
Coordination of Trade Capacity Building in Partner Countries	European Commission – EuropeAid
Coordination and complementarity in Humanitarian Assistance	European Commission – ECHO
EU Mechanisms that promote Policy Coherence for Development	France
Coordination and Complementarity of Country Strategy Papers with National Development Priorities	United Kingdom
Coordination and Complementarity of Assistance for Local Development	Sweden

This publication presents the overall results of the evaluation on coordination and coherence in the application of Article 96 of the Cotonou Partnership Agreement. The evaluation was managed by the Policy and Operations Evaluation Department (IOB) of the Netherlands Ministry of Foreign Affairs, and supported by the Evaluation Services of France, Belgium and the United Kingdom.

The evaluation study was done by a team of consultants from Conflict Transformation Service (CTS) in Finland, and looks at coordination and coherence in the context of cases in which Article 96 has been invoked. The cases are analysed in this report

<sup>1</sup> Hoebink, P. [ed.] (2004) 'The Treaty of Maastricht and Europe's Development Co-operation – Triple C Evaluations No 1.' (Amsterdam: Aksant Academic Publishers).

and are described in more detail in its appendix which can be downloaded from [www.three-cs.net](http://www.three-cs.net). The report presents useful insights about these processes in which development and political foreign policy objectives meet.

Eva Lithman, Chair of the EU-HES Task Force for the evaluation of the Three Cs

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### **Appendix**

The appendix to this study, which includes the reports of the four case studies in Fiji, Zimbabwe, Guinea and Guinea-Bissau, can be accessed online at:  
[http://www.three-cs.net/resource\\_corner/ongoing\\_studies](http://www.three-cs.net/resource_corner/ongoing_studies)

# List of Abbreviations

ACP	African, Caribbean and Pacific group of states
CFSP	Common Foreign and Security Policy
COREPER	Committee of Permanent Representatives
CPA	Cotonou Partnership Agreement
CPLP	Community of Lusophone Countries
DAC	Development Assistance Committee (OECD)
DG	Directorate General
EC	European Commission
ECB	European Central Bank
ECDPM	European Centre for Development Policy Management
ECOWAS	Economic Community of West African States
EDF	European Development Fund
EU	European Union
EU-HES	Heads of Evaluation Services of the EU Member States and the Commission
FCFA	Franc des Colonies Français D’Afrique
GDP	Gross Domestic Product
GNP	Gross National Product
H&A	Harmonisation and Alignment
HOM	Head of Mission
IMF	International Monetary Fund
IOB	Policy and Operations Evaluation Department (Netherlands Ministry of Foreign Affairs)
MDC	Movement for Democratic Change (Zimbabwe)
MEP	Member of the European Parliament
MS	Member State
NGO	Non-Governmental Organisation
OCTs	Overseas Countries and Territories
ODA	Official Development Assistance
OECD	Organisation for European Cooperation and Development
RELEX	Directorate General for External Relations
SADC	Southern African Development Community
ToR	Terms of Reference

UK	United Kingdom
UN	United Nations
UNDP	United Nations Development Programme
US	United States of America

# Preface

The Treaty on European Union, signed in Maastricht in 1992, identifies three basic concepts as essential elements of EU development policy: coordination, complementarity and coherence. In 2005, the Heads of European Union Member States' and the European Commission's evaluation services launched a series of six joint evaluation studies focusing on these concepts, which are also known as the "3Cs". This series of evaluations aims at assessing the role played by the Maastricht Treaty precepts of coordination, complementarity and coherence in the European Commission's and the EU Member States' development cooperation policies. Focusing on a wide variety of topics and issues, the evaluations determine to what extent the 3Cs have been applied in practice and with what impact.

This report presents the main findings, conclusions and recommendations of one of these evaluations, which analysed how coherence and coordination are being followed in the context of the consultation procedure under Article 96 of the Cotonou Partnership Agreement. This agreement, which is widely held to be the most comprehensive North-South partnership within the context of development cooperation, provides a solid basis for political dialogue between the EU and the African, Caribbean and Pacific (ACP) countries regarding the respect for human rights, democratic principles, rule of law and good governance. If one of the partners considers that these 'essential elements' are being abused, it may decide to invoke Article 96 (or 97 in the case of corruption), after first having sought to resolve the issue through the political dialogue called for in Article 8 of the Agreement. The following consultation procedure under Article 96 can either result in an acceptable resolution or in the taking of "appropriate measures", but the procedure is perhaps most known as potentially leading to the suspension of development cooperation activities, or to the imposition of sanctions. However, as the evaluation notes, the Article is more and more seen as a "window of opportunity" and both EU and ACP actors increasingly learn to use the instrument to their advantage.

The evaluation gathered evidence from cases in which Article 96 was used, in order to analyse the precepts of coordination and coherence in the practice of Article 96 of the Cotonou Agreement, a process in which both development and political foreign policy objectives need to be considered. The findings are based on a statistical analysis of all

ACP countries in relation to the aforementioned elements, a comprehensive desk study of all ten cases in which Article 96 had been invoked, and four field studies in Fiji, Zimbabwe, Guinea-Bissau and the Republic of Guinea.

The evaluation describes the complexity of the different Article 96 consultation processes and the period of dialogue preceding them, and highlights the multiple and contrasting perspectives of the various actors involved. The evaluators also underline that the existence of such a wide diversity of views, interests and perspectives necessitates the facilitation of a shared understanding of each other's positions, stakes and ideas through political dialogue before the article is invoked. Although the importance of this coordination is as such easily recognised, the field studies bring forward some examples where individual EU Member States chose to act in a way that was incoherent with what was collectively agreed, or acted before such agreement had emerged. As the number of EU Member State embassies in the ten cases under study varied from one to thirteen, it is also clear that the complexity and nature of the coordination processes differ considerably from one case to the other.

A consideration that proves to have a significant impact on the decision whether or not to invoke Article 96 is the question whether consultations and the eventual taking of appropriate measures are expected to have the desired outcome. Some actors may disapprove of an observed incoherence in the treatment of different cases from a political perspective, whereas other actors may find this lack of coherence to be logical and pertinent from a development perspective. The evaluation at least shows that there is no ground for the argument that the EU is applying a "double standard". Linked to this finding, the evaluation team also observed that there is a lack of understanding amongst many actors about the functioning and scope of the political dialogue process. The evaluation further notes that the process could be improved by giving more decision-making power to the local level, since the best knowledge regarding the feasibility of using Article 96 in a particular context finds itself at this level.

In line with these findings, recommendations are brought forward by the evaluation team on how coherence and coordination could further be improved in relation to the use of Article 96. Most of these recommendations focus on professionalising and further intensifying the communication process, the systematic involvement of civil society actors and peer group countries, further clarifying the process and the consequences of decisions that are taken, and increasing the transparency and "rules of the game" of the political dialogue that can result in the invocation of Article 96. One of the more concrete recommendations is to consider, as the occasion arises, appointing a special EU Envoy to improve coordination among EU actors and to guarantee high level involvement in the actual consultations.

Through publishing and disseminating this report in both hardcopy and electronic formats, we hope these recommendations will help to improve the usefulness and proper application of the Articles 8, 96 and 97 of the Cotonou Partnership Agreement, and consequently deepen the partnership between the European Union and the African, Caribbean and Pacific countries.

Bram van Ojik  
Director Policy and Operations Evaluation Department (IOB)

# Executive summary

## Background and objectives

This study belongs to a set of six evaluation studies on coordination, complementarity and coherence in the EU's development policy. The evaluations were initiated by the Group of Heads of Evaluation Services for External Cooperation of the Member States and the European Commission (EU-HES). The aim was to analyse how the principles of coherence and coordination are followed in the consultations under Article 96 of the Cotonou Partnership Agreement where both development objectives and political foreign policy objectives need to be taken into consideration. The question is particularly complex as foreign policy is an area of Member States' prerogative while development is a shared competency.

According to the Cotonou Agreement, the partnership between ACP countries and the EU is based on the "essential elements" of human rights, democracy and the rule of law, and one 'fundamental element' of good governance. If problems are looming, initial dialogue should be conducted under Article 8 of the Cotonou Agreement. If this does not resolve the issue the concerned party may invoke Article 96 (or 97 in the case of corruption) and invite the other party to consultations. If no resolution is reached, "appropriate measures" can be taken. These can involve diplomatic pressure or "smart sanctions", but also the suspension of aid, its redirection or the imposition of further conditions. Article 8 dialogue should be an ongoing political process with "difficult partners", not interrupted even if Article 96 consultations are invoked. In practice, however, Article 96 has been affected by a lack of clarity about when and how it is used. There is also confusion on what constitutes political dialogue as Article 8 defines it very broadly.

The methodological approach of this study is the use of comparative case studies based on a quantitative and qualitative analysis and conducted on three levels of generalization. First, a statistical overview of all ACP countries is presented. For a deeper comparative analysis, the consultation cases are considered in the second section. Article 96 has been invoked ten times: with Haiti, Fiji, Ivory Coast, Liberia, Zimbabwe, Central African Republic, Guinea-Bissau, Togo, the Republic of Guinea and Mauritania (in Liberia Article 97 was also referred to). In order to go deeper into the issues of coordi-

nation and coherence, one needs to analyze the cases in their specific contexts, as is done in section three. Field studies were conducted in Fiji, Zimbabwe, Guinea-Bissau and Guinea. They represent different causes for consultations: gradual deterioration of the situation, *coup d'état* and flawed electoral process. They also differ with regard to their colonial history and the intensity of relations with the EU, as well as with respect to the outcomes of the consultations.

### **Analysis of all ACP states**

The quantitative analysis showed that the democracy, human rights and rule of law record of countries invited to consultations was worse than the average for ACP countries. A *coup d'état* has always led to consultations. This study confirms the findings of earlier studies that the former colonial powers have not prevented their ex-colonies from being invited to consultations. Invoking Article 96 is most likely in cases where there is a deterioration of the human rights situation, democracy and the rule of law. A slight exception can be seen in the case of Zimbabwe with regard to freedom of participation. Consultations started in Zimbabwe even though freedom of participation had improved from the previous year and the absolute level of freedom of participation was better in Zimbabwe than in an average ACP country.

The EU is patient towards continuing problems in the human rights situation, democracy and rule of law. It is widely recognised that there are ACP countries where violations of these essential elements have not led to the invocation of Article 96. On the part of the Commission Directorate-General for Development these are cases of *intended incoherence*. There is no willingness to use the Article if prospects of its positive impact are low. In such cases the emphasis is put on tailoring the cooperation so that it could strengthen positive developments in the country in question.

From the point of view of the Commission's External Relations Directorate-General or the European Parliament for instance, the situation can be frustrating. If human rights and democracy are treated as horizontal themes in EU foreign policy, different treatment of different countries manifests incoherence, which is not properly monitored since the Working Groups in the Council that deal with country specific problems are geographically defined, whereas the Working Groups for horizontal themes, like human rights, deal with general policies only.

### **Overview of the ten consultation cases**

In half of the consultation cases the reason for invoking Article 96 was a *coup d'état*. The other half consisted of violations of democratic principles alone or combined with violations of human rights. The intensity of EU relations with these countries varied. The number of Member States having an embassy in the country varied between one



and thirteen. In most cases there were only 1-3 embassies. The time span needed before normalisation of relations varied, but there were only two cases in which this happened as soon as the following year.

When putting the cases on a line running from June 2000 to the present, one can observe a break of 20 months: between Zimbabwe in October 2001 and the Central African Republic in June 2003 the Article was not invoked a single time. With one exception, all of the post-Zimbabwe cases have been conducted in a positive atmosphere of cooperation.

In many cases one can ask why the EU did not start consultations before the *coup d'état*, when there was already information available on violations of human rights and democratic principles. Usually, the EU had issued statements condemning the political situation and had kept the door open for dialogue. Article 96, however, is considered as an instrument of last resort instead of an instrument to prevent constitutional crises. It is often initiated in a reactive manner only after flagrant breaches of the essential elements have taken place.

The consultations are conducted in a comprehensive manner, dealing with a broad range of issues related to human rights, democracy, rule of law and good governance. This results in long lists of issues on which the ACP government concerned needs to make improvements. On this basis, it is not feasible for the Article to be invoked as a last resort but lifted only when all problems with regard to the human rights, democracy, rule of law and good governance have been resolved. What is needed is a process-oriented case-by-case approach. Furthermore, 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. For ethical reasons, the EU should not negotiate with partners that have led or participated in gross human rights violations.

Consultations are increasingly seen by EU officials not as a mechanism to impose sanctions but as a 'window of opportunity' to normalize EU's relations with an ACP country after a period with limited cooperation or unconstitutional rupture like flawed elections or a *coup d'état*. The ACP countries, too, have learned to use the instrument to their advantage. Yet the common perception of Article 96 is that of a "sanction article" not only on the ACP side but also in civil society.

The decision to invoke Article 96 is proposed by the Commission and decided in the Council. The decision need not be unanimous, but in practice consensus applies. Even a discussion about the possibility of using the instrument forces the Member States to coordinate. Although consultations do not automatically lead to "appropriate measures", this has always been the case. Thus the Member States should consider the desirability

of the appropriate measures to bring positive changes already at the very early stages of the process.

The eventual decisions in the EU are made without great conflicts. The Commission is hesitant to issue a proposal if Member States are divided on the appropriateness of invoking Article 96. This establishes a political role for the Commission, although it could take on a purely administrative role and initiate a proposal for Article 96 whenever a breach of an essential element occurs. Such a role would, however, be untenable, since the Commission itself is an important actor in the relations with the ACP country concerned.

It is the responsibility of the Commission to provide adequate information to the Member States regarding the situation in the ACP country in question and to justify invoking Article 96. While the Commission has to take into consideration the views of the former colonial powers and other Member States directly engaged with the country before making any proposals to the Council, it has to form an independent analysis of the situation. Direct European relations and interests with a given ACP country do not translate into softer or harder policy towards the ACP country.

### **Case studies**

The Fijian case shows how coordination and coherence work when the Member States do not have strong and divergent interests in the country in question. The fact that major problems were avoided after the *coup d'état* in Fiji can be at least partly attributed to the leadership of the Commission: European actors were supplied with sufficient background information to reach common decisions. It was easy for the actors to act in coherence with CFSP. There was good cooperation in Suva between the Commission and the two Member States with embassies there, France and the United Kingdom. Due to the slowness of decision making, however, the EU was not able to act as early as the Commonwealth did. The UK acted within the Commonwealth framework before the EU acted. With regard to coherence it is noteworthy that the EU negotiated with the interim government instead of the legitimate government that was appointed after the last elections. It was also pragmatic in its support for new elections, even though in accordance to the constitution the results of the previous elections should have been respected.

Several EU Member States have connections to Zimbabwe. This made coordination intensive at the level of information sharing, but since the opinions have differed, coordination has been poor at the level of implementing joint decisions. The experience of the use of Article 96 in Zimbabwe has been frustrating since the situation has not improved and the EU has not been able to lift the appropriate measures. Many of the problems were caused by the short-sighted initial desire to influence the arrangements

of the elections in 2002. The case of Zimbabwe has affected negatively the EU-Africa relations. Coordination, however, can be regarded as successful because communication between the Council, the Member States and the Commission has been good and there is good cooperation in Zimbabwe as far as humanitarian aid programs and aid given to the social and health sectors are concerned.

In Guinea-Bissau, as in Fiji, the question was of a clear cut *coup d'état*, where Article 96 is consistently used. There were no diverging views among the EU actors. All condemned the coup but did not regret the deposing of the President. The transitional government presented a roadmap, and the EU used the Article 96 consultations and appropriate measures to support it. Coordination with other donors was easy as the EU is a leading donor in the country and its Member States are influential in the UN and the African Development Bank Group. Furthermore the EU supported the elections not only financially but also by sending an observer mission. This served as a mechanism to bring together the development policy and foreign policy objectives.

In the case of Guinea, the EU has faced difficulties. Although the main reason for this is the government's unwillingness to democratise the political system, the EU procedures and divisions between the country level and the capitals are also to blame. While there was a consensus among the EU actors on the fact that the Guinean government was violating the essential elements of the Cotonou Agreement, there was no shared conviction about the prospect of the Article 96 consultations bringing about positive changes. Finally, part of the reason for invoking the Article was to find a legal basis for the refusal of one Member State to sign the 9<sup>th</sup> EDF with Guinea. Coordination has been hampered as the former colonial power, France, increased its bilateral aid to Guinea when the EU reduced its financial support. On the other hand, the communication and information flows between the resident ambassadors, the delegation, the Commission and the Council has been good. Special merit must be given for the role played by the Special Presidency Representative for the Mano River Region.

### **Main Problems**

Coordination might fail in the implementation phase if the potential disagreements and differences in the approaches are not resolved before the EU proceeds to Article 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. Since human rights and democracy are horizontal themes in EU foreign policy, different treatment of violations of these principles in different geographical areas manifests incoherence. In some cases invoking Article 96 has related to other short-term goals, which can point to inconsistency.

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. Since any sanctions or even a threat of sanctions can have negative impacts on the economy (for investments for instance), it is easy to blame the EU for all economic difficulties the country is facing.

Dissenting opinions particularly at the local level erode the effectiveness of the official EU approach. The point of gravity in the decision-making has been in Brussels and the EU capitals, which is unjustified, given that the capacity to assess whether using Article 96 would affect the situation is strongest at the local level.

There is no shared understanding even among the EU actors about what constitutes Article 8 dialogue. In many cases, local civil society actors were not well informed about the EU approach. Often they felt that they had not been given any opportunity to participate in the dialogue. On the other hand, EU support to civil society can also cause political tensions, as the government might interpret that as support for its opposition.

The linkage of election observation to Article 96 is not clear, even though the issue of free and fair elections has been central in all cases where Article 96 has been invoked. The visibility and leadership of the EU has not always been clear at the local level.

## **Recommendations**

Observance of the principles of coordination and coherence:

- *The EU should continue to use Article 96 systematically in cases of coup d'état.*
- *The EU should continue to gather and exchange information and views on a case-by-case basis of the situations in ACP countries at risk of abusing the essential or fundamental element of the Cotonou Agreement.*
- *Balancing of short- and long-term objectives should be openly discussed, justified and communicated to the relevant stakeholders.*
- *Coordination needs to be observed in a more systematic manner in the application of Article 96.*

Steps to maximise coordination and coherence:

- *The more the EU Member States have interests in a given ACP country, the more important it is to pay attention to early stage coordination in terms of exchanging views, informing each other about bilateral activities and assessment of the situation.*
- *Immediate and practical cooperation problems should not be solved by invoking Article 96.*

Enabling mechanisms and/or frameworks to enhance coordination and coherence:

- *Dialogue under Article 8 should be conducted more explicitly so that the EU actors know they are participating in such dialogue. Even though the dialogue can be informal in nature there should be a common understanding of when, how and by whom such dialogue can be initiated. It should also be more explicitly continued after consultations have been completed.*
- *The EU should also ensure that the ACP group knows when dialogue under Article 8 is taking place. One possibility would be to send a copy of any document sent under Article 8 to the ACP secretariat.*
- *Article 96 and issues related to it should also be discussed in horizontal working groups, in order to enhance coherence between EU policy on ACP countries and EU external relations in general.*
- *Election observation should be linked to Article 96 in a more systematic manner. The EU should be able to support or send election observers to the elections in all countries where electoral policy has raised concern in the consultations. In all cases where the EU's observers judge the elections as not free and fair, dialogue under Article 8 should be conducted, and if the dialogue is not effective, the pros and cons of invoking Article 96 should be discussed among the Member States.*
- *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 establishing mechanisms and/or frameworks for coordination and coherence?

- *There should be shared and careful assessment of the feasibility of using Article 96 consultations to bring about positive changes.*
- *Article 96 should not be invoked in cases where the government of the ACP country in question is uncooperative and if Member States are not all committed beforehand to reflecting the appropriate measures in their bilateral relations.*
- *The role of resident ambassadors and the EU delegation in decision-making, not only in information sharing, should be enhanced. The Special Representatives should work in close cooperation with resident ambassadors.*
- *EU should continue to try to adopt appropriate measures that do not hurt the poor or harm social or economic development in the country in question. 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.*
- *There should be further exploration of the use of Article 96 as a positive instrument that uses carrots rather than sticks.*
- *In cases other than coup d'état, Article 96 should not be used with short-term priorities or policy goals in mind. Where the situation has deteriorated gradually, the improvements*

*are likely to take a long time, too. Therefore more transparency and time is needed in the phase where decisions are made about appropriate measures.*

- The EU should engage the “peer group” in the process as early as possible. Cases where the EU is not successful in this regard need to be looked at very carefully, since the relations of the EU actors to this peer group might affect coordination later.*
- Representatives of civil society should be invited to dialogue under Article 8 together with the government representatives.*
- Specific attention should be paid to situations where EU Member States take part in collective action within other internal organisations regarding the ACP country in question, particularly as far as the speed of decision-making is concerned.*

Linkage between measures taken and outcomes in terms of improved coordination and coherence:

- If sanctions are adopted as appropriate measures, there should be an exit plan also for the worst-case scenario. The exit plan should be part of the decision-making at the time when invoking Article 96 is discussed.*
- When appropriate measures include sanctions, it would be useful to include a specific evaluation clause stipulating the possibility of restarting consultations in case the measures have not brought about the intended results. In this way, prolonging would automatically require a new round of consultations and the Member States’ views could be taken into account.*

Enhancing coherence between Member States’ bilateral policies and the EU decisions:

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

# 1 Introduction

## 1.1 Background of the evaluation

This study belongs to a set of six evaluation studies which aim to determine to what extent the 1992 Treaty on European Union concepts of coordination, complementarity and coherence have been applied and with what impact. These so-called “3Cs” should form the basis of the development policy of the EU and the Member States. The evaluations were initiated by the Group of Heads of Evaluation Services for External Cooperation of the Member States and the European Commission (EU-HES) in order to strengthen the quality of European development policy.

## 1.2 Objectives of the evaluation

The overarching objective of this evaluation is to determine the extent to which it is possible to follow the precepts of coordination and coherence (“2Cs”) in one key area of EU external policy: that is the junction of foreign policy and development policy. The focus is on the use of Article 96 of the Cotonou Agreement, a context in which the choices to be made in the prioritisation between development objectives and political foreign policy objectives are usually at their most stark. At the same time this is an area where the need for good coordination between the Member States and with the Commission is acute and rendered more complex by the fact that competencies vary between the two policy fields, foreign policy being an area of Member States’ prerogative while development is a shared competency.

The prime purpose of the evaluation is to learn from the experience of past consultations under Article 96 and analyse whether the consultations following the application of this Article – one of the most difficult to apply in the Cotonou Agreement – are helped or perhaps hindered by the observance of the principles of coordination and coherence. The enunciation of these principles in the Maastricht Treaty is intended to improve the quality and consistency of EU external actions. In difficult areas of policy, this is all the more important, as both EU and ACP officials find the application of Article 96 a difficult task. Therefore any lessons that can be learnt from practical experience are particularly valuable to the various stakeholders.

The outcomes of this study contribute to and allow for a joint learning process among the European Commission, Member States and stakeholders in the ACP countries. The evaluation therefore also incorporates the various constituencies' perspectives on the 3Cs.

The pertinence of this study lies in the fact that the application of Article 96 is one of the most controversial aspects of the Cotonou Agreement and is watched closely by a variety of different actors and stakeholders, who often analyse the circumstances differently. ACP countries are clearly sensitive to the invocation of Article 96. Beneficiaries of European Development Fund (EDF) funded projects are directly affected if aid is suspended, and human rights campaigners and the media in Europe often watch EU actions closely and are not loath to criticise the EU publicly if they feel mistakes are made. It is thus important that the different aspects of policy are well applied and that close attention is paid to coherence between policy areas and coordination between the positions of the EU Member States and with the Commission. Evaluating whether this is done well and in a consistent fashion from case to case is therefore of direct interest to all.

### **1.3 Structure of the report**

Chapter 2 discusses the evaluation framework and states the explicit evaluation questions. It also overviews earlier research, provides background information on Article 96 and defines the concepts of coordination and coherence in the application of Article 96. Chapter 3 describes the comparative methodology that was applied in executing the evaluation, and discusses the limits of this evaluation.

There were three stages of empirical research, namely statistical analysis of all ACP countries, overview of the consultation cases, and a more detailed description of four case studies. The findings from these three stages are presented in Chapters 4, 5 and 6. The statistical analysis is augmented by a summary of correlations reported in Annex 3, as well as ten figures comparing consultation countries and other ACP Countries in Annex 4.

A more detailed analysis of the consultation cases is reported in the Appendix of this report. The Appendix includes the field work reports of the four case studies and the list of all people who were interviewed for this study.

Findings and recommendations are presented in Chapter 7.



## 2 Evaluation framework

### 2.1 Evaluation questions

According to the Terms of Reference (Annex 1), the focus of this evaluation is on the maximisation of coordination and coherence in the consultation under Article 96 and seeks, in particular, to answer the following questions:

*Question 1:* Are the principles of coordination and coherence regularly and systematically observed in the consultations following the application of Article 96?

*Question 2:* In these consultations, what steps do actors (EU member states and European Commission) commonly take, individually or jointly, to maximise coordination and coherence?

*Question 3:* What enabling mechanisms and/or frameworks to enhance coordination and coherence do they put in place, and are these effective?

*Question 4:* What constraints do actors encounter in establishing such mechanisms and/or frameworks? How do they deal with them? Are they successful in maximising coordination and coherence?

*Question 5:* Does a link exist between measures taken and outcomes in terms of improved coordination and coherence? Do actions taken and mechanisms put in place contribute to or rather, hinder the achievement of actual results?

*Question 6:* Is there a coherence between Member States' bilateral policies and the EU decisions about 'appropriate measures' in the eight cases?

The evaluation thus attempts to:

- identify what actually happened in terms of following the precepts of coordination and coherence.
- provide arguments to demonstrate the existence or otherwise of a link between the measures taken – in the field of coordination and coherence – and the outcomes.

- draw key lessons from the above and to make recommendations on what steps administrators might take to be more effective if and when they are faced with a similar situation in the future.
- perceive an evolution over time and from case to case, in the way Article 96 is used and the Member States coordinate among each other.

## 2.2 Understanding Article 96

In signing the Cotonou Partnership Agreement, the ACP countries and the EU partners agreed that their partnership would be based on a number of “essential elements,” namely human rights, democracy and the rule of law, and one “fundamental element,” namely good governance. If either party (which has thus far always been the EU) feels that these elements are being abused, and after having sought to resolve their differences through the political dialogue called for in Article 8, the concerned party may invoke Article 96 (or 97 in the case of corruption) and, by doing so, invite the other party to formal consultations. The purpose of these consultations is to conduct an examination of the situation with a view to seeking a resolution acceptable to the parties. If no agreement is reached the concerned party may take ‘appropriate measures’ against the other party, which it deems is abusing the essential elements.<sup>1</sup> Appropriate measures can be restricted to diplomatic steps or “smart sanctions”, but can also involve the suspension of aid, its redirection or the imposition of further conditions.

This process builds on the experience with Article 336a under the Lomé IV Convention (1995), which resulted in some two dozen cases. The rationale behind introducing such a measure was that previously, EU cooperation with a number of ACP countries had been suspended without a formal procedure or legal basis, as in Sudan in 1990. This state of affairs was seen as lacking in transparency.<sup>2</sup>

Since the Cotonou Agreement was signed in June 2000, Article 96 has been invoked ten times: with Zimbabwe, Fiji, Haiti, Ivory Coast, Guinea-Bissau, Central African Republic, Togo, the Republic of Guinea, Mauritania and Liberia. In the Liberian case, Article 97 was also referred to.

## 2.3 The procedure for invoking Article 96<sup>3</sup>

The EU receives and actively gathers information about the human rights, democracy, rule of law and governance situation in ACP countries from different sources: locally through the Member States’ Heads of Mission or the EU delegation, and in Brussels through, for example, the reports of election observation missions. When it becomes

<sup>1</sup> See Annex 2 for the text of Articles 8, 9, 96 and 97.

<sup>2</sup> Mackie, J. and J. Zinke. 2005. *When Agreement Breaks Down, What Next? The Cotonou Agreement’s Article 96 Consultation Procedure*, ECDPM Discussion Paper No. 64A, Maastricht: ECDPM, p. 3.

apparent that problems are looming, initial dialogue with the country in question should be conducted under Article 8 of the Cotonou Partnership Agreement.<sup>4</sup> Article 8 dialogue should be an ongoing political process with “difficult partners”, not interrupted even if Article 96 consultations are invoked. Ideally Article 8 dialogue should involve both state and non-state actors.

#### *Preparation phase*

The decision to start consultations under Article 96 is made by the General Affairs and External Relations Council. The proposal is issued by the Commission, either on its own initiative, or based on a request by the Council. This proposal includes a draft letter to the authorities of the ACP country in question inviting them for consultations.

The Commission’s proposal is discussed in the capital of the ACP country by Member State Heads of Mission and the EU delegation under the chairmanship of the EU Presidency. Discussion on the situation is also conducted bilaterally between the Member States. In Brussels, the proposal is discussed in the relevant geographical working group of the Council (for example the Africa working group). If the Council’s geographical working group considers that the situation has implications for development cooperation, the matter is passed on to the ACP working group. The proposal, however, is not discussed in horizontal working groups (like the Human Rights or United Nations working groups). The ACP working group can amend the proposal of the Commission for a Council decision. The working groups may request additional information on the situation from the EU delegation and Member States’ Heads of Mission. For such information the EU delegation and the Presidency can draw up a draft that is circulated for comments among other Member States’ missions. The final proposal is sent to the Council of Ministers via the Committee of Permanent Representatives (COREPER).

#### *Decision-making phase*

In principle, the decision to invoke Article 96 need not be unanimous, since qualified majority voting is applicable. In practice, however, consensus applies. This means that even a discussion about the possibility of using the instrument in a particular case forces the Member States to coordinate. Although the decision to start consultations

3 The description is based on Hazelzet, H. 2005. *Suspension of Development Cooperation: An Instrument to Promote Human Rights and Democracy?*, ECDPM Discussion Paper 64B. Maastricht: ECDPM. See also Article 3 and Annex in 2000/771/EC ‘Internal agreement between the representatives of the governments of the Member States, meeting within the Council, on measures to be taken and procedures to be followed for the implementation of the ACP-EC Partnership Agreement’ OJ L 317, 15/12/2000 P. 0376 – 0381.

4 Article 8 constitutes a commitment to a dialogue, during which the aims of the partnership agreement and issues of mutual concern can be addressed between the EU and the ACP country. It can be formal or informal. Member States and Commission representatives in the ACP capitals usually play an important role in the process. As noted by Hazelzet (2005), ‘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.’

does not automatically lead to appropriate measures (such as sanctions), the Member States have to consider the desirability of taking appropriate measures, in the likely case that the need arises.

The European Parliament is not involved in the decision-making process. The Council does, however, inform it on the commencement and completion of the consultations. MEPs monitor the implementation of the EU human rights policy and follow closely the use of Article 96, as well as the instances in which it is not applied. An example of non-application was when the European Parliament explicitly requested – without success – the Commission and the Council to open consultations under Article 96 with Ethiopia, after human rights violations in the wake of the elections that were monitored by an EU election observation mission. Angola, Rwanda and Eritrea have also been critically mentioned by MEPs as cases where Article 96 has not been invoked despite EU condemnations of the abuses of human rights.<sup>5</sup>

#### *Consultation phase*

After the country in question has responded to the invitation, the first meeting is organised within 30 days. In this meeting the EU is represented by the Troika. The country in question is accompanied by other ACP countries of its choice, representatives of the ACP Secretariat, and sometimes also regional organisations such as the African Union. During the actual consultations, the EU representatives ask questions about their main concerns and the ACP side responds with its point of view. The purpose is to agree on commitments to solve the problems and a timetable for them. The consultations have to be completed within 120 days (increased from 60 days in the 2005 mid-term review). During the 120 days, the EU evaluates how well the ACP country in question fulfils the agreed commitments. If the outcome is not satisfactory, the EU decides about appropriate measures.

#### *Taking appropriate measures*

The consultations are completed following a Commission initiative. The Council's ACP working group prepares a draft letter, which is agreed upon in COREPER and adopted by the General Affairs and External Relations Council. With regard to the appropriate measures, unanimity is required for the decision to suspend all cooperation, while a qualified majority is required to endorse a partial suspension.<sup>6</sup> In practice, partial suspension is also decided by consensus.

5 European Parliament, The Human Rights and Democracy Clause (debate), Tuesday 14 February 2006 – Strasbourg, OJ edition, P6\_CRE(2006)02-14.

6 Article 3 of the Internal Agreement in conjunction with the Annex to the Agreement. Council Decision 2000/771/EC, OJ L 317, 15.12.2000, p. 375-381. See Martenczuk, 2000, 486.

### *Lifting of appropriate measures*

The Council decision states the duration that the measures will apply unless the reasons for taking them disappear. To this end, and in order to extend the measures for a new period, the situation is reviewed regularly. This is done by the Commission, which is able to propose to the Member States a draft Council decision to extend or lift the appropriate measures. As with invoking consultations and taking appropriate measures, Commission proposals and Council decisions on extending or lifting the measures include a draft letter to the authorities of the ACP country in question.

## **2.4 Key issues concerning Article 96**

There have been only few studies focusing on the role and implementation of Article 96. Research has rather concentrated on the negotiation of the Cotonou Agreement itself, or the preceding Lomé Convention.<sup>7</sup> However, the ECDPM launched a series of Discussion Papers in August 2005 to explore different aspects of the application of Article 96.<sup>8</sup> Some of the insights that are provided by these papers are discussed below.

### *The nature of Article 96*

The study by James Mackie and Julia Zinke points at the different interpretations of the nature of Article 96. While the EU wants to see the consultation procedure as an ultimate means for resolving differences through deepened discussions, the common perception not only on the ACP side but also in civil society is that it is an article for sanctions.<sup>9</sup> Because the provision has only been invoked by the EU in response to violations of the essential elements by ACP countries, and because failure to reach agreement during consultations has often meant some form of punishment of the ACP state concerned, Article 96 looks like an instrument of sanctions to be used by the EU against ACP states. This imbalance puts into question the concept of a partnership of equals, which the Cotonou Agreement purports to be. However, appropriate measures that are positive in nature and the possibility to normalize relations after a *coup d'état* through the use of Article 96 have made it a window of opportunity for the ACP side,

7 Martenczuk, B. 2000. 'From Lomé to Cotonou: The ACP-EC Partnership Agreement in a legal perspective', in *European Foreign Affairs Review*, 5:4 (Winter), pp. 461-487.

8 Bradley, A. 2005. *An ACP Perspective and Overview of Article 96 Cases*, ECDPM Discussion Paper 64D, Maastricht: ECDPM; Mackie, J. and J. Zinke. 2005. *When Agreement Breaks Down, What Next? The Cotonou Agreement's Article 96 Consultation Procedure*, ECDPM Discussion Paper 64A, Maastricht: ECDPM; Mbangi, L. 2005. *Recent Cases of Article 96 Consultations*, ECDPM Discussion Paper 64C, Maastricht: ECDPM; Hazelzet, H. 2005. *Suspension of Development Cooperation: An Instrument to Promote Human Rights and Democracy?*, ECDPM Discussion Paper 64B, Maastricht: ECDPM.

9 A recent publication by International Alert when discussing the promotion of the essential elements of the Cotonou Agreement defines sanctions "as last resort" and notes "Article 96" only in parentheses after the word sanctions: The Conflict Prevention Partnership 2006. *EU Peacebuilding Activities In The Great Lakes Region: Impacts, Challenges And Opportunities*, Working Paper 25, The Conflict Prevention Partnership, International Alert, p. 15.

too. Indeed there have been cases where the ACP state has actively cooperated on the invoking of the Article.

#### *Lack of clarity regarding use*

The perceptions of Article 96 have been affected by a lack of clarity about when and how it is used. As the study by Hadewych Hazelzet shows, Article 96 (and before that Article 336a) has mainly been applied in response to a *coup d'état* or sudden deterioration of political conditions and human rights. In other words, the EU tended to react in an ad hoc fashion, rather than in a systematic manner to all violations of democratic principles or human rights.<sup>10</sup>

#### *Political dialogue*

Formal consultations under Article 96 are foreseen only if the regular political dialogue between the parties, as envisaged in Article 8 of the Cotonou Agreement, fails to prevent a violation of human rights, democratic principles and the rule of law. This principle was clearly stipulated in the midterm review of the Agreement. As such, Article 96 is clearly designed as a measure of last resort. However, the tool of regular political dialogue has not been used extensively or consistently by the EU and ACP states. There is also confusion of what constitutes political dialogue since Article 8 defines it very broadly: "The dialogue shall be conducted in a flexible manner. Dialogue shall be formal or informal according to the need, and conducted within and outside the institutional framework..." (Art. 8 para. 6 in Annex 2). If Article 8 is used early enough it can enhance "quiet diplomacy" for the support of the essential elements of the Cotonou Agreement.

#### *Colonial power*

The analysis of the attitude of colonial powers toward their former colonies is particularly interesting. After comparing EU reactions to almost 500 cases of human rights violations<sup>11</sup> between 1989 and 2000, Hazelzet concluded that former colonies were not shielded from sanctions as one might expect, but actually became subject to harsher sanctions than countries that had not been colonies. This can be explained by the fact that former colonies are generally less democratic than countries that have not been colonies. When looking at what motivated an EU reaction, Hazelzet found that the degree of human rights violations was a more powerful factor than the interests of the EU (in the form of a former colonial relationship with a Member State, or significant trade relations or strategic importance to the EU). As the level of human rights violations increased, the likelihood that the EU would suspend its cooperation increased, too. Conversely, the Hazelzet study also showed that some erstwhile colonial powers shielded their former colonies more than others. While former French and British colonies were no more or less likely to be sanctioned than countries that had not been

<sup>10</sup> Hazelzet 2005, p. 12.

<sup>11</sup> Identified in the Freedom House database.

former European colonies, the former colonies of other (smaller) Member States experienced sanctions most often. Furthermore, the degree of sanctions applied varied, being softest in the case of the former colonies of France. Hazelzet concluded that those punished most harshly were not defended in the Council of the EU by their former colonizers, whereas France and, to a lesser extent, Britain, made efforts to protect their former colonies.

#### *Success factors*

As far as the success of sanctions is concerned, Hazelzet's qualitative analysis confirms what many other studies on political conditionality have shown, namely that development cooperation is most likely to be withheld from countries where such an action is least likely to have an impact on the government. Governments that are violating human rights and democratic principles almost by definition do not feel accountable to their citizens or the international community. As Mackie and Zinke point out, the commitment of the authorities of the ACP country concerned is one of the key factors determining the positive or negative outcome of a consultation procedure. Hazelzet outlines several strategies the EU could use to influence the attitude of the ACP government concerned: assisting the government concerned in fulfilling the conditions through a combination of carrots and sticks; redressing the prejudice against Article 96; careful preparation of consultations and informal discussion of what the EU expects; and finally a proper and independent monitoring mechanism. All this requires good coordination and coherence regarding the EU position.

#### *Mid-term review 2005*

Learning from experience, the EU and the ACP countries adapted some elements of Article 96 during the mid-term review of the Cotonou Agreement in 2005. The ACP group tried to make the decision to start consultations under Article 96 a joint EU-ACP decision, however, the EU refused this change, arguing that it robbed the article of its purpose. Instead, the provision for "intensified dialogue" under Article 8 before moving to Article 96 was agreed. As will be explained below, the experience of the Republic of Guinea played a key role in this decision. It is now clearly stated that "all possible options for dialogue under Article 8" must be exhausted before Article 96 is invoked. The review also added a new Annex to the Cotonou Agreement which further stresses this link and provides for "intensified Political Dialogue preceding Article 96 Consultations" and indicates that this dialogue should be "systematic and formal", which diverges slightly from the general tone of Article 8 which also includes informal dialogue. Representatives of the ACP Group and of the Joint Parliamentary Assembly may take part in the political dialogue provided for under Article 8. In practical terms, for the ACP Group, this implies the troika of the ACP Committee of Ambassadors and the Chairperson of the ACP Sub-Committee on Political, Social, Humanitarian and Cultural Affairs, and, for the Assembly, the Co-Presidents or their designated nominees.

Two exceptions to this obligation of prior intensified political dialogue are foreseen, namely “cases of special urgency” (like *coups d'état*) and cases where “there is persistent lack of compliance with commitments taken by one of the Parties during an earlier dialogue, or by a failure to engage in dialogue in good faith.”

In addition to these changes, the time frame for consultations was extended to 120 days. Furthermore the Joint Council (comprised of the EU and ACP countries) may lay down a certain number of additional arrangements, relating, for example, to the stages of the consultation process and types of benchmarks and targets.

## 2.5 Coordination in the application of Article 96

The Terms of Reference for this study (Annex 1) define coordination as:

“activities of two or more development partners that are intended to mobilise aid resources or to harmonise their policies, programmes, procedures and practices so as to maximise the development effectiveness of aid resources”. With regard to co-ordination, several levels (international, regional, national, sub-national, sectoral) can be distinguished, as well as differences in content (policies/principles/priorities, procedures, practices) as in intensity (consultation, co-operation, collaboration). Co-ordination is seen as necessary, because a lack of co-ordination could lead to a donor driven agenda, excessive demands on scarce management capacities, inconsistencies of approach, etc.

The ability of actors to coordinate their activities in order to promote agreed goals and to produce agreed values refers to the classical notion of administrative rationality advanced by Max Weber.<sup>12</sup> Considering the fact that competencies are shared between the EU and its Member States, who have both shared and divergent objectives, administrative rationality becomes a highly complex issue.

### *Levels of coordination*

Coordination among EU-actors takes place in different stages of the process. As defined in the Terms of Reference, the main emphasis of the study is on actions: the main aim is to see whether or not policies of different European actors are harmonized and whether they contribute to an effective European strategy. At the same time, the ToR also mentions coordination in the context of planning of policies and on the level of decision-making. It might be that coordinated action can often be achieved by coordinating the planning and decision-making, but this is not conceptually necessary. One could imagine cases where more sharing of information is needed, and more commonness is needed for decision-making, and yet it is difficult to avoid contradictions on the level of policies. At the same time one could imagine cases where very lit-

12 Holland, R.C. 2004. *What We Have Learned About Diversity Management*, Pennsylvania: SEI Center for Advanced Studies in Management in the Wharton School, University of Pennsylvania.



the coordination is needed on the level of information-sharing and decision-making and yet on the level of actions no contradictions can be detected. Therefore when studying and measuring coordination, one must keep in mind that coordination can operate on several levels. It is therefore necessary for this study to identify layers where coordination is being measured. One could identify at least three layers:

1. Coordination of planning, consisting of sharing of information, analysis and identification of preferences and objectives.
2. Coordination of decision-making, involving openness to the influence of other European donors in decision-making.
3. Coordination of action, implying the absence of different European donors working against each other.

Invoking of Article 96 requires a minimum level of coordination. All actors involved in the decision-making should at least have at their disposal the information necessary to be able to assess the appropriateness of invoking Article 96. The level of information varies among actors, since not all Member States are represented in the ACP country in question. Decision-making would be very much facilitated if based on a common assessment of the local situation and a common analysis of the usefulness (likely success) of invoking Article 96 in improving the situation. If the assessment of the situation and the appropriateness of invoking Article 96 is shared among EU actors (Member States and EU institutions), there are no dissenting voices aired publicly. This would not only enhance the authority and credibility of the decision to start consultations, but would also decrease the risk of deviant behaviour of EU actors once “appropriate measures” have been taken and should be complied with. Since the actual phase of EU-ACP consultations does not require negotiations between different European agencies, it is the least complex phase in the whole process with regard to coordination.

#### *Coordination and appropriate measures*

When “appropriate measures” have been taken in the form of suspending Community aid, trade preferences or diplomatic sanctions, Member States have to comply with joint measures and, in case of improvement, they have to consider lifting the measures. CFSP measures are legally binding and therefore every Member State is bound by the decision, regardless of whether they were in favour of it. What is problematic from the point of view of coordination, however, is the relevance of appropriate measures to bilateral policies. To what extent are they limited to EU policies only? Such CFSP measures as travel restrictions or freezing the funds of certain individuals also apply in bilateral relations, but in the field of development cooperation, suspension of EDF funding does not affect bilateral development cooperation. Inconsistency is therefore possible: Member States can increase their bilateral cooperation while decreasing it within the EU framework. In practice it is not always clear whether or not the measures should be binding for bilateral relations.

### *Coordination among delegations in the capital of the ACP country in question*

The Member States' missions and the Commission's delegation are supposed to meet regularly at the level of Head of Mission. These sessions are organised by the Mission representing the Council's Presidency. However, the coordinating role actually played by the Presidency varies. If there are only a few EU embassies in an ACP country, then coordination of EU policy toward that country is probably easier than in cases where there are many embassies, different interests, and perhaps also different analyses of the situation and its context. The delegation may also participate in other coordination frameworks than the EU. The UK for instance is also a member of the Commonwealth, which has an acknowledged policy on democracy and human rights issues. Problems may arise if the decision-making proceeds at different speeds within different frameworks or if the opinions differ.

### *Coordination in Brussels*

In Brussels, the Commission's Directorate-General for Development has a major role in collecting information about the political situation in the ACP countries. In this it works closely with the EU delegation. The contact is most direct between the desk officer responsible for the country in question and the delegation. As the political problems tend to be long lasting, staff circulation can cause problems with regard to loss of "institutional memory". Individuals also matter, especially the Head of the EU delegation, who can play a visible role at the local level or can choose to have a low profile.

Coordination with Member States, the Council and the relevant geographical working groups and the ACP working group is pivotal, if the Commission makes a proposal for invoking Article 96. Such a proposal has never been made without prior discussions with the Member States – the Commission does not make proposals unless it knows that the Council is supportive. In spite of this, the situation in an ACP country can sometimes change rapidly.

Within the Commission, DG Development has to coordinate with DG External Relations (RELEX) in case the EU decides to send an election observation mission to the country in question. Occasionally, the Commission has to prepare answers on the use of Article 96 for the Parliament which is following the EU human rights policy. There are also efforts to enhance intra-EU coordination. One example is the recent paper of the Council secretariat entitled *Mainstreaming human rights across CFSP and other EU policies*.<sup>13</sup> In addition to the annual review of the implementation of the EU human rights policy, it calls for the linking of human rights-related efforts and democracy promotion (including election observation activities). It also suggests that delegations consider nominating an official to cover human rights issues discussed in the Human Rights Working Group (COHOM) and other working parties, and to serve as a contact

13 Council of the European Union, Brussels, 7 June 2006, 10076/06.

point on human rights for other institutions such as the European Parliament and its Sub-Committee on Human Rights and NGOs.

In practice, thematic coordination within the EU is not systematic, leaving 'grey areas' where development, foreign and humanitarian policies overlap. The prioritisation of policy objectives is not always clearly articulated and therefore different policies may frustrate each other.

#### *Coordination with non-EU actors*

Administering a common EU approach is not only a matter of coordination between European actors and policy instruments, but also concerns diverse contacts ranging from multilateral ones to those between private actors and non-governmental organisations. Agents in the bargaining may include other ACP countries and regional organisations. The role of a peer group can be very important. Lydie Mbangú's study on consultations with Guinea-Bissau, the Central African Republic and Togo highlights the effect of peer pressure (i.e. active participation by friends of the relevant ACP country, neighbouring countries and regional organisations), which has often been a key to the success of the consultations.

#### *Coups d'état versus slow deterioration*

In cases of clear-cut violations of the principles of the Cotonou Agreement (as in the case of a *coup d'état*) it is easier for EU Member States to arrive at a common analysis than in cases where the situation has deteriorated gradually. First of all this is because in cases of *coup d'état*, the situation leaves little room for interpretation, while in cases of slow deterioration it must be argued whether and when a critical line is passed. Secondly, the incentive to arrive at a common position in *coup d'état* cases is much stronger, because not taking a decision would inevitably catch the attention of the rest of the world and could be interpreted as a decision not to take action. Thirdly inviting the coup members to consultations represents at least some kind of international recognition and can provide a smooth way of normalising their relations with the EU, so they might therefore be particularly cooperative and also strongly supported by other ACP states in doing so. For these reasons, coordination in cases of *coup d'état* is much less of a challenge than in cases of slow deterioration.

The study will analyse:

- What kinds of situations result in the invocation of Article 96?
- What is the information and analysis of the situation?
- How are decisions to start consultations made, both formally and informally, and who takes the initiative?
- What is the role played by former colonial powers?
- How does the intensity of the EU relations with the ACP country (number of EU Embassies etc.) affect the process?

- How does the EU coordinate its actions with non-EU actors?
- What are the local level perceptions of the coordination of the EU policy?

## 2.6 Coherence in the application of Article 96

On coherence, the Terms of Reference for this study (Annex 1) note:

Coherence, probably the most debated of the 3Cs, is defined here as “the non-occurrence of effects of policy that are contrary to the intended results or aims of policy”. A narrow definition would be that objectives of policy in a particular field may not be undermined or obstructed by actions or activities in this same field. A wide definition would be that objectives of policy in a particular field may not be undermined or obstructed by actions or activities of government in that field or in other policy fields. With regard to policy coherence this means that it can focus on one terrain or field of policy only, or try to make links with other fields, domains or policies. Along these lines, we distinguish three types of “coherence”, as a focus for evaluation: *Coherence I*: between different elements of European development policy itself; *Coherence II*: between different sets or parts of European foreign policy and development cooperation policy; and *Coherence III*: between development cooperation policies and policies in other fields, which can in theory, be all parts of European policy making. An important aspect is the distinction between intended and unintended incoherence in policy-making. This stresses that there is no hierarchy in policies and that given a certain set of goals and weighing them against a set of goals in another policy field, incoherence can also be deliberate.

For this evaluation of Article 96, Coherence II is the most relevant type. In the context of Article 96 it can be understood as the need to balance foreign policy objectives, such as human rights and democracy, and the objective of social and economic development of the ACP countries. In general these goals are considered to be interlinked and mutually supportive, however, punitive measures, such as the suspension of aid in order to pressure the government to respect the democratic principles, can harm the country’s development process, at least in the short run. The fact that in Coherence II there are no policies or policy objectives that could be prioritised over others makes the regulation of a common strategy challenging. The essential elements of human rights, democracy and the rule of law or the fundamental element of good governance of the Cotonou Agreement are not more important than other objectives like poverty alleviation or the principle of partnership. Thus it would be too simplistic to consider Article 96 as just a mechanism of conditionality, where the EU would use the pressure of cutting aid in the promotion of common EU and ACP values. Article 96 is not simply an instrument for foreign policy goals to the detriment of the poverty alleviation objective.

### *Intended and dynamic incoherence*

In the application of Article 96 the notion of “intended incoherence” between European foreign policy and development cooperation is a very important one to bear in mind. Intended incoherence is a situation where decision-making recognises that all policy objectives cannot be achieved at the same time. Indeed, according to Paul Hoebink, incoherence should not always be regarded as a negative factor and may in some cases be seen instead as a result of clashes and conflicts of interest, in other words as a compromise in which the relative importance of the actions and actors has been duly weighed.<sup>14</sup> Whether incoherence is really intentional, however, is a particularly complex question within multilateral action and with shared competencies, since this would require that all actors share the same intention.

In case of “dynamic incoherence” there is a conscious attempt to balance between what is good at a given moment and what is good in the longer term.<sup>15</sup> Such situations are very different from cases of unintended incoherence, where the consequences of different policies are usually not even monitored. Unintended incoherence can lead to situations where particular policies frustrate the objectives of other policies but where this might remain unnoticed and thus is not effectively tackled. Dynamic incoherence, in turn, means that short term objectives are consciously “sacrificed” and the actors are actually prepared to setbacks, even so that they can respond to the problems caused by these setbacks with specific measures – like humanitarian aid in case of economic recession.

### *Article 96 is an instrument to address Coherence II*

Article 96 can be seen as an instrument directed at Coherence II, since its utmost aim is to harmonise the goals of foreign policy and development policy. The need to invoke Article 96 stems from a situation where the EU perceives an actual or likely incoherence between its policies. In such a situation it might well be that it is not possible to achieve all objectives. Instead, difficult considerations between different goals and short term and long term perspectives become essential. In many cases Article 96 can thus be conceptualised as a mechanism of intended or dynamic incoherence. Its alternative then is not coherence, but unintended incoherence, which would “silently” frustrate policy objectives and weaken attempts to solve the underlying problems.

Article 96 is a very context specific instrument. Particularly important are the historical background and developments in the country in question. Each specific case requires adequate information, as well as careful analysis and planning to ensure that the action taken supports rather than undermines human rights, rule of law and democracy. In spite of this, uncertainty with regard to any political developments can never

14 Hoebink, P. 2004. ‘Evaluating Maastricht’s Triple C: the “C” of coherence’ in Hoebink, P. ed. *The Treaty of Maastricht and Europe’s Development Co-operation, Studies in European Development Co-operation Evaluation* No 1, European Union, p. 193.

15 Hoebink referring to Weatherford 1994, p. 139.

be totally eliminated. It is therefore necessary to pay attention to the monitoring of the situation and be prepared to revise the strategy if needed. As far as the latter is concerned, however, what is often at stake is the credibility of the EU as an international actor, which can be regarded an important foreign policy objective, too (not least with regard to the Cotonou Agreement). The issue of credibility can prevent the EU from radically revising its strategy even in cases where the results have been negative. Thus the EU objectives and conditions of cooperation need to be “pragmatically adjusted to the specific circumstances of each country and each situation”<sup>16</sup> instead of trying to maximize coherence between specific development interventions and some general objectives applicable to all partnerships at all times and in all situations. Intended incoherence needs to be judged on this pragmatic adjustment to specific circumstances.

#### *The non-use of Article 96*

There are situations where a conscious decision is made to not even discuss the possibility of invoking Article 96, even when there are severe and well-documented violations of the principles of Article 9 of the Cotonou Agreement. In other words, inconsistencies in the use of Article 96 can possibly be explained by rational behaviour of the EU, bearing in mind the consequences for different policy objectives. For instance, in the most unstable political situations like wars or fragile periods of peace negotiations or peace processes, the EU is not very eager to apply the instrument of Article 96, as for example in the case of Sudan. The EU in some cases prefers “silent diplomacy” instead of a consultation process that attracts public attention.<sup>17</sup> Another reason might be that in countries in conflict the regular EU development cooperation has already decreased substantially due to reasons of insecurity or logistical difficulties. If only humanitarian aid is left, there would be little with which to put pressure on the authorities of the ACP country in question. These cases are, however, difficult to judge in terms of intended or dynamic incoherence. This will depend on the context of the case and the arguments underpinning the EU decision, which are not made public.

#### *Other multilateral forums*

Member States might also consider other multilateral forums to be more appropriate than the Cotonou framework, or see them as providing an additional level on which to undertake action. By these means, the EU can play a very visible role internationally through such actions as imposing sanctions following UN Security Council resolutions<sup>18</sup> or supporting dialogue through UN-led peace processes. On the other hand, there are cases in which the EU has combined imposing sanctions, such as arms embargoes, following UN measures and consultations under the Cotonou Agreement, Liberia being an example of this.

16 Singer, H.W., *Aid Conditionality*, IDS Discussion Paper 346, December 2005.

17 Hazelzet, 2005.

18 de Vries, A. and Hazelzet, H. 2005 ‘The EU as new actor on the sanctions scene’, in *Between Words and War*, Wallensteen and Staibano eds., London: Frank Cass Publishers.

### *Partnership and remaining engaged*

It is a widely recognized fact that without good governance and the democratic empowerment of people, including the poor, alleviation of poverty will also be difficult.<sup>19</sup> Empowering the poor enables them to end their poverty.<sup>20</sup> However, inequality and poverty are not only problems within states, but also between states: statistics show that inequality growth is greater between than within nations, making the problem of poor nations at least as pressing as the problem of poor segments within nations. Thus poor states should also be empowered, and values of democracy and good governance have to be maximized within states as well as internationally. Blunt and intrusive measures of aid conditionality might sometimes work for promoting democracy and poverty alleviation within developing countries, but their effect on the empowerment of poor states, and on ending international poverty, might be dubious. This would not only violate the principle of “partnership” in the Cotonou Agreement but also be inconsistent with the EU’s approach to conflict prevention and security policy. In the latter, the EU has recognised that isolating countries can lead to state failure, which in turn is related to several conflict risks, including that of terrorism. In the *EU Security Strategy* this is grasped with the notion of “preventive engagement”.<sup>21</sup> Following this line of reasoning would imply that the EU respects the principle of partnership and remains a partner even with countries that are violating agreed principles.

### *The EU intervenes in highly complex local power struggles*

The fact that different actors within the EU can have different perceptions of the “bargaining game” with the ACP country might expose the EU to various strategies of manipulation in a complex bargaining situation. This does not only relate to the negotiations between the EU and the ACP country in question, but also involves political and administrative factions within the ACP country. For instance, in cases of *coups d’état* the EU will have to choose with whom to negotiate – the interim coup leaders, the old government or the new one. In many cases ACP governments do not allow political factions to benefit in the domestic power struggles by utilizing the EU support. While the EU has supported democratisation processes and human rights by cooperating with civil society, governments of ACP countries going through a political crisis do not necessarily differentiate between civil society and their political opposition, sometimes not even between these and armed opposition. This politicises the EU approach and

19 The connection between authoritarianism and extreme expressions of poverty is most notably made by Amartya Sen, see for example Sen, A. 1999 ‘Democracy as a Universal Value,’ in *Journal of Democracy* 10(3), pp. 3-17. Also according to Rummel’s global comparative empirical analysis, famines mostly take place in authoritarian countries: see Rummel, R.J. 1994. *Death by Government*. New Brunswick, NJ: Transaction Publishers.

20 UNDP 2000. *Human Development Report 2000*, New York: UNDP. See also World Bank: ‘The World Bank views good governance and anti-corruption as central to its poverty alleviation mission’ (<http://www.worldbank.org/wbi/governance/>).

21 Javier Solana, European Union High Representative for the Common Foreign and Security Policy: ‘The EU Security Strategy: Implications for Europe’s role in a changing world’, 12 November 2003.

makes it difficult for it to distinguish between the security of the people and the security of the incumbent regime in the country in question. What also becomes pivotal is the way the EU is able to communicate its approach and objectives locally.

#### *Setting conditions*

The actual EU-ACP consultations are the least complex phase with regard to coherence, because consideration of coherence will have taken place before consultations start. The list of commitments that the ACP country will have to comply with is important, since these commitments indicate the weight the EU attaches to certain principles in relation to possible sanctions. Since the question typically is about complicated situations (even in cases of *coup d'état* the background is often marred by political, social and economic problems), the issues and commitments tend to form a long and comprehensive list. Balancing between what is feasible and what is desirable can be difficult.

#### *Appropriate measures*

The next phase in which the issue of coherence becomes relevant relates to the possible decision on appropriate measures and their relation to different policy goals, as well as the decisions to maintain or revoke the measures when progress of the country in question is assessed. In cases where the EU deems that the appropriate measures possible within the legal framework of the Cotonou Partnership Agreement are insufficient, it can decide to impose further sanctions unilaterally in the framework of its Common Foreign and Security Policy (CFSP).

On the basis of this discussion, this study will therefore analyse:

- Is the EU consistent when using Article 96?
- How has the EU tried to balance foreign policy objectives (Article 9 principles) and the development of the ACP country concerned? In other words, has the EU considered the consequences for its different policy objectives (intended or dynamic incoherence)?
- Has the EU tried to use Article 8 prior to invoking Article 96?
- How has the EU decided with whom to negotiate in cases of *coup d'état*?
- How does the EU communicate its approach locally?
- Has the EU proposed a realistic list of proposals and reasonable timeframes?
- What are the local level perceptions of the coordination of the EU policy?



## 3 Overview of the methodology

### 3.1 Comparative method

The main methodological approach of this study is the use of comparative case studies. Comparison will be based on a quantitative and qualitative analysis and conducted on three levels of generalization.

#### *A. Statistical analysis of all ACP countries*

First, a statistical analysis is presented to study the broadest generalizations of coherence based on an assessment of all ACP countries. Due to the large number of cases, the analysis cannot go into the details of coherence but looks only at the level of democracy and human rights and at EU decisions to invoke Article 96, however it reveals the big picture by offering broad comparisons. The main aim of the statistical overview is to produce hard evidence of the use of Article 96 in order to counter hasty conclusions that exist in the literature and that are derived from analyses of single cases or single situations. By looking at data on human rights, democracy and governance in 55 ACP countries over a period of six years, one can create a reference pool of 330 years of decisions about whether to invoke consultations. With 330 units for analysis one can make more reliable conclusions on some elementary variables related to coherence and coordination than is possible on the basis of a few case analyses only.

#### *B. Qualitative comparison of all ten consultation cases*

Second, a deeper penetrating comparative analysis is achieved by focusing on the ten cases of actual consultations and look into the background and context of decision-making in all these cases: the Central African Republic, Fiji, Guinea-Bissau, Republic of Guinea, Haiti, Côte d'Ivoire, Liberia, Mauritania, Togo and Zimbabwe. The focus is on different aspects and challenges of coordination and coherence, particularly those mentioned in the Terms of Reference (Annex 1):

- causes for invoking Article 96;
- historical or colonial links with Europe;
- number of EU Member States having embassies;
- outcomes to the consultations.

### C. In-depth analysis of four individual cases

Third, the influence of individual independent variables in the consultation cases is controlled by selecting four countries in which Article 96 was invoked, with sufficient variety for a more detailed study. It is also important to analyze the issues related to coordination and coherence from the local perspective. Local level views and knowledge of coordination and coherence of EU policy as well as of the feasibility and desirability of the use of Article 96 can reveal important aspects that are not observable in Brussels or in the published material. On the basis of the two earlier levels of analysis, four cases were selected for consideration, illustrating different aspects and challenges of coordination and coherence. In these cases, the actions taken at the level of the EU delegation and embassies are taken into consideration, as well as the way coordination and coherence of EU policy is perceived by the government in question and by other important local stakeholders like relevant NGOs or media. The choice of these cases reflects the diversity of situations and takes into account the above-mentioned issues that were in the focus of the overview of all cases, as set out in the Terms of Reference.

The cases of Zimbabwe, Fiji, Guinea-Bissau and the Republic of Guinea were selected for more detailed study. They present different causes for consultations: gradual deterioration of the situation, interruption of the governance and *coup d'état*, and flawed electoral process. They also differ with regard to colonial history and the intensity of current relations with the EU, and there is diversity with respect to the outcomes of the consultations.

The Fiji case presented its own unique challenges, in particular the question of whom to negotiate with. This is an issue of importance, as choices here may imply de facto recognition of a new government. In Fiji, the EU negotiated with the de facto power holders, but could have insisted on negotiating with the ousted authorities instead, who held power according to the Fijian legal system.

Zimbabwe is an exceptional case as far as the causes for invoking Article 96 are concerned. Furthermore, the principle of partnership in the Cotonou Agreement has been problematic in this case, and the need to maintain the appropriate measures for a long period points toward the inability of the EU to improve the situation in the country by applying Article 96.

West Africa is an important region to include in the study, because of the frequency of consultation cases there. A former colony of France, the Republic of Guinea has been an exceptional case with regard to the length of time that passed before consultations commenced. It is also important to consider a former colony of a smaller EU Member State. Guinea-Bissau (formerly colonised by Portugal) adds this dimension to the comparison.

### **3.2 Sources of information**

#### *Desk study and selection of cases*

The sources of information are official pronouncements and records of the Commission and the Council of the EU and the ACP Secretariat, as well as semi-structured interviews with officials representing the EU who have been involved in the decision-making and assessment and analysis of the situation in the ACP countries in question. Additional information is collected from academic literature, media coverage and data provided by NGOs and think tanks. The UNDP's Polity data for democracy and governance, and Transparency International's data on corruption are utilized in the quantitative analysis.

#### *Interviews in Brussels*

The most important informants in Brussels were representatives of the Commission's DG Development and DG RELEX, External Relations experts of the Council Secretariat, and the ACP Secretariat in Brussels.

#### *Four field missions*

During the four field missions, interviews were conducted with local government representatives, civil society representatives (including NGOs and local researchers), opposition representatives, EU Member States' representatives, the EU delegation and representatives of other donor countries as well as neighbouring countries and important regional powers.

The method of verification of information and the interpretation of informants has been based on the comparison of written sources (documents and studies) and various interviews with one another as well as feed-back from the interviewed persons, when summaries of the interviews and/or the draft version of the whole report were sent to them for comments. Furthermore the study teams for the four case studies included experts from the ACP countries in question, which strengthened the analysis of the local views.

### **3.3 Limits of this evaluation**

#### *Coordination is often confidential and informal in nature*

The confidential nature of the discussions conducted between the Member States and other EU actors makes it difficult to study the details of the (pre-)decision-making process in Brussels and the ACP capital. The Commission has a leading role in the phase where important decisions about appropriate measures are prepared, however the possibility of "appropriate measures" is discussed at an early stage between the Member States, and views are exchanged between the Member States' capitals and their representations in the ACP countries as well. This kind of coordination is confidential

and largely informal in nature. The study of coordination therefore relies heavily on personal views of the officials and diplomats involved.

*Coherence is hard to interpret in this very complex area*

Coherence with regard to the Article 96 procedure is hard to interpret in an unambiguous way by empirical research. It requires different approaches in different situations and with regard to different issues. For instance, actors could argue that support for good governance in some cases requires supportive measures (“carrots”), while in some other cases it requires sanctions (“sticks”). As will be explained in Chapter 5, the suspension of development cooperation or other punitive measures on the one hand, or positive incentives on the other hand, following consultations that did not resolve the problem cannot be considered as indications of coherence or incoherence per se. Due to the uncertainty that exists with regard to the effectiveness of the selected appropriate measures or the feasibility of the whole Article 96 process it is difficult to identify and judge explicit contradictions in policy choices. The time span is also significant in this regard: what seems contradictory in the short term could be coherent in the long term.

*Institutional memory has sometimes been lost*

As an important part of this study relies on interviews, personal shifts among officials and diplomats involved have hindered the availability and reliability of information. This was especially the case in Guinea-Bissau and Fiji, which were the earliest cases.

*Respondents' view of coordination and coherence can be influenced by their judgement of the instrument*

The historical perspective affects the views of respondents, as human memory is selective. If the use of Article 96 proved to be successful, respondents tend to be eager to emphasise their direct or indirect support for the process from the beginning. In the opposite case, they easily point out their early criticism or doubts towards the decision or criticise the behaviour of other EU actors. Particularly at the local level, the use of Article 96 itself raised strong opinions, which then affected the respondents' assessment of coherence and coordination of the EU policy as well. In practice, the respondents sometimes criticised or praised the use of the instrument itself in a particular case through criticising or praising coherence or coordination. At the same time, it was possible to get information in this regard indirectly and there were details that could be asked from the respondents without referring directly to coherence or coordination.

*Mid-term Review 2005*

Between the cases under study in this evaluation, the EU and ACP countries conducted a mid-term review of the Cotonou Partnership Agreement. Certain adaptations of the Agreement are related to the procedure of Article 96. Where relevant, these adaptations were mentioned in section 2.1. The changes were motivated by the experience of

using Article 96, which demonstrates that there have been lessons learned designed to improve coherence (explicit requirement of using Article 8 first) and coordination (the extension of the consultation period from 60 days to 120 days). Thus the evaluation of earlier cases can partially relate to issues that might have been solved by the mid-term review, however since there has been only one case after 2005 (Mauritania) it is impossible to be certain.

## 4 Statistical analysis in all ACP states

### 4.1 Introduction

*Statistical analysis reveals general level characteristics*

With a quantitative, statistical analysis we can grasp general level characteristics and the consistency of the use of Article 96 in bringing about coherence between development policies and foreign policy objectives. The statistical overview aims at answering the following questions:

*Question 1:* Does the EU systematically address problems of incoherence between development and foreign policy or does it have double standards, where problems of coherence in development partnership are sometimes addressed in the framework of the Cotonou Agreement, while sometimes they are not? This issue is being looked at in a context where development cooperation involves problems related to democracy, human rights, rule of law and governance, and where there is a risk, therefore, that development cooperation may sustain these problems in the ACP country.

*Question 2:* If rethinking of the cooperation (i.e. invoking of Article 96 of the Cotonou Agreement) is a standard procedure for dealing with possible incoherence in the above-mentioned context, then what is this standard based on? Does the EU invoke consultations

- a. whenever the level of democracy, human rights protection, the rule of law and governance is below a certain threshold (in absolute sense), or
- b. whenever there is a drastic deterioration of the situation?

*Question 3:* Since it seems easier for the EU to address issues of incoherence in cases where there has been a *coup d'état*, one is also interested in how consistently the EU addresses the problem of coherence in cases where there has not been a *coup d'état*. In other words, does the EU have a double standard for cases where there has not been a *coup d'état*?

*Consistent invocation of consultations is an indicator of coherence*

Coherence in relation to the decision to invoke consultations under Article 96 can be studied on a general level by looking at the levels of human rights, democracy, rule of

law and good governance and decisions to invoke Article 96. Assessing whether Article 96 consultations have been invoked every time there has been a serious problem of human rights, democracy, rule of law and/or good governance in an ACP partner country is a crude indicator of how well coherence between foreign policy and development cooperation functions. If there is a consistent line in the application of Article 96 consultations in order to avoid supporting undemocratic development or questionable governance and human rights practices, then the EU development cooperation can be viewed as an effective tool for achieving the foreign policy objectives of promoting democracy, respect for human rights, rule of law and good governance. The consistent invocation of consultations signals sensitivity of development cooperation towards foreign policy.

#### *Comparable data for statistical analysis*

Consideration of questions of human rights, democracy, rule of law and good governance in a way that allows broad cross-country comparisons is a difficult matter. Corruption is an example of a borderline issue in two different senses. Firstly, while it is explicitly mentioned in many of the Article 96 consultation cases, it is dealt with in Article 97. Secondly, the quantitative study of corruption is very complicated, since corruption data are not available for most countries, particularly for the years when the consultations were invoked. Transparency International, which is the most authoritative source for international comparisons on corruption, does not cover the Central African Republic, Guinea-Bissau, the Republic of Guinea, Togo and Mauritania, whereas in the cases of Fiji, Haiti and Liberia data is missing for the years of consultation. Reliable data for the years of consultation exist only in the cases of Côte d'Ivoire and Zimbabwe. Furthermore, while it is possible to say that a country will not generally protect human rights during a violent civil war, state collapse or *coup d'état*, one cannot assume that corruption would necessarily be high under these circumstances. We do not know what the level of corruption is during turbulent times, and it is not possible to study the general relationship between corruption and consultations by using quantitative data. In the cases of Zimbabwe and Côte d'Ivoire, corruption has not been an important motive for consultations, as it has not been particularly rampant during the years of consultation, and neither did it dramatically increase before the consultations in either case.<sup>1</sup>

As indicators of human rights, we have selected the level of legal democratic constraints on the country's chief executive, freedom of participation and competitiveness of participation. These indicators have been investigated in a way that allows cross country comparisons in the Polity IV project dataset, which is the most widely used source of comparative data on political systems, and has been used by the UNDP since 2002 in their assessment of human development. Here the violation of civil liberties is

<sup>1</sup> Transparency International's annual corruption perceptions index is the source of quantitative corruption data. The analyses of Liberia and Zimbabwe are presented in the Appendix of this report.

one of the forms of restriction on participation and the suppression of dissent and denial of political rights are coded in the data on competitiveness of participation.<sup>2</sup> The freedom of participation index also measures the extent of human rights violations in repressive political systems.<sup>3</sup>

The indicators of democracy and rule of law are more general and consist of component indicators of competitiveness and openness of executive recruitment, constraints on the chief executive, and competitiveness of political participation, while the indicators on authoritarianism also consider the issue of regulation of participation. These data are also taken from the Polity IV project dataset.

As indicators of good governance, we use data from Polity IV on the competitiveness of executive recruitment and Transparency International's Corruption Perceptions Index. All these data are used on the one hand to establish the degree to which there are problems with democracy, good governance, rule of law and human rights that justify consultations, and on the other hand to highlight deterioration that might create the need for consultations.

## 4.2 Main findings

The main findings regarding the above-mentioned questions that can be reached on the basis of a quantitative analysis are the following:

*Question 1:* Does the EU systematically address problems of incoherence between development policies and foreign policies?

The initiation of consultations is generally a systematic reaction to a problem of coherence. There is no general pattern of double standards in the EU's utilization of Article 96.

*Question 2:* If there is a standard of dealing with incoherence in the above-mentioned context, then what is this standard based on?

The initiation of consultations is most likely in situations where there is a deterioration of human rights situation, democracy and rule of law. At the same time the EU tends to be relatively patient towards continuing problems in these fields.

*Question 3:* How consistently does the EU address the problem of coherence in cases where there has not been a *coup d'état*?

2 Polity IV, codebook, p. 83.

3 Polity IV, codebook, p. 69.



- a. Consistency is greater in the cases of *coup d'état*, whereas it is less visible in other cases.
- b. In cases other than *coup d'état*, consultations are more systematically a response to a deterioration of the situation, rather than to continuing problems.
- c. In these cases, the EU policy is more consistent with regard to deteriorating governance and democracy than with regard to deteriorating human rights problems.
- d. In cases other than *coup d'état*, the EU policy tends to fail to react to the deterioration of peoples' participation in politics.

### 4.3 Conclusions and discussion

*Democracy, human rights and rule of law record of countries invited to consultations was worse than the average in ACP countries*

A quantitative overview reveals that the democracy, human rights and rule of law record of the countries where consultations were started was problematic at the time when the decision to start consultations was made. Every time Article 96 consultations have been started, the situation in the country in question has been more problematic than in other ACP countries. Figures 1 and 2 (Annex 4) reveal that in the period 1999-2003 the EU started consultations with countries (consultation countries) whose performance was on average worse than that of ACP countries in general.

*No systematic reaction to poor absolute levels*

This does not, however, mean that the EU consistently uses Article 96 with the most problematic countries. If one analyses these cases using appropriate tools<sup>4</sup> to measure the association between the situation and the decision to start consultations, one cannot always find a statistically significant correlation between respect for the essential elements and the fundamental element of the Cotonou Agreement on the one hand, and consultations on the other. The presence of a weak but nonetheless statistically significant correlation between consultations and authoritarianism in these cases testifies that consultations were a relatively systematic reaction to authoritarianism and the lack of constraints on the chief executive. There was, however, no statistical correlation between the indicators of poor governance, lack of democracy and violations of human rights and the decision to initiate consultations (a summary of correlations can be found in Annex 3). Thus in general it cannot be concluded that the EU systematically reacts to poor absolute levels of governance in the ACP countries.

*Observation of deterioration rather than absolute levels motivates consultations*

In some cases, consultations have been triggered by a deterioration of the situation, which nevertheless left the country better off than certain other ACP countries. In other

4 Here the most appropriate tool would be the Spearman bivariate correlation analysis. This way we do not need to assume the cardinal scale for the Polity IV data, but it is still possible to draw reliable conclusions on the association between the decision and the conditions.

words, there are poor performers with whom the EU has not invoked Article 96. Thus while the analysis appears to reveal a lack of consistency, it is possible to conclude that the EU's focus has been on political progress, and these cases should not therefore be interpreted as incoherence in the use of Article 96. With these criteria, the EU is generally consistent in its action and does not apply a double standard. In most cases, consultations were started immediately after conditions worsened. The exception is Côte d'Ivoire, where a *coup d'état* took place at the end of 2000, but the EU reacted the following year, and thus consultations have to be seen as a reaction to deterioration during the year prior to commencement of consultations. Figures 3 and 4 (in Annex 4) demonstrate how the situation in all consultation countries had deteriorated (bulks reaching further down to negative values) much more drastically than in all ACP countries (where only the situation with freedom of participation was deteriorating).

Further analysis reveals that decisions to start consultations are very significantly associated with the deterioration (rather than the absolute level) of human rights, democracy and rule of law. If one compares values for these factors during the year when consultation was invoked with values in the previous year, one can find statistically highly meaningful correlations between deteriorating conditions and the decision, regardless of which of the six indicators is used (see table of correlations in Annex 3).

On the basis of this statistical overview, one can see that the decisions to invoke consultations have been a consistent reaction to deterioration of the human rights, democracy and rule of law situation. The EU is more tolerant towards continuing incoherence between foreign policy objectives and development cooperation, as constantly poor human rights performance, lack of democracy and rule of law have not triggered the decision to start consultations.

#### *Coups d'état have always led to consultations*

In several cases (Fiji 2000, Côte d'Ivoire 2001, Central African Republic 2003, Guinea-Bissau 2003 and Mauritania 2005) consultations have been initiated as a result of a *coup d'état*. The policy of the EU has been very consistent in this regard: a clear-cut *coup d'état* has always led to consultations. However, it needs to be noted that there have been several other countries with interrupted and interregnum governance, such as Somalia, Sierra Leone, the Democratic Republic of Congo, Lesotho, the Solomon Islands and Burundi. In these countries, however, the interruption has been of a longer term nature, often related to state collapse which, naturally, would have made consultations difficult.

#### *Consultations invoked in response to other reasons than a coup d'état*

Since *coups d'état* cannot be regarded as the only requirement for initiating consultations under Article 96, one should also look into those cases where coups did not happen, to investigate the coherence of the EU policies more closely. Haiti 2000, Liberia 2001, Zimbabwe 2002, the Republic of Guinea 2004 and Togo 2004 belong to this

category. A lack of statistical data (Polity database) after 2003, means that one is left with only three assessable cases: Haiti, Liberia and Zimbabwe. These cases show that there is coherence in EU decisions to initiate consultations.

#### *Zimbabwe is a deviant case*

A slight exception can be seen in the case of Zimbabwe and with regard to freedom of participation. Here consultations were started even though freedom of participation had improved from the previous year and even though the absolute level of freedom of participation was better in Zimbabwe than in an average ACP country. Zimbabwe also performed better than most of the other ACP countries with regard to competitiveness of participation. In contrast, all the other indicators of democracy and rule of law for these three consultation countries show poorer absolute performance and poorer development. Yet all in all, consultation countries (even the ones which did not experience a coup) tend to be more problematic than the rest of the ACP countries, as can be seen in Figures 5 to 8 (in Annex 4).

#### *Increases in human rights problems have not consistently led to consultations*

Despite the fact that consultation countries are generally more problematic in terms of absolute performance and development in democracy, rule of law and some aspects of human rights, one cannot say conclusively whether these problems have systematically justified consultations in the same manner in each case. Only a correlation analysis can reveal this. Even though the number of cases is small (especially when it comes to cases of consultation in the absence of a *coup d'état*), one can clearly see from the correlation analysis that problems have not consistently led to consultations.

Again, more coherence could be found in relation to a deterioration of the situation than to the continuing poor level of human rights, democracy and rule of law. Moves towards authoritarianism systematically lead to greater likelihood of consultations, while deterioration of democracy situation and the loosening of constraints on the chief executive also tend to lead to consultations. On the other hand, deterioration of the freedom of participation seems to reduce the likelihood of consultations! This odd finding of incoherence can be explained by the single case of consultations with Zimbabwe in 2002. On the basis of a quantitative analysis, Zimbabwe seems to be a special case challenging the consistency of EU policy. It is also evident that there are some worse performing partner countries that have not been subjected to consultations.

In cases where *coups d'état* were not involved, it would seem that an EU decision to initiate consultations is a systematic, consistent reaction to the deterioration of democracy and rule of law situation. Consultations do not, however, consistently follow from an increase in human rights problems. As has been mentioned, the fact that there were only three cases of consultations that could be taken into account in this examination means that the conclusions on cases other than *coups d'état* should only be drawn with

caution. The exclusion of the case of Zimbabwe from the data set would have completely altered the results to a coherent one.

#### *Coherence and ACP regions*

Comparison between the three ACP regions shows that consultations have been initiated increasingly in Africa, while the most recent consultation outside Africa was in the year 2000. At the same time, Africa has democratised rather consistently since the late 1990s, while this has not been the case in the Pacific islands or in the Caribbean. The fact that Africa has been the region where consultations are being increasingly held, reflects the overall poor democracy and human rights performance of the continent, not its development in a worse direction. What matters, then, is not the direction of development but the poor absolute level of human rights protection, democracy and rule of law (see Figures 9 and 10, Annex 4).

#### **4.4 Agenda for qualitative analysis**

##### *Statistical analysis cannot go deep into the issue of coherence*

The statistical analysis proves that EU development cooperation is sensitive to incoherence and that Article 96 is used to address partnership that raises problems vis-à-vis the EU's common foreign and security policies. On the other hand the analysis also showed that there are inconsistencies, however it cannot go deeper into the issue of coherence. Even if there is consistency in the use of Article 96 whenever that is called for by problems of coherence, analysis based on averages cannot rule out the possibility that there would be a few deviant cases where the decision related to Article 96 has been different. Furthermore, a quantitative analysis cannot reveal whether the use of Article 96 actually manages to bring back coherence.

Nor can the quantitative analysis say anything about details related to the developments and the background of the problems due to which the EU decided to invoke Article 96. Even the category of *coup d'état* is a very broad one since its context is often marred by other problems related to the essential elements and the fundamental element of the Cotonou Agreement.

##### *The question of coordination requires qualitative analysis*

With a quantitative statistical analysis we could not grasp the issue of coordination or its conditions like the relations of the EU and the Member States with the country in question.

An examination of the specificities of the ACP countries and the EU decision-making can be achieved only by a case-by-case approach. An evolution over time in the way Article 96 is used is also an important aspect that requires qualitative analyses of the cases where Article 96 has been used.

## 5 Comparison of the ten consultation cases

A qualitative overview of all the ten cases where Article 96 has been used reveals important differences in the causes for the EU's decision. They also indicate slight changes in EU policy. The findings that are presented below are based on reports that can be found in the Appendix of this study.<sup>1</sup>

### 5.1 Findings on coherence

In half of the cases, the reason for invoking Article 96 has been a *coup d'état*. The other half consists of violations of democratic principles alone or combined with violations of human rights (see Table 5.1).

TABLE 5.1 Consultation cases

<i>Cases</i>	<i>Reason for invoking Article 96</i>	<i>Outcomes of consultations</i>
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

<sup>1</sup> The analysis presented in this chapter is based on the ten short country overviews. In order to avoid repetition, the Appendix covers only the final reports of the four field study countries, preceded by the short overviews of the six other cases.

The time span that has been needed before normalisation of relations has varied, but only in two cases this has happened in the following year, which indicates that the process can take a fairly long time. In the case of Haiti it took five years and in the case of Zimbabwe the process is lasting even longer.

*After Zimbabwe there has been hesitation to invoke Article 96*

When putting the different Article 96 cases on a time-line running from mid-2000 to mid-2006, one can observe a break of more than 20 months. The Article was not invoked between Zimbabwe in October 2001 and the Central African Republic in June 2003 (see Annex 5), and both the Central African Republic and the next new case (Guinea-Bissau) were clear *coups d'état*. With one exception (that of Guinea) all of the post-Zimbabwe cases have been conducted in a positive atmosphere of cooperation: either at the ACP country's own initiative (Guinea-Bissau, Togo and Mauritania) or with a de facto government eager to legitimise its unconstitutional regime by normalising relations with the EU (Central African Republic). This observation is confirmed by the fact that while serious human rights violations and lack of rule of law were observed in 2004 in Côte d'Ivoire<sup>2</sup> at almost the same time as the Togo case, the former was dropped without a decision to open consultations in the Council in spite of a Commission proposal, while the latter was pursued, at the initiative of the Togo government.

*Article 96 is not used for short-term conflict prevention*

In 2004 Côte d'Ivoire became the first (and so far the only) case in which the Council rejected the Commission's proposal. The reasons were related to the rapidly changing and very serious situation in Côte d'Ivoire and the fact that the EU was involved in the UN peace process there. The uncooperative attitude of the government also eroded the usefulness of Article 96. The threat of civil war was acute and worrying for the EU not least due to the thousands of EU citizens living in the country. In such a situation it was seen that the EU had more leverage to influence the peace process in the country by maintaining as normal relations as possible.

*Intended incoherence*

It is widely recognised that there are ACP countries where, even if serious human rights violations and flawed elections have taken place, and the EU has even publicly condemned such developments, the Commission did not submit proposals to invoke Article 96. On the part of the DG Development, in particular, these were mostly cases of intended incoherence based on previous experiences on the use of punitive measures. There was no willingness to use the instrument if prospects of its usefulness were low. Instead the emphasis was on attempts to tailor the cooperation so that it could strengthen positive rather than negative development in the country in question.

2 Commission's communication to the Council from August 2004.

### *Unintended incoherence*

From the point of view of RELEX, the situation can be frustrating. If human rights and democracy are treated as horizontal themes in EU foreign policy, different treatment of violations of these principles in different countries manifests incoherence. For RELEX this is unintended and not properly monitored since the working groups in the Council that are dealing with country specific problems are geographically defined, as already mentioned, whereas the working groups for horizontal themes, like human rights, deal with general policies only.<sup>3</sup> Since Article 96 provides the EU with a mechanism to treat the ACP countries according to equal standards of EU foreign policy objectives, such incoherence can be regarded as unintended.

### *Election observation*

The fact that the EU election observation missions are administered in one unit is a measurement of coherence in this field of activity. However, if an EU election observation mission reports flaws in the electoral process in an ACP country, this does not necessarily lead to any serious reactions on the part of the EU. Furthermore, it is difficult for the EU to ensure coherence when deciding where to send observers and where not to send them. As these operations are costly and require adequate preparation in time (which is one aspect of ensuring coherence in terms of the quality of election observation), the EU does not have a special policy to send missions to all countries where observation would be useful with regard to its other policy goals. Election observation as such is conducted in a coherent manner, but its linkage to EU development policy in general and Article 96 in particular poses a challenge to coherence II.

This finding is important since all cases where Article 96 has been invoked have raised the issue of free and fair elections. In cases of *coup d'état*, holding democratic elections is a key for constitutional rule and normalisation of the relations with the EU. Without exception the other cases also centred on electoral politics (motivated by the “standard reason” of violations of democratic principles). Therefore one could have expected the EU elections observation to play a more prominent role during the period between consultations and the lifting of the appropriate measures. Yet only the elections in Guinea-Bissau (2005), Liberia (2005) and Mauritania (2006) were observed by the EU. However, the fact that these are recent cases suggests that the EU increasingly sees election observation as an instrument to normalise its relations with the consultation countries.

The case of Zimbabwe has been complicated, since the EU initially wanted to send observers there, but in the end withdrew from the process due to conditions it could not accept. Guinea, in turn, is a case where before deciding to invoke Article 96, the EU considered the possibility of election observation and sent a mission to the country to investigate the preparations of elections. In the end it was not invited to observe the

3 See for example ‘European Union Guidelines on Human Rights Dialogues’ Council of the EU - 13 December 2001, [http://ec.europa.eu/comm/external\\_relations/human\\_rights/doc/ghd12\\_01.htm](http://ec.europa.eu/comm/external_relations/human_rights/doc/ghd12_01.htm).

elections, and concluded that conditions were not conducive to free and fair elections. Election observation is, of course, meaningless if the process can be judged to be not free and fair beforehand. In this respect it requires at least some respect for democratic principles. Significantly the EU sent election observers to Haiti and Fiji in 2005 after the normalisation of relations with these countries. Furthermore, it needs to be noted that in some cases like in Guinea, the EU has used other positive measures to support the electoral process, including assistance given to domestic observers.

#### *Instrument of last resort*

In many cases one can ask why the EU did not start consultations before the *coup d'état*, when there was already information on violations of human rights and democratic principles. The Central African Republic, Guinea-Bissau and Mauritania performed poorly with regard to human rights, democracy and rule of law already before the coup. The EU can easily be accused of applying Article 96 only when a violation of the essential elements of the Cotonou Agreement is too obvious, but ignoring continuous or slowly deteriorating violations of the principles. In these cases, however, the EU had issued statements condemning the political situation and it had also kept the door open for political dialogue. This means that Article 96 has usually been considered as an instrument of last resort instead of an instrument that could be used in order to prevent major constitutional crises. It is often initiated in a reactive manner only after flagrant breaches of the essential elements have taken place. Zimbabwe is an exception in this regard, but also a case that has been particularly difficult with regard to coherence and cooperation, as will be explained below.

#### *Comprehensive approach and exit strategy*

The consultations are often conducted in a comprehensive manner, meaning that a broad range of issues related to human rights, democracy and good governance are dealt with. This results in long, and – taking into account the timeframe – sometimes unrealistic lists of issues where the ACP government concerned needs to improve its performance. Using the instrument in its proper extent can thus cause practical problems with regard to the lifting the appropriate measures. The purpose of Article 96 cannot be that it is invoked as a last resort but lifted only when all problems with regard to the human rights, democracy, rule of law and good governance have been solved. The issue is problematic, however. The spirit of Articles 9 and 96 does not support planning of an explicit exit strategy, which would note minimal but realistic requirements. It would not only be difficult to define what such minimal improvements should be, but such definitions would also open up possibilities for the ACP government in question to engage in unhealthy bargaining - in the worst case justifying certain other violations of the essential elements. What is therefore needed for the exit is a process-oriented approach that can be operationalised only on a case-by-case basis.



#### *A learning process on the side of the ACP countries*

While the EU has become more careful or hesitant in invoking Article 96 after the case of Zimbabwe, the ACP countries, too, have learned to use the instrument to their advantage. This is shown especially in the cases of Guinea-Bissau and Mauritania, whose reward has been an increase of aid in support of the democratic transition process. In other words, ACP countries have come to see the benefits of Article 96. The exception in this regard is the Republic of Guinea, where the government considered the consultations to be a sanction or at least inappropriate foreign interference in its internal affairs.

#### *Window of opportunity and the importance of partnership*

The selected appropriate measures vary and include both “carrots” like supporting free and fair electoral processes and “sticks” like suspending development aid. Consultations are increasingly seen by EU officials not as a mechanism to impose sanctions but as a “window of opportunity”, i.e. a possibility to normalise the EU’s relations with an ACP country after a difficult period with limited cooperation or unconstitutional rupture like flawed elections or *coup d’état*. This view is illustrated by the cases of Fiji, Central African Republic, Togo as well as Guinea-Bissau and Mauritania where the authorities of the ACP country concerned were cooperative. In those cases invoking Article 96 is concomitant with the principle of partnership in the Cotonou Agreement. A positive outcome has followed appropriate measures that at least to a certain extent have “empowered” the government and enabled it to present its own agenda. This has been most evident in a post *coup d’état* situation, when invoking Article 96 has been one way of giving recognition for the new government. At the same time, within the EU, it has been recognised that this is not always the case and the use of Article 96 cannot be limited to “easy” cases only.

#### *With whom to negotiate*

The EU obviously attempts to negotiate with a partner that has the most powerful position in the country. At the same time, however, it should not legitimize an interim or coup government – yet only in the case of Fiji has the EU chosen not to negotiate with the coup leaders or the interim government that was put in place by them. For ethical reasons, the EU should also not negotiate with partners that have led or participated in gross human rights violations.

#### *Assumptions on the willingness of the ACP country to change its policy*

The interviews with EU officials revealed that an important motive for invoking Article 96 with an ACP country violating the principles of the Cotonou Agreement proved to be the assumption that the consultations and appropriate measures eventually imposed will have an impact on the situation. The frustration experienced because of the case of Zimbabwe was often mentioned. It is evident that the decision to invoke Article 96 is dependent upon the EU’s perceptions of the political will of the ACP country

to respond to its concerns, although it is not possible in this evaluation to come into a definite conclusion on the extent to which these considerations have played a role in the decision-making, due to the confidential nature of this kind of discussion within the EU. On the one hand this observation means that the EU is not consistent when applying the criteria of essential elements and the fundamental element of the Cotonou Agreement. On the other hand a behaviour where “Realpolitik” is taken into consideration and where the EU consciously avoids entering into a stalemate situation with difficult partners reflects priority given to foreign policy objectives, particularly the objective of “preventive engagement” mentioned in the *EU Security Strategy*. With difficult partners it is better to look for other ways of influencing human rights, democracy, rule of law and good governance.

## 5.2 Findings on coordination

The intensity of EU relations varies in the consultation countries. For example, the number of Member States having an embassy in the country varied between one and thirteen in 2006. In most cases, however, there were only 1-3 embassies (see Table 5.2).

### *Former colonial powers*

This study confirms the findings of Hazelzet that the former colonial powers have not prevented their former colonies from being invited to consultations. Among the consultation countries, there have been former colonies of France, United Kingdom, Portugal and Germany, while Liberia has a historical link with the United States. Former

TABLE 5.2 EU Embassies in 2006 and former colonial links

<b>Country</b>	<b>Number of EU Embassies</b>	<b>Colonial links</b>
Haiti	3: France, Germany, Spain	France until 1804
Fiji	2: United Kingdom, France	United Kingdom until 1970
Côte d'Ivoire	6: France, Denmark, Belgium, Spain, Italy, Germany	France until 1960
Liberia	1: Germany	American Colonization Society until 1847
Zimbabwe	13: United Kingdom, Sweden, The Netherlands, Italy, Germany, Spain, France, Poland, Portugal, Greece, Belgium, Austria and Czech Republic	United Kingdom until 1965, majority rule since 1980
Central African Republic	1: France	France (until 1960)
Guinea-Bissau	2: France, Portugal	Portugal (until 1973-74)
Togo	2: Germany, France	Germany, then France from WWII, independence 1960
Guinea	3: France, Germany, United Kingdom	France until 1958
Mauritania	3: France, Germany, Spain	France until 1960

colonial powers, however, take an active role in the negotiations and influence the content of the appropriate measures, the timing of consultations and other actions the EU might take. The United Kingdom was active (although not alone) in pressing the Commission to propose consultations with Zimbabwe in a speedy manner. France delayed the process in the case of Guinea. Portugal, in turn, pressed for the decision to send an election observation mission to Guinea-Bissau. The relative importance of former colonial powers stems not only from their material and/or cultural interests, but also from the practical fact that they have embassies in their former colonies while most other EU Member States have not.

*Commission proposes use of Article 96 only if the Member States support it*

According to the Terms of Reference for this study (Annex 1), the decision on the application of Article 96 takes place in a “hothouse atmosphere”. This study finds, however, that despite the political sensitivity of the subject matter, the eventual decisions in the Council of the EU are made without great conflict. The explanation for this is that the Commission is hesitant to issue a proposal when Member States are divided on the appropriateness of invoking Article 96. This behaviour establishes a political role for the Commission, while in theory the Commission could also take on a purely administrative role and initiate a proposal for Article 96 whenever a breach of an essential or fundamental element is established. Such a role would, however, be untenable, since the Commission itself is an important actor in the relations with the ACP country concerned. Also, it would attract the public’s attention to the Council’s decision-making in a sensitive field. Therefore proposals are only made when the Commission has indications that there is enough support for it in the Council. As already mentioned, only in the case of Côte d’Ivoire in 2004 has a proposal by the Commission been rejected.

*The role of the Commission*

It is the responsibility of the Commission to provide adequate and balanced information to all Member States on the situation in the ACP country in question and to justify the need to invoke Article 96. While the Commission has to take into consideration the views of the former colonial powers and other Member States who are directly engaged with the country before making any proposals to the Council, it is also very important that it does not rely on a few Member States but forms an independent analysis of the situation. Furthermore, direct European relations and interests with a given ACP country do not automatically translate into softer or harder policy towards the ACP country. In the case of Zimbabwe, the EU policy has been hard in spite of the diverse European interests in the country ranging from European business or confiscated commercial farms owned by European citizens to the great number of European descendants living in the country. Côte d’Ivoire, where the European interests are comparable to those in Zimbabwe, in turn, has been treated in a softer manner.

### 5.3 Agenda for the case studies

#### *More information is needed on the coordination mechanisms*

Further research is needed in order to identify the actual mechanisms and/or frameworks the EU actors have established in order to enhance coordination and to identify the constraints they encounter in establishing such mechanisms. The previous analysis does not enable us to say anything about the coordination between Member States' bilateral policies and the EU policies in the consultancy cases. More information is needed for instance on the deviant case of Zimbabwe in order to understand the EU decision to invoke consultations with it.

#### *The importance of the local level*

As noted in the methodological discussion above, it is necessary to take into account the local level views including for example the views of the government in question, local NGOs, the EU delegation, EU embassies, other donors and neighbouring countries. As already stated, Zimbabwe, Fiji, Guinea-Bissau and the Republic of Guinea were selected for deeper research and field work.

Since the four countries differ with regard to the causes for consultations, colonial links, the intensity of their relations with the EU and the outcomes of the consultations, a detailed analysis of the consultation process in these cases enables us to make recommendations on coordination and coherence in the use of Article 96.

## 6 Case studies

### 6.1 Fiji

#### 6.1.1 Introduction

##### *Background to EU-Fiji relations*

Fiji is a former colony of the United Kingdom and achieved independence in 1970. Its relatively high level of per capita income (almost € 6,000) makes Fiji just barely eligible for aid and not dependent on development cooperation. Aid constitutes only 2.1% of Fijian GDP. European aid constitutes about half of the total Fijian aid receipts (48% in 2005). The percentage was much lower, however, at the time of the initiation of the Article 96 consultations in 2000 (16.2%). Fiji benefits from the European economy in the form of European tourism and the remittances of Fijians working in Europe. The main economic link with the EU is Fiji's sugar exports, for which Fiji has special access to the European market. The EU Member State with the closest economic relations with Fiji is the UK. It is the country's third biggest trading partner, accounting for around 13% of Fiji's external trade. The value of Fiji's exports is 44.5% of total GDP. According to the common Fijian assessment, Fiji needs the international community for its market access rather than aid. Yet some experts claim that the main problem for Fiji is not market access but poor export supply response due to the domestic obstacles to investments. Aid may well be useful for overcoming these supply constraints.

##### *Coup d'état condemned by the EU*

On 19 May 2000, one year after Parliamentary elections, a military unit augmented by a group of civilians staged a *coup d'état*, which was immediately condemned by the EU. The declared motive for the coup was the perceived threat of ethnic Indian dominance of politics in Fiji. While some members of the Fijian military, police and the main ethnic Fijian institutions were supportive of the motive behind the coup, the method was condemned by most. As a result the coup never managed to get the support of the military and thus failed to gain control of the country. Nevertheless, a combination of sympathy and opportunistic motives triggered widespread looting and anti-Indian rioting and later fuelled a mutiny within the Fijian Military Force.

### *Consultations invoked in October 2000*

On 19 October 2000, during France's EU Presidency, the EU, following a motion of the Commission and decision by the Council, invoked consultations, referring to conditions after the coup, and the essential elements of the Cotonou Agreement, namely respect for human rights, democratic institutions and the rule of law.

### *Only new projects subject to conditions*

In concluding consultations<sup>1</sup> six months later, the EU decided on 9 April 2001 to continue its planned development projects with due neutrality during the run-up to the elections, and to continue contributions to regional projects, operations of a humanitarian nature, trade cooperation and trade-related preferences, which included Fijian sugar's special access to European markets. The notification of the 9<sup>th</sup> EDF allocation and the financing and implementation of new programs and projects under the 6th, 7th and 8th EDF National Identification programs were subject to two conditions:

- free and fair elections; and
- the appointment of a legitimate government.

In addition, the EU paid particular attention to such issues as the maintenance of law and order, the election campaign, the formation of a legitimate government, and the conviction of the leaders of the *coup d'état*. In doing so, it utilized several instruments, but these did not include sending observers to the general elections of 2001.

### *Gradual normalization of relations*

The EU measures were reviewed every six months after the consultation. On 27 November 2001, after free and fair elections were held and a new government was appointed, the Council decided to gradually resume EU-Fiji cooperation. Micro projects focused on the rural population were continued and the EU also announced its willingness to consider a financial contribution to support actions that promoted human rights and democracy in Fiji as of 2002.

In spite of this, the EU was not completely satisfied with the constitutional legitimacy of the government. According to Fiji's constitution of 1997, the government is required to allocate seats in the cabinet to all parties that have reached more than 10% of the votes, yet the Indian-dominated Labour Party had not received the seats that it was entitled to in accordance to its share of the votes. According to the Fijian Supreme Court, this was a violation of the constitution. Full European cooperation was made conditional on the settlement of this issue, and was only agreed to by the EU on 11 November 2003 after the Labour party itself declared that it was not interested in the cabinet seats offered by the ruling party. The final conditions were only lifted on 6 February 2004,

1 Council Decision 2001/334/EC of 9 April 2001 concluding consultations with the Republic of the Fiji Islands under Article 96 of the ACP-EC Partnership Agreement (OJ L 120, 28.04.2001, p. 33-35).

which was late when compared to the decisions of other donors. Australia and the US had already lifted reservations in 2003, while Japan had never imposed any conditions.

### 6.1.2 Coordination

#### *An easy case*

The fact that the issue that triggered Article 96 consultations was a military-civilian coup, made the response clear-cut. Thus it was easy for European actors to act in a coordinated fashion. The analysis of the European donors present in Suva (the Commission, the UK and France) was unanimous, and neither was there any disagreement among the Member States on the initiation of the consultations in Brussels. Furthermore, the attitude of the Fijian officials and the Foreign Minister was proactive as the foundations of the development partnership were in question and there was a need to consult on how to proceed. In this respect the decision to initiate consultations on 19 October 2000 was well coordinated.

The reasons for consultations presented by the EU referred to the essential elements of the Cotonou Agreement. The taking hostage of parliamentarians and ministers, the unconstitutional replacement of the elected government, the deposing of President Ratu Sir Kamisese Mara, and the repealing of the 1997 constitution were explicitly mentioned as reasons for consultations.

The attitude of the Fijian government made donor coordination easy during the Article 96 consultations. Instead of seeing the organisation of the donor community as threatening, Fijian ministries took a proactive role to ensure that donor coordination took place within the framework of Fijian development plans. Fijian national development planning and the specific strategies of different ministries offered a structure for coordinated donor planning. While the general framework of cooperation was based on bilateral country consultations with the Foreign Ministry, and while the practical financial issues were also dealt with on a bilateral basis with the Development Cooperation Unit of the Ministry of Finance and Planning, other ministries already had their own institutional settings and regular donor coordination meetings. This was particularly the case with the Ministry of Education.

#### *The EU's decision-making was slower than that of the British Commonwealth's*

In spite of this inclination towards coordination, the rigidity of the European planning framework occasionally made coordination between development partners difficult. This general problem was illustrated by the fact that one of the donor officials interviewed in Fiji believed that even minor decisions related to the implementation of EU aid required the consensual acceptance of all EU Member States. Furthermore, the UK was also involved in another organisation – the British Commonwealth – and as a member of that group, it was not prepared to wait for a coordinated European effort.

The British Commonwealth felt it needed to act before the UK was able to fully coordinate its efforts with the rest of Europe. The fact that the EU did not react as quickly as the Commonwealth could be seen as a problem of European coordination on the level of actions. In the end, however, the UK's approach within the context of the Commonwealth did not constitute a serious coordination problem within the EU: the Commonwealth simply decided to act earlier than the EU, at a stage when the issue of hostages was high on the agenda. The slowness of the EU reaction stemming from the overall rigidity of the EU decision-making system, made Europe a follower of the Commonwealth and donor coordination rather than being a proactive agent and a leader of coordinated donor policies.

#### *The gravity point of coordination was in Brussels*

The gravity point of the coordination between Member States and the Commission was located in Brussels, while the embassies in Suva were informed about the results of coordination meetings in Brussels. All consultation processes proceed through the same processes, from the Commission's initiative (DG Development had taken the lead) through negotiation between the Commission and the Member States, to decisions in the Council. The lack of strong political and economic interests made it possible for the Commission to follow the process thoroughly.<sup>2</sup>

#### *No disagreements*

The decisions concerning the invocation of Article 96 consultations, on appropriate measures and on the conditions for resuming full cooperation were made without significant disagreement between the EU institutions and Member States. Decisions were prepared in the Commission in collaboration with the Council, and were not challenged at any stage in the decision-making process. Decisions in Brussels were assisted by analyses and briefings that reflected the consensus of the three European actors in Suva (the UK, France and the Commission Delegation). None of the Member States, not even the UK (the former colonial master and the EU Member State with the closest economic ties) or France (the Member State holding the EU Presidency) took any distinctive role in the preparation of decisions on appropriate measures, monitoring, or the lifting of the sanctions.

#### *The UK had a leading role*

The UK was mentioned in several interviews as the most active of the Member States in the decision-making process. This did not, however, hamper the coordination as throughout the process there was never any need for any of the Member States to deviate from collectively agreed policies. As discussed, as a Commonwealth country, the

2 Due to the highly classified nature of dialogue between Member States on consultation issues, it is not possible to describe the details of the coordination process in Brussels. Also the fact that the process started six years ago limits the details available for this study. The perspective of EU donors in Fiji is, however, easier to reconstruct.



UK acted more quickly than the rest of the European donor agencies. The urgency of the issue for Australia and New Zealand called for faster action than was possible in the framework of EU decision-making. Yet the UK's actions were never in conflict with that of other EU donors and thus coordination on the level of actions was relatively good. On the level of information sharing and coordination of decision-making, extensive measures were not needed to ensure that the actions of European donors were well coordinated and were consistent on a policy level.

*Frequent meetings and contacts, but no specific measures*

In Suva, European donors met regularly, often at the embassy representing the EU Presidency. These meetings took place at least once a month, often in conjunction with the more general donor coordination meetings in different sectors (especially education) in the relevant Fijian ministry. When the situation demanded, however, European embassies and the delegation met almost every day. The Commission's role in issues of EU coordination was central and this was reinforced by the small size of individual member countries' development allocation. Due to the small size of the country, and the small number of European development cooperation officials in Fiji, European donor coordination was not highly institutionalized. Instead, it relied on direct personal contacts among a handful of people.

The size of the country also meant that the community of officials dealing with issues related to Fiji was small. Furthermore, diplomatic communication between Europe and Fiji was not very intensive because Fiji has a relatively low level of economic and other interaction with other nations. As already stated among the EU Member States, only the UK and France had high-level diplomatic representation (Embassy/High Commission) in the capital Suva. Both countries had only a few people assigned to development cooperation-related activities in Fiji, and these personnel covered six other Pacific island nations in addition to Fiji. The European Commission also had a delegation in Suva, covering ten other Pacific countries, four Overseas Countries and Territories (OCTs), and regional programmes. The Pacific Islands Forum, the Asian Development Bank and many other multilateral agencies are becoming increasingly significant fora for coordination and communication on aid-related issues. Thus, even in Fiji, the sharing of information and coordination of decisions did not require specific measures to bring together a large number of actors and was not intense in that respect. Yet European policies were well coordinated.

The trend of Member States distributing their aid through multilateral organisations in Fiji further reduced the challenges related to intra-European coordination. Less independent individual decision-making by Member States has made coordination easier. While the coordination of Member States and the EC did not need to take a highly institutionalized form during the Article 96 consultations, institutional instruments for

donor coordination (including non-European donors) existed in the multilateral fora, especially the Pacific Islands Forum.

### 6.1.3 Coherence

#### *The relation between development and foreign policy objectives*

The key issue of coherence was to bring the objectives and consequences of development cooperation with Fiji into coherence with the European political (CFSP) objectives to support democracy, good governance, and human rights after the coup by using the instruments offered by Article 96 of the Cotonou Agreement. Commercially Fiji's trade, especially in sugar and fishery products, is of interest to Europe, while development objectives include environmentally sustainable development and the eradication of poverty. Constitutional interruptions have always meant instability and economic disruption in Fiji, which is why Europe's political objectives of democratic development and good governance are well in line with development goals, at least in the long run. Conditions imposed in the Article 96 consultation process have, however, harmed the shorter term development objectives in the country, as the resumption of development cooperation was delayed pending progress towards the normalisation of governance.

#### *The appropriate measures contributed to coherence in the long run*

Unlike in some other cases, in Fiji, the short term sacrifices in development cooperation caused by the appropriate measures resulted in the improvement of governance and thus stimulated the Fijian economy and its trade with Europe and other countries. Thus in the long run consultation process contributed to the coherence of Europe's political, economic and development objectives in Fiji. After the 2006 election (observed by the EU) Fiji formed its first ever multiparty government and introduced new policies to focus attention on the frustrations of the poor rather than just the ethnic Fijians. If the government manages to tackle the pressures from the military (and if it gets explicit support from the EU and others), Fiji might be heading into a new political era with more stable constitutional development, a more stable environment for economic development, an increase in trade, and the reduction of poverty. In this sense, one might be tempted to say that the European efforts to encourage democratisation and better governance in Fiji have been successful, and that the political objective of encouraging better governance has been able to be harmonised with the objectives of development and increased trade.<sup>3</sup>

3 Unfortunately, a simple analysis of the processes of consultation cannot demonstrate the causal link between European measures and development as measured by macroeconomic indicators and governance. Even if it is not possible to track this contribution, however, it is possible to claim that European political and development cooperation efforts have been part of a process that has led to the fulfillment of both political and development cooperation objectives.

*The criteria for invoking Article 96 were present*

The criteria for invoking Article 96 consultations were clearly present in Fiji in 2000: in the midst of confusion and a legitimacy vacuum, governance deteriorated drastically, there was no rule of law, and democracy and respect for human rights were replaced by the rule of the gun. The incontestable presence of these factors obviously facilitated the achievement of coherent European policies: there was no hesitation in the minds of any of the European donors, Article 96 of the Cotonou Agreement was meant for this kind of cases, and efforts to bring political and development objectives back into a coherent package were needed.

*The selection of the parties to communicate with*

The confusion within the Fijian governance system complicated the modalities of consultations. On 4 August 2000 the EU requested consultations with the interim government<sup>4</sup> and their preparations were facilitated by the Foreign Minister of the interim government, Kaliopate Tavola, who had been Fiji's ambassador to the European Community and enjoyed the trust of the EU. The interim government's President Iloilo was the point of communication, and on 19 October in the actual consultation, it was again the Foreign Minister Tavola of the interim government who represented Fiji. The interim government was declared illegal in November by Fiji's High Court of Justice, yet the EU continued to communicate with President Iloilo, who had been unconstitutionally appointed by the Great Council of Chiefs, a colonially initiated tribal liaison group of Fijian chiefs which has since assumed greater constitutional authority.

The selection of the parties to communicate with in Article 96 consultations was an important political decision, since requesting consultations with the "government" constituted a *de facto* recognition of that body as Fiji's representative. The EU's policy line could nevertheless be challenged on grounds that it was not optimal for the promotion of constitutional democracy and conflicted with declared European political principles. Insisting on dealing only with the legitimate elected government, which had been released by the hostage coup-makers, could have shown the domestic actors the hopelessness of their attempt to take power by force.

In this issue there was never any disagreement between the UK and the rest of the EU donors. The Commonwealth stance was the same as that adopted by the EU in the later phase: one has to state clearly that negotiations do not constitute *de jure* recognition, but at the same time each issue has to be negotiated with those who constitute the real power-base, legitimate or illegitimate.

4 COM (2000) 460 final.

*The demand for new elections deviated from the principle of rule of law*

The decision regarding conditions also had to find a balance between the case-specific political realities and coherence with support for rule of law. The European decision to ask for the democratic expression of Fijian citizens and to tie the continuation of aid to the formation of a legal constitutional government did not, despite good intentions, optimize European input to the strengthening of the legal protection of democratic expression. The rejection of the constitutional, democratic expression of popular will in the results of the 1999 elections and pressure to arrange new elections in 2001, did not send the same signal as international insistence on constitutional processes would have done.

#### 6.1.4 Conclusions

The Fijian case can be used as a control case in the analysis of how coordination and coherence work when the EU Member States do not have strong and divergent individual political or economic interests in the country in question. A careful analysis of the individual choices made in the process of consultations shows that a coherent line was followed and that policies were coordinated among the Member States and the Commission.

The main contributors to the avoidance of major problems of coherence and coordination in Fiji were:

1. The trigger for initiating Article 96 consultations was not open to interpretation. It was therefore easy to strive for coherence between development cooperation and the political objectives of the CFSP with regard to the promotion of democracy and good governance. Furthermore, since the case was so clearly one that was regulated by Article 96, it was not possible for any EU actor to challenge the common line or donor coordination.
2. Fiji did not attempt to divide the donors or offer alternative interpretations of the situation, thus coordination between European donors was easy.
3. Leadership of the Commission meant that European actors were supplied with sufficient common background information to reach common decisions. It was therefore easy for the actors to act in coherence with CSFP, and to coordinate policies.
4. There was good cooperation in Suva between the Commission and the two Member States with embassies there, France and the UK.
5. There were shared perspectives and a common professional culture amongst European and Fijian diplomats.
6. No Member State had strong national interests related to the consultations issues. The modest economic interests meant that the EU did not have problems adhering to a coherent set of policies.
7. There were not strong conflicting and partial interests between the EU and other key donors. European and non-European donors shared an interest in stability in

Fiji. This contributed to the long term coherence of development and political interests which had a significant impact.

On balance there were two issues where the EU decisions were not perfectly coordinated or coherent:

1. Even though the EU did not have a strong need to follow another donor group, due to the slowness of decision-making, it was not able to act as quickly as the Commonwealth did. As a consequence the UK acted within the Commonwealth framework before the EU adopted the very same approach.
2. The EU was pragmatic in its choice to negotiate with the interim government instead of the legitimate government that was appointed after the last elections. It was also pragmatic in its demand and support for new elections. These facts can be interpreted as examples of intended incoherence. These decisions did not impose problems for the credibility of the EU approach with regard to its foreign policy goals.

## 6.2 Zimbabwe

### 6.2.1 Introduction

#### *Background to EU-Zimbabwe relations*

Zimbabwe was colonised under the British Empire and unilaterally declared independence as Rhodesia under minority rule in 1965. Majority rule and “real independence” were established only in 1980 after a violent liberation war. Soon after, Zimbabwe became a signatory of the Lomé Convention. The impact of preferential market access has been positive and the country has benefited from the STABEX fund for supporting export earnings. Zimbabwe enjoys a trade surplus. In 2001, trade between the EU and Zimbabwe accounted for 35% of Zimbabwe’s exports and 18% of its imports. Due to its economic recession, Zimbabwe’s trade with the EU has declined during 2004 and 2005. Aid from the EU and Member States constitutes the biggest share of Zimbabwe’s total aid receipts. The donors’ agenda is focused on humanitarian aid, social sector, democracy, human rights and good governance.

#### *Gradually deteriorating situation*

Zimbabwe’s development achievements and racial reconciliation during the first decade of independence were internationally celebrated. However, economic problems started to build in the early 1990s and Zimbabwe’s reputation deteriorated. Amidst increasing discontent, a new opposition party, the Movement for Democratic Change (MDC) emerged, centred on labour union and civic groups and openly supported by some white Zimbabweans. Facing the state machinery on the side of the ruling party the MDC has not been able to turn its popularity into an electoral victory.

### *The EU expressed open criticism*

Before the 2000 referendum on a new constitution, political relations between Zimbabwe and the EU were cordial. After the majority of voters rejected the government proposal for a new constitution, the government started a campaign of forceful acquisition of the properties of white farmers. The EU expressed criticism and called the government to hold free and fair elections in May 2000.<sup>5</sup> The EU pressed the Zimbabwean government to accept international observers, however even before the EU Election Observation Mission (led by former Swedish minister Pierre Schori) entered the country, the EU had criticised the campaign period as not enabling a free and fair election. ZANU(PF) won the elections and intimidation of the opposition continued ahead of the 2002 Presidential elections – and so did the criticism of the EU. Since that time, Zimbabwe has been on the agenda of the Africa Working Group, the General Affairs and External Relations Council and the European Parliament, including the ACP-EU Joint Parliamentary Assembly. There have been several critical CFSP statements on the situation in Zimbabwe.

### *Quick decision to invoke Article 96*

Zimbabwe was invited to Article 96 consultations in 2001. In 2002 the Council of the EU decided on appropriate measures, commonly known as “smart sanctions”. These measures are still applicable.

## 6.2.2 Coordination

### *Intensive coordination*

Coordination was intensive from the beginning and facilitated by the fact that most EU Member States had missions in Zimbabwe: the United Kingdom, Sweden, the Netherlands, Italy, Germany, Spain, France, Poland, Czech Republic, Portugal, Greece, Austria and Belgium.<sup>6</sup> The EU Delegation and Member States’ embassies in Harare started discussing the possibility of a dialogue under Article 8 in September 2000, with some Member States advocating a direct move to Article 96. The Commission provided the proposals for consensus and in February 2001 a request was made to the government of Zimbabwe to start an Article 8 political dialogue. Commissioner Poul Nielson and President Mugabe decided in Brussels in March to conduct such a dialogue. According to the Africa Working Group this would have been led by the Heads of Mission in Harare.<sup>7</sup> It took several weeks and meetings before it was possible to agree on the agenda for Article 8 dialogue. The EU interpreted the Zimbabwean behaviour as a sign of unwillingness to proceed and as a consequence the Council requested that the Commission take the initiative of invoking Article 96 in October 2001. According to the

5 <http://europa.eu/bulletin/en/20004/p106073.htm#ancho248>

6 Belgium closed its embassy in September 2006.

7 Mackie, J. and T. Lehtinen, ‘Implementing the Political Dimensions of the Cotonou Agreement: EU Political dialogue and consultations with Zimbabwe, in *Mimeo*, 6 January 2003.

Commission it was “hardly realistic to expect an early reversal of present policies” in Zimbabwe.<sup>8</sup>

#### *Different views*

Member States took an active role in determining the critical approach of the EU. The UK, the Nordic countries, the Netherlands and Germany took a “hard line”. Sweden, which held the EU Presidency in the first half of 2001 was particularly important.<sup>9</sup> France, Belgium and Spain were more moderate. France in particular opposed invoking Article 96, however in line with its agreement with the UK in Saint Malo in 1998, which stipulated that both countries should respect each other’s Africa policy, it left the EU-Zimbabwe policy largely to the British.

#### *The role of the UK*

While the UK had a larger concentration of interests in Zimbabwe than any other EU Member State, its approach did not stem from those interests but rather from principles and values of the Cotonou Agreement. The British business in the country, for instance, has not benefited from the “smart sanction”. Zimbabwean perceptions of the role of its old colonial master carry with them the discourse on the injustices of the colonial past – something that neither the EU nor the British government has been prepared to discuss. The EU was not alone in its criticism of the government of Zimbabwe. An important reference group in this regard was the Commonwealth, which suspended Zimbabwe in 2001. The US, in turn, passed a specific piece of legislation, the “Zimbabwe Democracy and Economic Recovery Act” in 2001, which included calls for sanctions targeting those responsible for political violence in the country, and instructed US directors on the boards of the World Bank and IMF to vote against any lending to Zimbabwe, except on humanitarian grounds.

#### *Embassy and local level knowledge was not emphasised*

The point of gravity of decision making was in Brussels, with the embassies in Harare merely informed about the results of meetings in Brussels. Even though the feedback and analysis provided by the embassies was important, many representatives of the embassies argued that their ability to influence the decisions was limited and that there was some difference in opinions. In the case of some Member States, like Sweden, the capital was said to take harder or more rigid positions than the embassy. Personalities are important at the local level: a new head of delegation can have a different approach than his or her predecessor.

8 *Communication From the Commission on the opening of consultations with Zimbabwe pursuant to Article 96 of the Cotonou Agreement*, 26.10.2001, COM(2001) 623 final.

9 Denmark closed its embassy in Harare, although in that case a change of government in Denmark probably also played a part, and cynics could conclude that the worsening situation in Zimbabwe provided a convenient excuse for the new Danish government to scale down its commitments in Africa. Finland, too, closed its embassy in Harare, although it was never represented there at the ambassadorial level and was not an important donor.

### *Coordination in Harare*

EU Member States and the EC delegation have coordinated their positions through Heads of Missions (HOMs) meetings. The UK, for example, organized regular meetings during its Presidency. A group of like-minded countries regularly communicates to form a common view. Direct informal contacts are important and extend to non-EU states as well, including the United States, Canada and Australia. Such cooperation excludes some Member States: most importantly France, which today is one of the largest creditors to Zimbabwe. Zimbabwe, however, is not a priority for France, which does not have important economic interests there. Yet, France wants to have better bilateral relations with Zimbabwe than the EU has. This is not well understood by the other Member States and appears as poor coordination. The situation is further complicated by the fact that the cooperation between France and the Commission is good in Harare. Some Member States criticise the current Commission delegation (which tries to enhance dialogue with the government) for being too lenient and overlooking the common view of the Member States. Under the previous Head of the Commission Delegation, the Commission's approach was more centred on human rights.

### *Aid is well coordinated*

As far as humanitarian relief programs are concerned, there is good coordination among EU and Member States' donor agencies, as well as other donors, even at the operational level. Representatives of civil society note that the support given to NGOs for coordination is effective: project proposals are shared, preventing duplication of support. There is also a common fund for NGO support.

### *Cooperation has not resolved divisions*

Cooperation is good to the extent that the EU actors are making their positions known to each other. They have also been able to make decisions together. The problem is that in spite of being officially behind the common EU policy, the Member States' opinions differ, and this has become clearer as the Zimbabwean crisis deepens. It has not been possible to come together and decide on a new policy that would be wholeheartedly implemented by all Member States in their bilateral relations. According to some EU commentators, the Member States are free to be strict or lenient in their interpretation of the common decisions. As a result there is a Council position, which is very close to the UK position, a French position which is very different, a Commission position which is somewhere in between, and a critical position held by several Member States that simply are not comfortable with the current situation.

### *Zimbabwean commentary highlights divisions within the EU*

The government of Zimbabwe can claim that it has allies within the EU. The government-owned media have exploited opportunities to show that there are dissident voices in the EU: for example, the new Swedish ambassador was quoted as saying that smart sanctions have hit the poor, although he later rejected this. An MEP was also quoted as



saying that land reform was the real issue behind the sanctions. While some representatives of civil society (the labour unions, parts of the church and human rights groups) and the opposition see the EU focus as firmly based on the Cotonou Agreement, the view of some other representatives of Zimbabwean civil society (including the private sector) is that it was primarily the acquisition of farms that irritated the UK, and that in spite of being comprised of Member States with different views, the EU adopted the UK position.

#### *The EU failed to get the support of SADC*

The EU has attempted to coordinate its policies also with the Southern African Development Community (SADC). According to some representatives of EU Member States, this was a mistake. The SADC policy of non-interference has not allowed its Member States to openly interfere with Zimbabwe's internal dispute, and for SADC the priority has been to avoid Zimbabwe's isolation. Many in Africa view Mugabe as a hero, and in addition to this, as the eldest incumbent President and a liberation war leader he is not somebody who could easily be advised by other African leaders.

### 6.2.3 Coherence

#### *Foreign policy objectives were coherent with development policy objectives*

According to the EU, Zimbabwe did not live up to "its previously good reputation regarding the essential elements". For the dialogue under Article 8, the EU General Affairs Council noted the following aims:

1. An end to political violence, and in particular an end to all official encouragement or acceptance of such violence;
2. An invitation to the EU to support and observe coming elections and full access to that end;
3. Concrete action to protect the freedom of mass media; and
4. Independence of the judiciary and respect for its decisions and an end to illegal occupation of properties.

The objective of the Member States to have a positive impact on the conduct of the presidential elections can be regarded as a foreign policy objective rather than an objective related to the day-to-day development cooperation activities, although it was not contradictory to the objectives of development policy. The EU and Member States had supported human rights, elections and media as part of their development cooperation with Zimbabwe for a long time. In this regard the EU approach was coherent.

#### *Coherent implementation was difficult*

The uncooperative attitude of the Zimbabwean government made it difficult for the EU to apply the principle of coherence in its interaction with the government of Zimbabwe. The fact that the EU decided to commence the Article 96 process even though

no effective dialogue had taken place under Article 8 points toward incoherence in the EU approach, since the aim of the EU had been to proceed to Article 96 only if dialogue 8 did not solve the problem. The explanation for the haste was the forthcoming elections. In other words, foreign policy goals were safeguarded and considered more important than the partnership principle in the Cotonou Agreement.

For the EU there were only difficult choices available: to continue with the delayed and probably unproductive Article 8 dialogue beyond the important pre-elections period, or to launch Article 96 consultations straight away. The Zimbabwean government argued that the real EU agenda was a regime change in Zimbabwe, dictated by the UK, which already placed conditions on its bilateral aid to Zimbabwe. To Zimbabwe, the EU move was unilateral and a poor example of the spirit of partnership. This feeling was exacerbated by the EU attending the first consultation meeting with a lower level delegation than that of Zimbabwe.

#### *Comprehensive approach*

There were several issues where the EU wanted to see improvement. While a comprehensive approach was coherent with EU development policy, it turned into ambiguity when used in applying conditions to aid and cooperation, not least since some of the issues had been tolerated in the past, and Zimbabwean performance on other issues had actually improved when compared with previous years.<sup>10</sup> From a foreign policy perspective, however, leaving some important issues out of the consultations would have signalled that the EU was not concerned on them and incoherent in that respect.

#### *Consultations did not bring results*

In response to the concerns of the EU, Zimbabwe referred to the partnership principle in the Cotonou Agreement, the need for a deeper EU appreciation of Zimbabwe's problems with land reform, and the urgent need to restore UK-Zimbabwe collaboration on the land reform program. The EU sought access for observers and the media to the elections in addition to a government plan on "its actions on all points covered by the discussion" in readiness for an EU review of the situation at the General Affairs Council on 28 January 2002. Zimbabwe sent the requested letter on 18 January. In response, the EU noted that "essential elements" were not respected, and announced its intention to impose sanctions if:

1. Zimbabwe prevented the deployment of an EU observation mission, prevented this mission from operating, or prevented the international media from having free access to cover the election;
2. there were a deterioration of the human rights situation or attacks on the opposition; or
3. the election was assessed as not being free and fair.

<sup>10</sup> According to the Polity data that was used for statistical analysis in this study, the human rights situation and freedom of participation were slightly better in 2002 than in 2001.

After Zimbabwe invited foreign observers, Pierre Schori's EU observer team arrived in early February. The Zimbabweans then indicated that certain EU nationalities would not be acceptable, and as a result, Schori had to leave Zimbabwe only a week after his arrival, just before the General Affairs Council meeting of 18 February 2002. The Commission and the Council secretariat were already preparing the papers for the passing of sanctions against Zimbabwe.<sup>11</sup> This again points to incoherence as the EU was not waiting for Zimbabwe's response, even though the aim of the consultations had been to try to solve the problem. The General Affairs Council meeting resulted in an agreement to conclude the consultations and to adopt appropriate measures, since the human rights situation, electoral policy and rule of law in the country had not improved.<sup>12</sup>

According to Zimbabwe there was a dispute between Zimbabwe and the EU and it therefore wanted to invoke Article 98 of the Cotonou Agreement, which allows disputes between parties to be submitted to the Joint Council of Ministers for settlement.

#### *"Smart sanctions" led to accusations of double standards*

When the EU imposed so-called smart sanctions, many Zimbabwean observers accused the EU of double standards. Some EU Member States also saw grounds for such accusations, since there were worse cases which had not even led to discussions on Article 96. The General Affairs Council's decision to impose smart sanctions on the high officials of the Zimbabwean Government (who were believed to be in a position to influence government decisions) was a unilateral CFSP measure. The sanctions consisted of travel restrictions and freezing the assets of "Cabinet Ministers, Politburo Secretaries, Deputy Ministers, Assistant Secretaries of the Politburo and the spouse of President Mugabe".<sup>13</sup> The EU also forbade the sale of arms to Zimbabwe, and the 9<sup>th</sup> EDF for the period 2002-2007 was not signed. Every year since 2002, the EU has decided to maintain the appropriate measures, with minor changes such as adding individuals to the travel ban list, which now totals 127 people.

#### *Redirection of aid*

Aid has been directed towards social sectors and cooperation with civil society. Relief aid has continued. In some respects, direct support to the people has exacerbated the difficult relations between the EU and the government, because the EU is viewed as seeking to influence the constituency of a government without involving it. In turn, the Zimbabwean government has sought to gain mileage from humanitarian support by channelling it through its own structures so that it would be viewed as government support to the people. This has irritated the EU.

11 *Commission Proposal for a Council Regulation*, 11.02.2002, COM(2002) 88 final.

12 *Council Decision 2002/148/EC* of 18 February 2002 concluding consultations with Zimbabwe under Article 96 of the ACP-EC Partnership Agreement (OJ L 50, 21.02.2002, p. 64-65).

13 EU Council press statement 10945/02.

### *Cooperation with the government is contested*

According to Zimbabwe, relations between the Ministry of Health and the EU have improved since the imposition of sanctions. Before the sanctions, only small amounts of money trickled into the Ministry of Health. At the moment, the support is offered directly to service providers. The National Pharmaceutical Company (NATPHAM) is working with the EU on a strategy for bringing drugs to the people. The Commission delegation's view is that when a policy (like health or education) is good, it is appropriate for the EU to support the government ministries implementing that policy. Some Member States argue that aid should never be distributed in cooperation with the ministries, since transparency in the government remains low.

### *Implementation of sanctions is not easy*

Smart sanctions have made it difficult to conduct dialogue with Zimbabwe. Dialogue between the EU and Africa has also been harmed by the EU-Zimbabwe dispute. Such consequences are not coherent with the EU's aim of deepening its dialogue with Africa. Both Africans and Europeans agree that the Zimbabwe issue has brought unnecessary tension to their relations. The EU has tried to solve practical problems on a case-by-case basis. For instance, it agreed to move one EU-SADC meeting scheduled for Copenhagen to Maputo because of the travel ban. France, in turn, invited Mugabe to an Africa Summit in Paris, because it did not want to damage its relations with Africa over the Zimbabwe issue. On the other hand, a decision by the European Parliament not to allow two Zimbabwean ministers to access their buildings resulted in the last minute cancellation of the 4<sup>th</sup> Session of the ACP-EU Joint Parliamentary Assembly in 2002.<sup>14</sup>

### *Different opinions on the effects of the appropriate measures*

The government of Zimbabwe communicates to the public that in its view the country is under illegal sanctions, because they are not endorsed by the United Nations. The common perception amongst Zimbabweans is that aid has decreased as a result of these sanctions. Although the Zimbabwean government recognizes that the EU and its Member States are investing in the social sector, it does not praise the EU for excluding humanitarian aid, aid benefiting the people and economic relations from the appropriate measures. The government's view is that the measures are negatively affecting the economy, and the UK in particular bears the brunt of this. The smart sanctions have also divided the Zimbabwean civil society, including the churches and the opposition, with some believing that sanctions should be extended if they are to be really effective, while others believe that they are making things worse. Some members of Zimbabwean civil society argue that there is need for the education of the citizens so that they know that the economic problems are not due to smart sanctions.

14 Mackie and Lehtinen, op. cit.

### *Different views of dialogue*

Nothing has formally prevented an Article 8 political dialogue from proceeding, however little dialogue has occurred between the Member States and Zimbabwe. Formal contacts have been at the minimum level. Some of the ambassadors of the EU Member States are trying to promote dialogue with government ministers, but to many Europeans the current discourse of ZANU(PF) is anti-Western, which makes dialogue difficult. The views of the Member States differ to the extent that some Member States argue that any Article 8 discussion needs to be initiated by Member States and such discussions have not been conducted, while other Member States are of the opinion that there has been such dialogue. The Commission regards all of its interaction with the Zimbabwean government as dialogue referred to in Article 8, and has conducted preparatory discussion for the 10<sup>th</sup> EDF in order to enhance political dialogue. Commissioner Louis Michel, for example, met with Zimbabwe's Ministers in Gaborone and again in Brussels in 2006 (during the ACP Ministers of Finance meeting).<sup>15</sup>

### *Exit strategy and the question of EU credibility*

The appropriate measures have been maintained much longer than was initially hoped for and predicted by the Member States. As the basis for an exit strategy, in 2003 the EU set out benchmarks, according to which any positive moves on the side of the government of Zimbabwe could be assessed. The benchmarks are consistent with the initial concerns of the EU and are comprehensive. Although this is an internal EU decision, the benchmarks have been communicated to the Zimbabwean government. The Member States discussed the feasibility of the benchmarks in June 2006 and it appears that for the Northern "hard liners" the question is one of principle and the EU has not been able to soften its approach in fear of losing its credibility. The issue of the EU's credibility brings a further dimension to policy coherence.

### *Dynamic incoherence*

Within the EU there were two different analyses of the usefulness of Article 8 and later Article 96: one that did not expect reversals and another that hoped for such reversals. In the end foreign policy considerations were weighted as more important than development co-operation, even though the aim was to safeguard the latter by focusing appropriate measures on those who are held responsible for the problems of Zimbabwe. At best the outcome has been a package of dynamic incoherence, which the EU hoped would help to achieve development policy objectives in the long term, in spite of their short term frustration.

<sup>15</sup> The latter meeting drew attention from Member States and some MEPs (and subsequently Zimbabweans) as the Commission wanted to extend the stay of the Zimbabwean Minister in Brussels by one day, in order to meet more convenient flight connections, but was not allowed to do so.

## 6.2.4 Conclusions

The fact that several EU Member States have significant connections with Zimbabwe has made coordination intensive at the level of information sharing, but coordination has been poor at the level of implementing joint decisions, due to differences of opinion. The overall experience of the use of Article 96 in Zimbabwe has been negative in the sense that various stakeholders are frustrated. There are, however, developments which indicate attempts to redirect the appropriate measures to more positive ones. The preparatory discussion for the 10<sup>th</sup> EDF is a case in point.

In summary one could say that current weaknesses in the coherence of EU policy in Zimbabwe relate to the following:

1. The short-sighted desire to have a positive impact on a forthcoming election;
2. The antagonistic attitude of the government towards the donor countries;
3. The EU Member States holding different opinions about the seriousness of the situation and how to improve it;
4. The fear that the EU would lose credibility if it changed its policy;
5. The EU's inability to form alliances with Zimbabwe's neighbouring countries; and
6. Zimbabwe having become a problem in the EU-Africa relations.

Coordination can be regarded as successful in other respects, namely:

1. Communication between the Council, the Member States and the Commission has been good;
2. There has been willingness on the part of the EU to provide humanitarian assistance to Zimbabwe and support for the people of Zimbabwe;
3. There is good cooperation in Zimbabwe as far as aid programmes are concerned;
4. Some parts of the government are cooperative and promote policies that the EU can support; and
5. There are fresh initiatives to use the discussion of the 10<sup>th</sup> EDF as an entry point for political dialogue and to translate the benchmarks into positive measures.

## 6.3 Guinea-Bissau

### 6.3.1 Introduction

#### *Background to EU-Guinea-Bissau relations*

Guinea-Bissau is one of the poorest countries in the world and is still recovering from the civil war of 1998-99. It was a former Portuguese colony until 1973. Two European countries have embassies in Bissau, namely Portugal and France. The EU and its Member States constitute the most important sources of ODA to Guinea-Bissau. The EU,

Portugal and France (earlier also Sweden and the Netherlands) provide about half of all aid. If the European multilateral support channelled through the African Development Bank Group (African Development Foundation) is taken into consideration, the share of the EU is even higher.

Portugal is the main European partner in the country. In 1996 Portugal initiated the founding of the Community of Lusophone Countries (CPLP), of which Guinea-Bissau became a member. France also has become significant, reflecting its historical ties in West Africa. Guinea-Bissau joined the International Organisation of the Francophonie in 1979, and in 1997 it became a member of the West African Monetary Union with its currency FCFA, which was then backed by the Central Bank of France and now the ECB. The currency is now tied to the Euro. French enterprises have entered into the economy of Guinea-Bissau mostly from Senegal. The civil war of 1998-99 had important regional implications (with both Senegalese and Guinean troops entering the territory of Guinea-Bissau), and Portugal and France found themselves supporting, more or less openly, different sides of the conflict. There was, however, no division between France and Portugal hampering the coordination of EU policy with regard to the handling of the consultations under Article 96 after the coup of September 2003.

#### *The EU expressed its concern in June 2003 due to instability*

After the civil war ended in 1999, elections were held in 2000, and Kumba Yala was elected President. Very soon, however, discontent arose because of the economic crisis in the country as the government had moved part of the economy's central functions from Senegalese hands into the hands of Guinea-Bissau nationals. Tax revenues fell and government was plagued by clientelism and suffered from high instability: in three years there were four Premiers and fifty ministers. In 2002, Yala unilaterally dismissed the parliament and refused to organise legislative elections. There were strikes almost on a monthly basis and public sector salaries were not paid for one year. There had been small, failed coup attempts in 2001 and 2002, and by 2003 there were persons ready to turn to violence against Yala and his regime. The EU expressed its concern in June 2003 regarding the growing instability in the economic, social and political fields,<sup>16</sup> the weakening of the rule of law, the disappearance of separation of state powers, violations against freedom of expression and poor budgetary governance.

#### *Condemnation of the coup d'état in September 2003*

On 14 September 2003 there was a coup that successfully overthrew Yala. The coup was bloodless and among the organised forces of the society and the international community there was a general agreement on two issues: first, that a military seizure of power was intolerable, and second, that nobody was particularly unhappy about Yala being deposed.

16 OJ 6-2003; point 1.6.26.

After 14 September it took four days for the EU to react. The declaration by the EU Presidency of 18 September 2003<sup>17</sup> condemned a *coup d'état*, whereas the UN Security Council had opted for condemning “the assumption of power by unconstitutional means”.<sup>18</sup> The four day delay was due to the fact that Kumba Yala did not originally want to give up power and it took exactly those four days to negotiate his resignation (until 18 September 2003), by which time it was clear that there had been an effective unconstitutional assumption of power. The EU took note of the military committee’s intention to re-establish constitutional order and a civilian regime, and committed its support together with other international actors (mainly the UN and the CPLP) for a swift turn to normality, the organisation of elections and national reconciliation. It should not be forgotten, however, that these conditions had been negotiated with the military committee by the organised forces of the society, led by the Catholic Bishop of Bissau, resulting in a Transition Charter and the appointment of an interim parliament (the National Transition Council) and a Transition Government that later prepared a detailed transition roadmap.

### 6.3.2 Coordination

#### *Successful coordination at all levels*

The case of Guinea-Bissau is an example of good coordination on all three levels: information sharing (including a shared analysis of the situation), joint decisions and implementation of the decisions. The background to this was the civil war of 1998-99, an experience that nobody inside or outside the country wanted to be repeated.

At the national level, when the self-proclaimed military government summoned the organised forces of the society to a meeting in Bissau on the morning following the coup, political parties, civil society organisations, the private sector and all religious communities acted together and advocated a rapid return to democracy, while the military committee did not want to give up power immediately. These same actors negotiated a Transition Charter, signed by all concerned parties. The Transition Committee had sent a delegation to Dakar, Senegal, asking for help from President Wade who sent an ECOWAS delegation to Bissau. The delegation arrived on 18 September, the day Yala resigned and the EU announced its declaration condemning the *coup d'état*.

#### *Regular meetings in Bissau and coordination with the Transition Government*

The Heads of Mission of the EU and the Member States in Bissau met on a fortnightly basis. The two Member States present at the diplomatic level in Bissau take 6-month turns for the rotating presidency of this meeting. None of the persons interviewed for this study were in Bissau in 2003, hence they had no first-hand information on the actual discussions and/or joint decisions that took place then. After the Council decided

17 12602/03 (Press 273) of the Council; CFSP number P 113/03.

18 UN Press Release SC/7873 of September 15, 2003.



to invoke Article 96, the Commission coordinated the consultations to fit in with the roadmap and pace of transition proposed by the Transition Government of Guinea-Bissau.

#### *Support and monitoring of the elections*

Long-time donors Sweden and the Netherlands financed the elections in 2004 through a trust fund managed by the UN, Portugal provided bilateral support, and the CPLP supported the transition plan and the organisation of elections. The EU continued disbursements without interruption. Despite the fact that electoral observation for Guinea-Bissau was not initially proposed by the Commission's DG for External Relations (RELEX), after strong Portuguese advocacy and the personal initiative of the country desk officer in Brussels, plus the petition of the head of the Delegation in Bissau, an electoral observation mission was sent to Guinea-Bissau for the Presidential elections of 2005.<sup>19</sup> This enhanced coordination within the Commission, as the election observation mission was administered by RELEX. The mission found the elections well organised and transparent, meeting the essential international standards of democratic elections, stating that "The second round [July 24, 2005] was generally well organised in a transparent and inclusive manner, and met international principles for democratic elections ... voters were able to exercise their franchise freely, despite a tense pre-election period."<sup>20</sup>

### 6.3.3 Coherence

#### *No suspension of development cooperation*

Coherence between the EU's foreign policy goals and its development objectives was enhanced by the fact that invoking Article 96 did not lead to the suspension of the EU development cooperation activities financed under the 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> or 9<sup>th</sup> EDFs. The appropriate measures did not punish Guinea-Bissau by reducing European aid. Only the continuation and increase of aid was made conditional on progress of the transitional government.

#### *Invoking consultations supported Guinea-Bissau's transition plan*

The EU also tried to guarantee coherence in its actions by delaying the declaration on the unconstitutional assumption of power until the resignation of Kumba Yala. There also was a delay in invoking Article 96: this happened on 19 December 2003<sup>21</sup> after the transitional government of Guinea-Bissau had prepared a transition plan. Informal communication between the EU and the National Transition Government ensured that invoking Article 96 was based on mutual will. The instrument of Article 96 was used to support the country's own timetable and action plan, and the fact that the EU did not

19 European Union Election Observation Mission Guinea-Bissau 2005, [http://www.eueomgbissau.org/intro\\_media.htm](http://www.eueomgbissau.org/intro_media.htm).

20 European Union Election Observation Mission Guinea-Bissau 2005, Press Release, 19 August 2005.

21 COM(2003)824 final.

impose an agenda but respected the roadmap proposed by the transitional government satisfied Guinea-Bissau. This approach did not jeopardise the partnership principle in the Cotonou Agreement.

#### *Bilateral aid from Member States supported transition*

The continuation of bilateral aid from EU Member States was important in supporting Guinea-Bissau's transitional government and the achievement of its goals. Portugal, for instance, increased its bilateral aid from € 7.3 million in 2003 to € 9.77 million in 2004 (and to € 10.9 million in 2005), and resumed the support to Guinean NGOs,<sup>22</sup> which had been interrupted. This was coherent with the EU policy of supporting the country in its transition to democratic rule.

#### *Respecting the timetable enhanced monitoring and normalization of relations*

Monthly assessments of Guinea-Bissau's progress towards fulfilling its commitments were undertaken. An observer mission dispatched by the European Commission from 10 to 13 February 2004 concluded that preparations for elections were in progress, and that the proposed schedule could be fulfilled. The mission also observed progress in the re-establishment of the judicial system. Its main recommendations related to improvements in the governance of public finances. In April 2005, Guinea-Bissau presented a report on its political situation to the European Commission.<sup>23</sup> During the first half of 2005, an EU delegation visited Guinea-Bissau, led by the local Presidency, Portugal. After the second round of Presidential elections, the next EU delegation, again under the locally represented Presidency, France, visited the country and observed the progress of the second round. Guinea-Bissau not only succeeded in fulfilling the key commitment of holding free and fair elections, but it also managed to do so within the time-frame set by the roadmap. It was decided that there was no need to continue the appropriate measures. EU-Guinea-Bissau relations were fully normalised on 11 October 2005, and the appropriate measures are no longer applicable.<sup>24</sup>

### 6.3.4 Conclusions

The success of a peaceful transition from a conflict-ridden pre-coup situation to civilian rule was based on the fact that all involved parties (donors, the international community, civil society, political parties and religious leaders) shared the same analysis of the situation. There was no need to introduce specific mechanisms or frameworks to enhance coordination and coherence. In addition to Guinea-Bissau being a clear

22 [http://www.ipad.mne.gov.pt/index.php?option=com\\_content&task=view&id=64&Itemid=95](http://www.ipad.mne.gov.pt/index.php?option=com_content&task=view&id=64&Itemid=95) (the Portuguese Institute of Development Aid; 14.9.2006). Partially, the increase is also due to the general increase in Portugal's development aid as a percentage of GNP.

23 Mbangi op.cit, p. 3.

24 Council Decision concluding consultations with Guinea-Bissau under Article 96 of the ACP-EC Partnership Agreement, 10955/04 + REV 1 (pt), 11199/1/04 REV 1.

case of *coup d'état*, the high degree of coherence and coordination was due to the background of the civil war of 1998-99 and the consequent learning process which was applied to prevent violent history from repeating itself.

The most important factors that contributed to the avoidance of problems of coherence and coordination were:

1. The question was of a clear cut case of a *coup d'état*, in which Article 96 is consistently used.
2. There were no diverging views or interests among the EU actors or the Member States, including France, Portugal, the Netherlands and Sweden as key current or recent donors. All actors condemned the coup but did not regret the deposing of the President.
3. The bloodlessness of the coup contributed to a peaceful transition. The transitional government presented a roadmap, and the EU used the Article 96 consultations and appropriate measures to support the democratic transition as proposed by the transition government. The EU respected the locally owned transition programme and timetable.
4. Coordination with other donors was facilitated by the fact that the EU is a leading donor in the country and its Member States are influential in the UN and the African Development Bank Group.
5. The EU supported the elections not only financially but also by sending an observer mission. This served as a mechanism to bring together the development policy and foreign policy objectives.

## **6.4 The Republic of Guinea**

### **6.4.1 Introduction**

#### *Background to EU-Guinea relations*

Guinea formed part of French West Africa until 1958. After independence the Republic of Guinea was a one-party dictatorship until 1984 when the nationalist leader Ahmed Sékou Touré passed away. His follower, the leader of the military committee, Lansana Conté, the actual President of Guinea, carried out economic reforms to liberalise the economy, but did not accede to a thorough political liberalisation.

France is the main European power in Guinea, although Guinea is not as oriented towards France as some other West African countries. The reluctance of France to recognise Guinea's independence in 1958 continues to affect relations between Conakry and Paris even today. The other two European Member States with embassy level representation in Guinea are Germany and the United Kingdom. The UK presence is only recent: its embassy was opened after the Article 96 consultations.

The EU, France and Germany are among the main development partners of Guinea. Guinea has used only about a third of its 8<sup>th</sup> EDF allocations. The 9<sup>th</sup> EDF has not been signed and therefore none of the originally promised € 220 million has been disbursed. ODA as a percentage of GNP was 8.1 in 2004. This is not very high but still significant. While ODA is secondary as a source of income for Guinea, it is important as a source of foreign currency which props up the external balance of payments.

#### *Gradual deterioration of the situation*

The issue that gave rise to the invocation of Article 96 was a long, problematic situation, and it was the lack of improvement rather than a sudden deterioration in the political situation that led the EU to respond. After the Presidential elections of 1998, an opposition leader contested the electoral results and was arrested and condemned to five years of prison. The 2000 municipal elections were marked by violence and the legislative elections of 2000 were postponed due to the unrest at the country's borders with Liberia and Sierra Leone.

#### *The EU expressed its concern in 2001*

In 2001 Lansana Conté's ruling party announced its intention to amend the Constitution by referendum. The amendments proposed the abolition of the limit of two Presidential terms. The EU expressed its concern at the referendum's implications for the country's stability and democratic development, and called for observance of the constitutional rules, preservation of checks and balances, liberalisation of the media, and the establishment of a framework for a fair and transparent electoral process.<sup>25</sup> On 8 November a reminder demarche on the same topic was issued to Guinea, urging it to observe criteria enabling the referendum to be held in democratic conditions. The referendum was held on 11 November 2001, and the reforms were approved with 98.4% of the votes, with official statistics reporting a voter turnout rate of 87%, despite the fact that hardly any voters were seen at the voting booths. The EU called the government to postpone the legislative elections scheduled for December 2001 in order to create an acceptable electoral environment for all political parties in Guinea.<sup>26</sup>

#### *EU Presidency representative for the Mano River Union played a role*

During the Swedish Presidency of the EU, Hans Dahlgren, a high level civil servant at the Swedish Ministry of Foreign Affairs, was appointed as a special EU Presidency representative for the Mano River Union.<sup>27</sup> His role was confirmed by subsequent Presidencies. Dahlgren visited Guinea in December 2001 and reiterated the request to postpone the legislative elections. He also asked for an election observation mis-

25 25.10.2001; 13241/01 (Press release 388) P168/01; Council, General Affairs and Foreign Relations.

26 COM(2003)517.

27 The Mano River Union is an economic and customs alliance that incorporates Liberia, Sierra Leone and the Republic of Guinea.

sion to be invited to monitor the process. Under international pressure, the Guinean government agreed to postpone the elections.

#### *A fact-finding mission and monitoring of the electoral process*

In April 2002, the EU sent out a fact-finding mission to assess progress in the electoral process. The mission concluded that the minimum conditions had not been met, and the EU therefore decided not to become involved in a process already marred by serious irregularities and devoid of any real competition. It nevertheless decided to continue monitoring the run-up to the Presidential elections, which were now scheduled for 2003. In October 2002, Dahlgren again held talks with the authorities and reiterated the minimum conditions required by the EU for democratic elections. On 14 November 2002, Danish Foreign Minister Stig Møller and EU Commissioner Nielson wrote to President Conté, stressing the importance the EU attached to efforts by the authorities to carry out electoral reform.<sup>28</sup> The concurrence of Denmark's incumbency as EU President, a Dane in the role of Commissioner, and Dahlgren's role strengthened the voice of the two Scandinavian Member States<sup>29</sup> in the case of Guinea. However, at that time there was no unanimity in the Council to approve a declaration or resolution on the situation in Guinea.

#### *Guinea rejected the EU's request to invite election observers*

In January 2003, a ministerial delegation from Guinea handed over the President's reply to the EU and held talks with Dahlgren and Commissioner Nielsen. Neither the reply nor the discussions with the ministerial delegation convinced the EU of any progress on the part of the Guinean government. The EU asked the government of Guinea to invite international observers for the Presidential elections but the government did not accept the petition. The conclusion at the time of the Commission's communication to the Council concerning the opening of consultations under Article 96 in August 2003 was that there had not been real progress on electoral reform, nor had the Guinean authorities shown any sign of moving towards a genuine process of democratisation in the near future.

### 6.4.2 Coordination

#### *Legal basis for suspending aid to Guinea*

While nobody among the European actors denied the existence of convincing arguments for invoking Article 96, there were different opinions about the way the consultations were initiated. The invocation of Article 96 and the invitation to consultations happened after a Member State (Germany) had refused to sign the 9<sup>th</sup> EDF and the Guinea Country Strategy Paper at the EDF committee meeting in June 2003 and

<sup>28</sup> COM(2003)517

<sup>29</sup> Sweden and Denmark are both countries without any historic linkages with or special strategic interests in Guinea.

blocked approval of the Country Strategy Paper. The EDF committee does not have a legal mandate to decide upon the continuation of aid disbursements to a certain country, thus the EU had to choose whether to find a legal basis for suspending aid to Guinea or to go on as usual, which was difficult due to Germany's position. Article 96 offered a legal basis.

#### *Commission proposed consultations after the elections*

The Presidential elections were held in October 2003, but were boycotted by the opposition. Unsurprisingly, Lansana Conté was elected for a third term. EU electoral observation was not conducted and the elections were plagued by irregularities and harassment of the opposition. In its communication to the Council of 26 August 2003 proposing the invocation of Article 96, the European Commission noted factors contributing to the gradual deterioration of the democratic environment: the "dubious" referendum, the undemocratic parliamentary elections in 2002, and the lack of positive signs of imminent change in the situation. These amounted to disrespect of the essential elements of the Cotonou Agreement.<sup>30</sup>

#### *Coordination between the Commission and the Council*

Coordination between the Commission and the Danish Presidency in 2002 was good. The special representative of the Council for the Mano River Region, Dahlgren, also contributed to this communication. This was expressed by one of the European Ambassadors based in Conakry in the following words: "The Commission tends to think that it is the European Union. Sometimes it is healthy to have a representative of the Council in the field."

#### *Divisions at the level of joint decisions and the importance of individuals*

At the level of joint decisions, the coordination was not perfect between the capitals of the Member States and Conakry. When the Council made decision on consultations under Article 96 (in March 2004), the ambassadors in Conakry differed. Whereas the previous Ambassador of Germany had supported the strict position in Brussels, his follower, who served in Conakry from July 2003 to July 2006, took a different view. According to him, the decision not to sign the 9<sup>th</sup> EDF was made contrary to EU regulations "based on personal relations at the EDF committee", and this constituted a bad example of governance both to the partner countries and to the new Member States. For the other Member State present at the embassy level in Conakry, the situation was the reverse: the present Ambassador of France considered Article 96 to have been a useful instrument in the case of Guinea, whereas his predecessor had not been very keen on using sanctions against Conakry in 2003.

30 COM(2003)517.

### *The Guinean government was not cooperative*

These divisions had resonance in the uncooperative approach of the Guinean government, which was surprised by the Council's decision to turn to consultations under Article 96. One cannot rule out the possibility that the German Ambassador's position encouraged the Guinean government to refuse to cooperate. The government's representatives used similar arguments when appealing to the irregular nature of the invocation of Article 96. The controversy boiled down to two different interpretations about what constitutes "political dialogue" under Article 8 of the Cotonou Agreement. For the EU, all previous dialogue and communication constituted political dialogue in the sense of Article 8, but according to Guinea's interpretation of the Agreement, communication at the political level can be considered to form part of Article 8 only if the Article is explicitly referred to.<sup>31</sup> Furthermore the Guinean government did not appear at the first invitation to consultations on 15 April 2004. When the second round was organised in July, most EU officials were on holiday and the consultations were held between high level Guineans and lower-ranking EU functionaries.

### *No specific coordination with bilateral aid*

There has been a general tendency towards decreasing aid disbursements to Guinea. In addition to the decision not to sign the 9<sup>th</sup> EDF, Guinea has lagged behind on disbursements of the 8<sup>th</sup> EDF, and Germany reduced the level and extent of its aid as early as 2002. Canada, too, has suspended its bilateral aid. This does not stem from any coordinated donor response but rather of the incapacity of the Guinean government to present feasible projects for funding. In contrast, France's bilateral aid to Guinea has not experienced decreases after the appropriate measures taken by the EU, France actually increased its aid to Guinea in 2003 as part of its general increase of foreign aid. In the interviews, however, it was generally agreed that communication and information sharing is well organized, including at the level of the EU ambassadors and the Delegation coordination meetings in spite of possible differing views and analysis of the situation.

### *Aid coordination in general*

EU aid in Guinea is increasingly coordinated with other donors. The donors meet regularly at the "G-8", a high-level meeting of resident representatives, heads of delegations and ambassadors. Recently, the High Level Forum of Rome and the Paris Declaration of 2005, Harmonisation and Alignment (H&A) have also had an impact on aid to Guinea.<sup>32</sup> For example, it has been agreed that the EU, together with other donors, will finance the formation of an electoral register of all citizens with the right to vote, and distribute electors' photographic identity cards, to avoid electoral fraud.

31 Consequently Guinea waged a campaign to modify the Cotonou Agreement during the mid-term review. According to these modifications, which were signed in 2005, Article 96 can be invoked only after consulting the ACP group of countries.

32 H&A is an initiative of the OECD/DAC.

### 6.4.3 Coherence

#### *A difficult process*

In spite of some progress, the process can hardly be described as successful. This has affected coherence of EU policy, particularly as the timing of each step is concerned. It is interesting to note that the sequence of events that led to the invocation of Article 96 of the Cotonou Agreement started at the same time as the EU expressed its concerns about the worsening situation in Guinea's neighbour, Guinea-Bissau in June 2003. Contrary to the experience in Guinea-Bissau, the consultations in Guinea did not start swiftly. The uncooperative approach of the Guinean government divided views in the EU and there was a period before invoking Article 96, when intended incoherence rather than coherence characterised the EU approach. As already stated, the Commission decided to propose invoking Article 96 in order to find a legal basis for the suspension of aid to Guinea after the 9<sup>th</sup> EDF was blocked by Germany. This means that appropriate measures in fact preceded consultations.

The ACP group was also somewhat divided with regard to the policy of the EU. The ACP ambassadors based in Brussels travelled to Conakry to convince the Guinean government to attend the consultations, after it initially failed to show up in the consultations convoked for 15 April 2004. The positions of the local level diplomatic representations of the ACP countries in Conakry were more ambiguous, with a rather tolerant attitude towards the Conté regime and doubts about the feasibility or desirability of applying the same democracy standards on European and African countries.

#### *Coherence between CFSP and development policy*

The decision to invoke Article 96 in the case of Guinea was coherent with the European Common Foreign and Security Policy goals of support to democracy and human rights. The fact that the EU did not send observers to the Guinean elections did not imply lack of coherence, quite to the contrary: the EU was prepared to do so yet was prevented from doing so by the Guinean government.

The pressure for free and competitive elections and the liberalisation of air waves has contributed only to a slight improvement in the situation. Opposition parties are allowed to operate between elections (but not necessarily during electoral periods), and the liberalisation of radio waves is under way, although at a very slow pace. European development cooperation supports the preparation of elections, humanitarian operations and civil society, in order to promote respect for and reinforcement of democracy, human rights, good governance and the consolidation of free media. At this level, there is coherence between the foreign policy goals and development goals both in the short and the long terms, although actual results (i.e. progress made by the Guinean government) leave much to be desired.



#### *Trade relations were not affected*

The fact that the EU continued trade cooperation and trade-linked preferences was coherent with the overall goal of enhancing economic development in Guinea. From a foreign policy point of view and considering the relative weight of European trade with Guinea one can, however, ask whether trade sanctions would have changed the defiant attitude adopted by the Guinean government as the suspension of € 65 million from the 9<sup>th</sup> EDF (down from the original € 220 million budgeted for Guinea) was not enough to promote significant changes.

#### *The policy of Bretton Woods institutions*

The decision of the Bretton Woods institutions to suspend all budgetary support to Guinea in 2002 did not play a role in the invocation of Article 96 nor did it directly affect the 8<sup>th</sup> and 9<sup>th</sup> EDF disbursements. With regard to budgetary support, however, the EU Member States supported the different logic, or at least different timing, of the EU and the World Bank and IMF.

#### 6.4.4 Conclusions

In the case of Guinea, the invocation of Article 96 of the Cotonou Partnership Agreement and the application of appropriate measures have in general terms enhanced coherence between the CFSP goals of promoting democracy and human rights and the development objectives set for the country. The process however has been hampered by difficulties. Although most observers believe that the main reasons for this was the Guinean government's unwillingness to democratise the political system in the country, the EU procedures and divisions within the EU, particularly those between the country level and the capitals, are also partially to blame.

The main obstacles hampering coherence and coordination can be summarised as follows:

1. While there was a consensus among the EU institutions and Member States and the main ACP actors that the Guinean government was violating the essential elements and the fundamental element of the Cotonou Partnership Agreement, there was no shared conviction about the ability of the Article 96 consultations to bring about positive changes.
2. The views on the feasibility of Article 96 varied between the European diplomatic representations in Conakry, and between the position holders in relation to their predecessors or successors, and in relation to the position taken by the European capitals. These differences stemmed from, but also contributed to, the defiant attitude of the Guinean government.
3. Article 96 was partially used in order to find a legal basis for the refusal of one member state to sign the 9<sup>th</sup> EDF.

4. Due to the political situation in Guinea there was no political dialogue in the country and civil society was not able to utilise the external pressure for easing of political constraints.
5. The former colonial power, France, increased bilateral aid to Guinea when the EU reduced its financial support.

Coordination can be regarded having had some success because:

1. The communication and information flows between the resident ambassadors, the delegation, the Commission and the Council was good. A special merit here falls on the role of the Special Presidency Representative for the Mano River Region.
2. At the level of joint decisions and their implementation, the appropriate measures supported issues that were raised as concerns in the invocation of Article 96.
3. There was consensus between donors and the Guinean government that the EU, together with other donors, would finance an electoral register and elector identification cards.

## 7 Findings and recommendations

The aim of this evaluation was to analyse the use of the legal instrument of Article 96 of the Cotonou Partnership Agreement from the point of view of the Maastricht Treaty's principles of coordination and coherence, which are intended to enhance the quality of EU development policy. The evaluation showed that Article 96 has been actively used and developed over the six years of its existence. Its overall impact on European external relations has been to contribute to coherence (Coherence II in particular) and coordination as far as the strategies and objectives of foreign policy and development cooperation are concerned. At the same time, the EU has also encountered difficulties that have frustrated its policy objectives.

While the focus of this evaluation was defined as being “on the maximisation of coordination and coherence in the consultation under Article 96”, we also have to ask how relevant these principles are for a rational use of Article 96. Only after doing that can we draw useful conclusions about their observance and effectiveness, answer the specific evaluation questions (mentioned in Chapter 2) and formulate recommendations. It is, however, important to note that many difficulties the EU has encountered when using Article 96 do not stem from lack of coherence (or unintended incoherence) and lack of coordination, and therefore they cannot be solved by enhancing the observance of these principles alone. The reasons why the Article is invoked are often very difficult and complex ones.

*Question 1:* Are the principles of coordination and coherence regularly and systematically observed in the consultations following the application of Article 96?

### *The relevance of the principle of coherence*

In this evaluation, coherence (Coherence II) was understood as referring to the need to consider and balance foreign policy objectives, such as human rights and democracy, and the development policy objectives, such as poverty reduction and partnership with the ACP countries. The statistical overview and the case studies show that Article 96 has been used to that end. In the cases where Article 96 has been invoked, the aim has been to bring the goals of foreign policy and development policy together. Therefore Coherence II cannot be regarded as external or an additional principle of Article 96

that is either observed or not: Article 96 is an instrument of coherence, and therefore the issue of coherence is always addressed when the article is invoked.

In all cases the justification for the use of Article 96 stemmed from concerns that there was incoherence between development cooperation (Cotonou partnership) objectives and foreign policy objectives due to the difficult political situation in the country in question. In cases which required balancing between different goals as well as between short term and long term goals, Article 96 exemplified a mechanism of intended or dynamic incoherence.

The EU is not using the instrument mechanically in all cases where violations of the principles of human rights, democracy and rule of law have occurred. However, the statistical analysis shows that there is significant consistency. First of all, consultations systematically follow a deterioration of the human rights situation, democracy and the rule of law. At the same time the EU is patient towards continuing problems. Secondly consistency is greatest in cases of *coup d'état*. In other cases consultations are more systematically invoked in response to the deterioration of a situation, rather than to continuing problems, particularly deteriorations of democracy and the rule of law. There is less coherence with regard to human rights problems and also peoples' participation in politics.

#### **Recommendation 1.1**

*The EU should continue to use Article 96 systematically in cases of coup d'état.*

In cases other than *coup d'état* the assessment of the possible abuse of the principles of human rights, democracy and the rule of law is made on a case-by-case basis using various sources, which means that the historic, economic and political context of the country is taken into consideration.

#### **Recommendation 1.2**

*The EU should continue to gather and exchange information and views on a case-by-case basis of the situation in ACP countries at risk of abusing the essential or fundamental elements of the Cotonou Agreement.*

The proper use of Article 96 can lead to intended incoherence, when one policy area is consciously weighted as more important than another. Often the question is about dynamic incoherence, where the emphasis is on the long term results of the chosen policy. In Fiji, for instance, the short term sacrifices in development cooperation caused by the appropriate measures resulted in the improvement of governance and stimulated the Fijian economy and its trade with Europe and other countries. In this way,

European political and development cooperation efforts were part of a process that led to the fulfilment of both political and development cooperation objectives.

Coherence is inevitably affected by balancing the case-specific political realities and the principles the EU wants to uphold. In the case of Fiji, insisting on a constitutional government based on the elected parliament would have been more coherent with the European policy of promoting good governance than the decision to insist on new elections. The decision to go for new elections reflected donor realism. Similar realism played a role when the EU decided to negotiate with the party that held de facto power in the country.

Difficulties (accusation of arbitrariness or double standards) can 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.

### ***Recommendation 1.3***

*Balancing of short- and long-term objectives should be openly discussed, justified and communicated to the relevant stakeholders.*

#### *The relevance of the principle of coordination*

The decision to invoke Article 96 requires coordination, since the decision is made in the Council by the Member States and in all cases has been proposed by the Commission. The Member States' interests and knowledge of the ACP countries varies a lot, however. Therefore, specific mechanisms are needed for a common assessment of the situation as well as for a common assessment of the desirability and feasibility of Article 96 to improve the situation (or at least to prevent its deterioration). The case studies revealed that dissenting opinions, particularly at the local level, can erode the effectiveness of the official EU approach. In some cases the differences became manifest in contradictions between bilateral and common European approaches.

### ***Recommendation 1.4***

*Coordination needs to be observed in a more systematic manner in the application of Article 96.*

*Question 2:* In these consultations, what steps do actors (EU Member States and European Commission) commonly take, individually or jointly, to maximise coordination and coherence?

#### *Intensity of relations contributes to coordination when Article 96 is considered*

The more EU Member States have contacts and interests in a given ACP country and the more important that country is as a partner for the EU, the more intense the coordi-

nation needs to be at the first level (sharing of knowledge and views, and information on the approaches of the EU actors). This finding is particularly relevant for cases other than *coups d'état*, since the latter are clear-cut and do not open up so much space for different interpretations.

If there were several EU agents in the capital of the given ACP country, coordination of their views required several meetings and exchange of views as coordination also took place between the Heads of Mission and the capitals of the EU Member States. European interests in the country also meant that there were non-governmental actors (civil society, diaspora from that country living in Europe, media and private sector), who followed the situation keenly and acted as pressure groups on the EU.

In contrast, in cases where the EU does not have a lot of direct interests, or only a few EU Member States have interests, coordination in the first phase does not need to be very intense and can also be personal and informal in nature. If the number of actors having views, opinions and knowledge of the situation is small, coordination requires fewer meetings and less correspondence between the capitals.

#### ***Recommendation 2.1***

*The more the EU Member States have interests in a given ACP country, the more important it is to pay attention to early stage coordination in terms of exchanging views, informing each other about bilateral activities and assessment of the situation.*

In some cases invoking Article 96 is related to other short term goals, which are not necessarily contradictory to foreign policy or development goals, but nevertheless point to inconsistency. In the case of Guinea, one immediate motivation for the Commission to propose the use Article 96 was to find a legal basis for the suspension of aid to Guinea after the 9<sup>th</sup> EDF of Guinea was blocked by Germany. This could be interpreted as a Member State's strategy to press for the invocation of Article 96, which makes the case exceptional. If it was a precedent for similar decisions in the future, it would provide unilateral power to any Member State to force the EU to start consultations with any ACP country.

#### ***Recommendation 2.2***

*Immediate and practical cooperation problems should not be solved by invoking Article 96.*

*Question 3: What enabling mechanisms and/or frameworks to enhance coordination and coherence do they put in place and are these effective?*

One of the most important mechanisms for coordination is Article 8 dialogue with “difficult partners”. In principle it should not be interrupted even if Article 96 consultations are invoked. Also, it should involve both state and non-state actors. The Mid-term review has clearly made the requirements to use this opportunity more formal, but the stakeholders’ views of when and how this dialogue occurs seem to be far from identical. Occasionally some Member States felt they did not have ownership of, a role in, or even knowledge of this dialogue, which indeed points toward lack of coordination. Zimbabwe is a case in point.

### ***Recommendation 3.1.***

*Dialogue under Article 8 should be conducted more explicitly so that the EU actors know they are participating in such dialogue. Even though the dialogue can be informal in nature there should be a common understanding of when, how and by whom such dialogue can be initiated. It should also be more explicitly continued after consultations are completed.*

*The EU should also ensure that the ACP group knows when dialogue under Article 8 is taking place. One possibility would be to send a copy of any document sent under Article 8 to the ACP secretariat.*

### ***Horizontal vs. geographical working groups***

Since human rights and democracy are horizontal themes in EU foreign policy, different treatment of violations of these principles in different geographical areas manifests incoherence. This is not properly monitored since the Council working groups that deal with country-specific problems are geographically defined, whereas the working groups for horizontal themes, like human rights, deal with general policies only.

### ***Recommendation 3.2.***

*Article 96 and issues related to it should also be discussed in horizontal working groups, in order to enhance coherence between EU policy on ACP countries and EU external relations in general.*

### ***Election observation***

That the EU election observation missions are administered in DG RELEX in cooperation with DG Development, the European Parliament and Member States is a measure of coherence and cooperation. Reports of serious flaws in the electoral process in an ACP country do not necessarily lead to consideration to use Article 96, and this has frustrated the European Parliament in particular.

The EU does not have a special policy aimed at sending missions to all consultation countries where observation would be useful. The linkage between election observa-

tion and Article 96 is not clear, even though the issue of free and fair elections has been central in all cases where Article 96 has been invoked. The recent cases (Guinea-Bissau in 2005, Liberia in 2005, Mauritania in 2006) suggest that the EU sees election observation increasingly as an instrument for normalising its relations with the consultation countries. Furthermore it needs to be noted that there have been cases (Zimbabwe and Guinea) where the EU has not been able to send observers even though it was willing to do so, due to the policy of the ACP country in question.

### ***Recommendation 3.3***

*Election observation should be linked to Article 96 in a more systematic manner. The EU should be able to support or send election observers to the elections in all countries where electoral policy has raised concern in the consultations. In all cases where the EU's observers judge the elections as not free and fair, dialogue under Article 8 should be conducted, and if the dialogue is not effective, the pros and cons of invoking Article 96 should be discussed among the Member States.*

#### ***Role of the Presidency***

While the Presidency is important for instance at the local level when arranging the regular meetings for Member States' representatives, the evaluation shows that the Presidencies have not tried to influence EU policy in any systematic manner. Only in the case of the Republic of Guinea did the Presidency (Denmark) have a significant role before the Commission formally proposed consultations. At that early stage the Presidency was able to coordinate EU policy efficiently.

#### ***Role of the Commissioner***

Guinea is also a rare example of a case where the Commissioner (Poul Nielsen) was directly involved. Another rare example is the other difficult case, namely Zimbabwe, where the new Commissioner Louis Michel has taken a proactive role in order to enhance dialogue with the government in spite of the maintenance of the appropriate measures. While his approach has not contradicted the Council decision, it has not been fully appreciated by all Member States and the European Parliament.

#### ***Role of Special Representatives***

Only in one case, that of Guinea again, has there been an EU Special Representative involved in the dialogue. Even though the mandate of Hans Dahlgren, special EU Presidency representative for the Mano River Union, was not related to Article 96, he succeeded in coordinating the views of the Member States' capitals at the local level, and the experience was regarded as positive by several EU actors, not least since it was seen as balancing the visibility of the Commission EU delegation as the representative of the EU.



### ***Recommendation 3.4***

*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.*

*Question 4: What constraints do actors encounter in establishing such mechanisms and/or frameworks? How do they deal with them? Are they successful in maximising coordination and coherence?*

The intensity of the coordination varies. Sometimes what looks like a very well coordinated information sharing and preparatory work actually involves the active input of only a few Member States, while others are following quite passively. Such situations are unavoidable, since it is impossible and not even desirable that all 27 Member States adopt well informed national approaches toward all ACP countries. In most cases, the majority of the Member States have to trust and rely on the analysis provided by the Commission and those Member States that have closest relations with the countries in question.

The situation becomes more complex, of course, if the analysis by the European actors who have interests and approaches of their own, is not unanimous. Coordination might fail in the implementation phase if the potential disagreements and differences in the approaches are not resolved before the EU proceeds to Article 96. The situation is particularly risky if the ACP country in question is not cooperative. At the implementation stage, the EU can, of course, produce unanimous decisions, but if these are not wholeheartedly supported by all Member States and reflected in their bilateral relations, coordination is very poor indeed. In difficult cases it is also very likely that the affected ACP government will try to divide the EU and play the EU actors against each other. A striking example in this regard is Zimbabwe.

### ***Recommendation 4.1***

*There should be shared and careful assessment of the feasibility of using Article 96 consultations to bring about positive changes.*

*Article 96 should not be invoked in cases where the government of the ACP country in question is uncooperative and if Member States are not all committed beforehand to reflecting the appropriate measures in their bilateral relations.*

In the four case studies included in this evaluation, the communication and information flows between the resident ambassadors, the delegation, the Commission and

the Council proved to be good. The point of gravity in the decision-making has been Brussels and the EU capitals. This, however, is not entirely justified, considering that the local level has the greatest capacity to assess the ability of Article 96 to affect the situation.

***Recommendation 4.2***

*The role of resident ambassadors and the EU delegation in decision-making, not only in information sharing, should be enhanced. The Special Representatives should work in close cooperation with resident ambassadors.*

With regard to appropriate measures, the EU has attempted to ensure Coherence II by taking measures that do not hurt the poor or the development process and by continuing or even expanding humanitarian assistance if that is needed. This is respected by the ACP countries.

Assessment of the (direct and indirect) impacts of the adopted measures is difficult, but still possible. Since any sanctions or even a threat of sanctions can have negative impacts on the economy (for investments for instance), it is easy to blame the EU for all economic difficulties the country is facing. The EU should be prepared to respond to such accusations.

***Recommendation 4.3***

*EU should continue to try to adopt appropriate measures that do not hurt the poor or harm social or economic development in the country in question. 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.*

In general, the use of Article 96 has been most successful if the countries in question have been supported and rewarded rather than punished. Also EU cooperation has been most successful with such an approach.

***Recommendation 4.4***

*There should be further exploration of the use of Article 96 as a positive instrument that uses carrots rather than sticks.*

In the case of Zimbabwe, the decisions on the appropriate measures were made in haste. Although they supported the concerns that were raised in the consultations, there was not much time to consider the pros and cons of the measures, with all EU actors having views on them. Of course the lack of joint efforts is also problematic

when some Member States feel that such efforts are needed. Coordination is not good if the EU does not manage to react to violations of the essential elements of the Cotonou Agreement, even though some Member States do so. The EU can, however, complement Member States' policies in ways that are not as rigid as Article 96. It can act through the UN, redirect its development cooperation, and/or conduct dialogue under Article 8, for instance. What is most important from the point of view of coordination is that the EU does not undermine the policies of the Member States.

#### ***Recommendation 4.5***

*In cases other than coup d'état, Article 96 should not be used with short-term priorities or policy goals in mind. Where the situation has deteriorated gradually, the improvements are likely to take a long time, too. Therefore more transparency and time is needed in the phase where decisions are made about appropriate measures.*

#### ***Coordination with non-EU actors***

In most cases the EU and Member States coordinated their policy efficiently with other important donors. In Zimbabwe the coordination among "like-minded" countries was at least in some respects even more intense than coordination between Member States. In order to enhance coordination with regard to the ACP group, the EU made the consultation procedures more transparent, taking on board the friends of the ACP country in question as well as regional organisations for instance. The cases where the EU has succeeded in this are also among the most successful in terms of the end results of the consultations. Guinea-Bissau is an exemplary case of good coordination with the peer group. A negative experience in this regard is Zimbabwe, which is causing harm to the entire EU-Africa dialogue.

#### ***Recommendation 4.6***

*The EU should engage the "peer group" in the process as early as possible. Cases where the EU is not successful in this regard need to be looked at very carefully, since the relations of the EU actors to this peer group might affect coordination later.*

#### ***Cooperation with civil society***

The EU has also attempted to take into account such actors as parliamentarians, civil society organisations and the media. In many cases, however, local civil society actors, for instance, were not well informed about the EU approach. Often they felt that they had not been given any opportunity to participate in the dialogue under Article 8. On the other hand, EU support to civil society can also cause political tensions, as the government might interpret this as support for its opposition.

#### ***Recommendation 4.7***

*Representatives of civil society should be invited to dialogue under Article 8 together with the government representatives.*

#### ***Other multilateral frameworks***

Coordination is also challenged by the fact that Member States are involved in other coordination frameworks, too. The British Commonwealth, for instance, forces the UK to coordinate its policies with both the EU and Commonwealth. In the case studies of this evaluation, the UK managed this well. However in Fiji, for instance, the EU was slower in its decision-making than the Commonwealth.

#### ***Recommendation 4.8***

*Specific attention should be paid 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.*

*Question 5:* Does a link exist between measures taken and outcomes in terms of improved coordination and coherence? Do actions taken and mechanisms put in place contribute to or rather, hinder the achievement of actual results?

#### ***Coordination in the implementation phase***

Implementation of joint policies can be particularly well coordinated when there are not very many or diverse EU interests in the country in question. As already stated, those cases do not require intensive coordination during the first phase. In those cases most Member States rely on the assessments of the Commission and of those Member States with direct relations, which can be cultural, economic or related to development cooperation for instance. This, however, does not mean that they would be disinterested in the cases or that they would not be concerned about the common political interest and values of the EU.

On the other hand, very intensive coordination in the decision-making phase can still result in poor coordination at the implementation phase, if the Member States do not share the same analysis of the situation. What was problematic in the difficult cases was that there was no clear exit plan.

#### ***Recommendation 5.1***

*If sanctions are adopted as appropriate measures, there should be an exit plan for the worst-case scenario. The exit plan should be part of the decision-making at the time when invoking Article 96 is discussed.*

Coordination becomes particularly difficult when the time period has extended beyond what was expected when Article 96 was invoked. Limiting the discussion at that point to the question of whether or not to lift the appropriate measures prevents the EU from redirecting its policy, since the issue at stake easily becomes EU's credibility rather than what would be the best possible way to improve the situation in a difficult partner. In the case of Zimbabwe, the EU has decided on certain benchmarks that are concomitant with its initial concerns. Since these are not public (although they have been leaked), it has not been possible to conduct an open dialogue on their content with Zimbabwe, the peer group and civil society.

***Recommendation 5.2***

*When appropriate measures include sanctions, it would be useful to include a specific evaluation clause stipulating the possibility of restarting consultations in case the measures have not brought about the intended results. In this way, prolonging would automatically require a new round of consultations and the Member States' views could be taken into account.*

*Question 6:* Is there a coherence between Member States' bilateral policies and the EU decisions about "appropriate measures" in the eight cases?

There are differing opinions about whether and to what extent the EU decision binds the Member States with regard to their bilateral relations. In the difficult cases of Guinea and Zimbabwe, for instance, France's bilateral development cooperation was quite different from that of the EU. In principle CFSP measures like travel bans are binding, whereas cutting aid is not: i.e. Member States can increase aid to countries with which the EU has suspended aid. This is a problem that is not systematically monitored but can harm the efficiency of EU policy.

***Recommendation 6***

*There should be a shared understanding among the Member States about when the appropriate measures are binding and when they are not.*

# Annex 1: Terms of Reference

## Evaluation of Coordination and Coherence in the Application of Article 96 of the Cotonou Partnership Agreement

### 1. Introduction

The Group of Heads of Evaluation Services for External Cooperation of the Member States and the European Commission (EU-HES) agreed in 2000 to the desirability of joint evaluations to assess the role played by the Treaty on European Union (the Maastricht Treaty) concepts of co-ordination, complementarity and coherence<sup>1</sup>, in the European Union's development co-operation policies and operations. The general aim of the evaluations is to determine to what extent these so-called "3Cs" have been applied and with what impact. The evaluations are expected to produce evidence, lessons and recommendations to strengthen the quality of European development assistance.

These Terms of Reference are a follow up of the general Terms of Reference for Evaluating and Learning about Coherence, Coordination and Complementarity, that were adopted by the EU-Heads of Evaluation Services meeting in Brussels on June 16, 2004. During that meeting, it was agreed to undertake initially a set of 6 specific evaluation studies that are relevant to the 3Cs initiative<sup>2</sup>. Each of these will be undertaken by a group of interested Member States and/or the European Commission. The present study will be commissioned by the Policy and Operations Evaluation Department of the Netherlands (lead agency), France (partner), Belgium (partner) and the UK (silent partner).

1 A specification of co-ordination, complementarity and coherence, as referred to in this ToR, is in Annex I

2 The six studies are:

- 1 Coordination and Coherence in the Application of Article 96 of the Cotonou Partnership Agreement
- 2 Coordination of Trade Capacity Building in Partner Countries
- 3 Coordination and Complementarity in Humanitarian Assistance
- 4 EU mechanisms that promote Policy Coherence for Development
- 5 Coordination and Complementarity of CSPs with National Development Priorities
- 6 Coordination and Complementarity of EU Assistance to Local Development

## 2. Background and relevant context

### *Policy background*

In signing the Cotonou Partnership Agreement, the ACP countries<sup>3</sup> and the EU partners agreed that their partnership would be based on a number of ‘essential elements’, human rights, democracy and the rule of law, and one ‘fundamental element’, good governance. If either party feel that these elements are being abused, and after having sought to resolve their differences through the political dialogue called for in Article 8, the concerned party may invoke Article 96 (or 97 in the case of corruption) and, by doing so, invite the other party to formal consultations. These consultations are to conduct an examination of the situation with a view to seeking a resolution acceptable to the Parties. If no agreement is reached the concerned party may take ‘appropriate measures’ against the other which it deems is abusing the essential elements.

This process builds on the experience of a similar process under the Lomé Convention which resulted in some two dozen cases. Since the Cotonou Agreement was signed in June 2000, Article 96 has been invoked eight times (Zimbabwe, Fiji, Haiti, Ivory Coast, Guinea-Bissau, Central African Republic, Togo and Guinea Conakry) and Article 97 once (Liberia). Invoking Article 96 requires the EU to achieve a balance between the importance it attaches to upholding the maintenance of human rights, democracy and the rule of law in a country, and continuing to support the development process. Of course the latter is not really possible without the former, but it is usually the rich and powerful who abuse the essential elements while it is the poor that suffer most if development assistance is reduced or withdrawn in some way. ‘Appropriate measures’ can be restricted to diplomatic steps and sanctions, but can also involve the suspension of aid, its redirection or the imposition of further conditions. Invoking article 96 often presents policy makers and administrators with extremely difficult choices. In such a situation opinions are often divided and maintaining coherence in the application of different policies is not an easy task, nor indeed is it easy to apply the policy consistently. To make matters worse it is usually the case that different EU Member States have different levels of interest in and contacts with the ACP country concerned. Agreeing what appropriate measures to take will therefore also affect EU member states differently. To launch an Article 96 process requires an agreement among the EU member states (this need not be unanimous as qualified majority voting is applicable) and therefore a high level of coordination among them is vital to build consensus.

The choices are therefore usually difficult, highly sensitive, often controversial, and frequently attract a good deal of public and media attention. The EU Member States therefore often have to confront the issues in something of a hothouse atmosphere, which makes the consistent application of policy more difficult still. In these circum-

3 Group of countries in Africa, the Caribbean and the Pacific.

stances, to observe coordination and coherence in the application of foreign and development policy is thus not an easy undertaking but at the same time the need to do so is acute.

Within the scope of this evaluation, it would be equally interesting to assess the coherence between adopted EU policies and the Member States bilateral policies with the same countries. Is there a coherence between the Member States and the EU after the decisions?

### **3. Justification for the evaluation**

The overall objective of this evaluation is to evaluate the extent to which it is possible to follow the precepts of coordination and coherence in one key area of EU external policy: that is the junction of foreign policy and development policy (the so called Coherence II, see Annex 1). The focus is particularly on the use of Article 96 of the Cotonou Agreement where the choices to be made in the prioritisation between development objectives and political foreign policy objectives are usually at their most stark. At the same time this is an area where the need for good coordination between the Member States and with the EC is acute and rendered more complex by the fact that competences vary between the two policy fields; foreign policy being an area of Member States' prerogative while development is a shared competence.

The overall focus of this study will be on a comparison of how coordination and coherence II were handled in the preparation and conduct of a number of these consultation processes, not on the rights and wrongs of the issues covered by each case of Article 96 consultation.

The outcomes of this study should contribute to and allow for, a joint learning process among the EC, Member States and stakeholders in the South. The evaluation should also incorporate the various constituencies' perspectives on the 3Cs.

The pertinence of this study lies in the fact that the application of Article 96 is one of the most controversial aspects of the Cotonou Agreement and is watched closely by a variety of different actors and stakeholders who often differently analyse the circumstances. ACP countries are clearly very sensitive to Article 96 being invoked, beneficiaries of European Development Fund (EDF) funded projects are directly affected if aid is suspended and human rights campaigners and the media in Europe often watch EU actions closely, and are not loath to criticise the EU publicly if they feel mistakes are made. It is thus very important that the different aspects of policy are well applied and that close attention is paid to coherence between policy areas and coordination between the positions of EU Member States and with the Commission. Evaluating if this is done well and in a consistent fashion from case to case is therefore of direct interest to all.



The value added of the study is probably greatest for the EU institutions; the EC and Council of ministers of course, but also for the European Parliament, who would all directly benefit from being able to refer to the results of an independent evaluation on the application of the 3Cs in this area of foreign and development policies. The ACP countries are also keen to understand better how Article 96 is applied, and this will be the subject of discussions in the up-coming quinquennial review of the Cotonou agreement where the ACP countries are expected to ask for greater clarification in the way it is intended to be used.

The study could be difficult to conduct because of the sensitivity of its subject matter, but it is nevertheless deemed to be **feasible** because the various steps in the process of applying Article 96 are documented in official records and public statements. Cases are usually also documented by independent observers such as development or human rights NGOs and in the media. There are therefore also a variety of actors and observers that could be interviewed.

#### **4. Evaluation objectives**

The prime purpose of the evaluation is to learn from the experience of the consultations under Article 96 and evaluate whether the consultations following the application of this article, one of the most difficult to apply in the Cotonou Agreement, are helped or perhaps hindered by the observance of the principles of coordination and coherence II. The enunciation of these principles in the Maastricht Treaty is intended to improve the quality and consistency of EU external actions and in difficult areas of policy this is all the more important. Yet both EU and ACP officials find the application of Article 96 a difficult task. Therefore any lessons that can be learnt from practical experience will be particularly valuable to the various stakeholders involved.

#### **5. Scope of the evaluation**

##### *Evaluation questions*

The scope of this study is relatively broad, but the evaluators will focus on the steps taken to maximise coordination and coherence in the consultation under Article 96 and in particular seek to answer the following questions:

- Are the principles of coordination and coherence regularly and systematically observed in the consultations following the application of Article 96?
- In these consultations, what steps do actors (EU member states and European Commission) commonly take, individually or jointly, to maximise coordination and coherence?
- What enabling mechanisms and/or frameworks to enhance coordination and coherence do they put in place and are these effective?

- What constraints did actors encounter in establishing such mechanisms and/or frameworks? How did they deal with them? Were they successful in maximising coordination and coherence?
- Does a link exist between measures taken and outcomes in terms of improved coordination and coherence? Did actions taken and mechanisms put in place contribute to or rather, hinder the achievement of actual results?
- Is there a coherence between MS bilateral policies and the EU decisions about “appropriate measures” in the eight cases?

#### *Expected results*

The evaluation report should:

- identify what actually happened in terms of following the precepts of coordination and coherence II.
- provide arguments to demonstrate the existence or otherwise of a link between the measures taken – in the field of coordination and coherence – and the outcomes.
- draw key lessons from the above and finally the evaluators should seek to make recommendations on what steps administrators might take to be more effective if and when they are faced with a similar situation in the future.
- perceive an evolution over time and from case to case, in the way article 96 is used and the Member States coordinate among each other?

## **6. Approach and methodology**

The study is best approached by doing comparative overview of all the eight cases of Article 96 consultations that have arisen since the Cotonou Agreement was signed<sup>4</sup>. This moment in time will be taken as the starting point for this evaluation. The overview will focus on how the coordination and coherence II principles were applied in the consultations and generally to what avail. From this comparative overview, 3-4 specific cases are to be chosen that can be looked at in more depth.

The choice of the case studies would then have to yield a diversity of situations, taking into account *four main criteria*:

- A range of *cases* with different causes for invoking Article 96
- A range of countries with different *historic or colonial links with Europe*
- Cases where *a number of EU Member States* (minimum 5 or 6) have embassies as well as some cases with only a few (1 or 2) Member States
- Preferably a range of different *outcomes to the consultations*

4 Article 96 of the Cotonou Agreement has been invoked in the cases of: Zimbabwe, Fiji, Haiti, Ivory Coast, Guinea-Bissau, Central African Republic, Togo and Guinea Conakry. (In Liberia it was Article 97 that was invoked).

Experience shows that it is particularly difficult for the Member States (and the European Commission) to coordinate their positions in cases where there has been no sharp rupture in governance, such as with a *coup d'état*, but more of a progressively worsening situation. The build up to the application of Article 96 in Zimbabwe is a good example of this occurring. Although the choice of such a case might prove controversial the results would probably be more informative than a case where there had been little debate between Member States.

For the case studies the following principles apply:

- The main sources of information will be through studying official pronouncements and records and through interviews with officials. Additional information could be collected from press coverage and from academic or NGO studies.
- A mix of methods for data/information collection should be used. Examples are: review of secondary sources, documentation and/or literature; semi-structured interviews with key informants; case studies; field observation studies; surveys and/or measurements.
- Key informants should be used chosen from the organisations directly involved in the process and external stakeholders such as non-state actors – private enterprise, NGOs, user organisation.
- Verification of the interviews should take place with stakeholders in and outside the EU. Methods to be used are; statistical evaluation; triangulation; feed-back to stakeholders.
- It should be ensured that the findings follow logically from the data analysis and interpretations based on transparent assumptions and rationale.
- It should be ensured that the recommendations will be fair, unbiased by personal views and sufficiently detailed to be operationally applicable.

The consultants are requested to design and elaborate a theoretical approach to the issues addressed in the evaluation, which permits the development of an analytical framework that allows for a further specification of the evaluation questions. The approach chosen and the methodology proposed are to take into account the particular nature of this type of process-oriented evaluation.

## **7. Management**

### *General management of the evaluation of the Three C's*

The *Group of Heads of Evaluation Services for External Cooperation of the Member States and the European Commission* (EU-HES) is the initiator of the program for the evaluation of the Three C's. At the meeting in Brussels on June 16, 2004 the Group decided to undertake the six proposed studies and installed a Task Force, which is responsible for the progress and continuation of the program. The European Commission and each of the member states can participate in the Task Force.

### *Management of the evaluation of consultation processes under article 96*

The progress of the evaluation of the consultation processes under Article 96 will be followed closely by a *Reference Group* consisting of representatives of the Policy and Operations Evaluation Department of the Netherlands (*lead agency*) and representatives of the Evaluation Services for Development cooperation of France (*partner*) and the UK (*silent partner*).

The Reference Group will when necessary convene at critical moments of the evaluation for review, discussion and oversight. In the *Preparatory phase* the Reference Group is responsible for the approval of the Terms of reference and the selection of the consultant. In this phase the Reference Group also gives their comments on the consultants' proposal and inception note. The lead agency is responsible for the organisation of the tendering process through public advertisement, short listing and competitive bidding. In the *Desk Phase* the Reference Group will give comments on the desk phase report and will make the choice of the case study countries. In the Case study phase the Reference Group will give their comments on the case study reports and in the report writing phase on the draft report. During the evaluation the Task Force will receive all the reports for information. The Task Force will assess the quality of the final report. The criteria for this assessment are mentioned in annex 2.

The lead agency will directly oversee the work of the consultants contracted to execute the study and prepare meetings of the Reference Group. The consultant should for the case studies (field phase) if possible, make use of local consultants.

In consultation with the Task Force, the Reference Group will decide on the way to proceed with the dissemination of the report.

## **8. Implementation**

### *Inception phase*

Upon invitation to tender, the consultant will submit a *proposal* to the Policy and Operations Evaluation Department of the Netherlands. This *proposal* will contain the consultant's understanding of the Terms of Reference, her/his proposed general approach to the evaluation; a theoretical approach towards the issues addresses by the evaluation; the proposed composition of the evaluation team (CVs) and a budget proposal. Once the consultant has been selected, has made any agreed amendments and the *proposal* has been approved by the Reference Group, the consultant will assemble relevant documentation on the issues to be addressed during the evaluation. On the basis of an in-depth analysis of this documentation the consultant(s) will then produce an *Inception Report*.

This *Inception Report* will include a well-founded theoretical approach towards the issues addressed by the evaluation, leading to an analytical framework that allows a further

specification of the evaluation questions; it will define adequate sources of information; set criteria for assessing the responses to each of the questions addressed; present appropriate methods for information; set criteria for assessing the responses to each of the questions addressed; present appropriate methods for information and data collection, processing and analysis, and if foreseen, suggest locations for field studies and interviews. The *Inception Report* should also detail possible limitations of the type of analysis chosen. It will be submitted to the Reference Group for approval, and distributed among the members of the Task Force, for their information and/or suggestions.

#### *Desk study phase*

The desk study should provide a comparative overview of all 8 cases in which Article 96 has been invoked. The desk study should make it possible to choose a limited number of cases to be looked at in more depth. It focuses on how the coordination and coherence II principles were applied in the consultation processes and generally, to what avail. The desk study should make use of all the data which are already available.

To complement the desk study, the Reference Group decides – in consultation with the consultants – which choice will be made of 3 cases to be studied in greater depth, using the criteria and considerations specified above (see 7.).

#### *Case or field study phase*

Following the satisfactory completion of the Desk Phase, the consultant(s) will proceed to the field missions. The purpose of the field missions is to complement the data found in the desk study with findings in the developing countries concerned. The consultant(s) will present the findings during the fieldwork at the end of each field mission in a *Field Report*. The Reference Group will comment on these reports, which will be shared with the Task Force for their information.

#### *Reporting phase*

The consultant(s) will deliver the Draft Evaluation Report to the Reference Group. The report will be circulated for comments. The lead agency will organise a meeting of the Reference Group to discuss the draft report, in the presence of the consultant(s). The draft final report is sent to the Task Force for information.

On the basis of comments received from the Reference Group, the consultant(s) will make amendments and submit the Final Evaluation Report.

### **9. Consultant(s) profile**

A lead consultant, selected through competitive proposal submission, will carry out the evaluation. The organisation of the evaluation is the responsibility of the lead consultant. Therefore the lead consultant will specify and explain the organisation of the

evaluation clearly in the proposal for the evaluation. The lead consultant should hold a post-graduate degree in social science, political science and/or development studies with at least 10 years of relevant experience as well as experience in EU development programmes and knowledge of the working of the EU and its institutions.

Besides, the lead consultant will have or include in his/her team at a senior level, extensive experience with respect to the analysis and evaluation of policy-related multi-stakeholder processes. He or she is expected to be able to form and lead an interdisciplinary team to match the specific specialist fields required by the evaluation.

To assure that partner country perspectives are reflected in the study the team of consultants should include experts from partner countries, with priority for the countries where case studies are to be conducted. Therefore the team must include the linguistic competencies required for field work in the case study countries.

The lead consultant should have extensive experience in conducting complex and sensitive evaluations.

Innovativeness regarding the design of the theoretical approach and methodology for the evaluation is considered an asset. The consultants will be required on a regular basis to interact with the Reference Group; and to promote learning with respect to the outcomes of the evaluation, by defining specific inputs into the 3C learning platform at regular intervals in their *Proposal*.

## **10. Dissemination and follow-up**

After approval of the final report, the Reference Group will proceed with the Dissemination of the results (conclusions and recommendations) contained within this Report. The Reference Group will: (i) make a formal Judgement on the Quality of the evaluation (see section 6 and Annex 2); (ii) draft a 2-page Evaluation Summary; (iii) agree with the Task Force for the 3Cs initiative on the distribution of the report.

### **ToR Annex 1: Coordination, complementarity and coherence: origin and operational definitions**

The Community's competence in the field of development co-operation was established in law by adoption of the Treaty on European Union (Maastricht Treaty) in 1992. The Treaty created a constitutional basis for development co-operation policies, and formalises the existence of a European development policy functioning in liaison with those of Member States, while recognising their interdependence. It revolves in essence around aspects of the so-called "3Cs": *co-ordination, complementarity and*

*coherence*; which are also inter-related. However, the Treaty is not always clear or free from ambiguities. Below, a summary of the relevant provisions are given.

Article C of the Treaty on European Union (Maastricht Treaty) sets out the general parameter for the Union's external action. It stipulates that "the Union shall in particular ensure the **consistency** of its external activities as a whole in the context of its external relations, security, economic and development policies."<sup>5</sup> Further, it requires the Council and the Commission to be responsible for ensuring such **consistency**. These provisions were reiterated in the Amsterdam and Nice Treaties under Article 3.

Article 130v of the Maastricht Treaty, which was taken up in the subsequent Amsterdam and Nice Treaties as Article 178, further requires the Union to "take account of the objectives referred to in Article 130u [Article 177 in both the Nice and Amsterdam Treaties] in the policies that it implements which are likely to affect developing countries". Article 130u, in turn, states that the EU development policy, which shall be **complementary** to those of the MS, shall foster the sustainable social and economic development for, the integration into the world economy of, and alleviation of poverty in developing countries.

Article 130x of the Maastricht Treaty (Article 180 of the Amsterdam and Nice Treaties) demands that "the Community and the Member States shall **coordinate** their policies on development cooperation and shall consult each other on their aid programmes, including in international organisations and during international conferences." Member States shall contribute if necessary to the implementation of Community aid programmes.<sup>6</sup> Article 130x adds that the Commission may take any useful initiatives to promote this coordination.

In the context of the Amsterdam and Nice Treaties, humanitarian action is considered as one aspect of the Union's common foreign and security policy (Article 17 (2)). Provisions under this heading demand that the MS "...support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity. The Member States shall work together to enhance and develop their mutual political solidarity. They shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations" (Article 11).

5 Treaty on European Union, Official Journal of the European Communities C191, 29 July 1992 [http://europa.eu.int/eur-lex/en/treaties/dat/EU\\_treaty.html](http://europa.eu.int/eur-lex/en/treaties/dat/EU_treaty.html).

6 See Treaty on European Union, Official Journal C 191, 29 July 1992, and Consolidated Versions of the Treaty on European Union and of the Treaty establishing the European Community, Official Journal C 325/1 24 December 2002.

### *Co-ordination*

Co-ordination has been defined here, as ‘activities of two or more development partners that are intended to mobilise aid resources or to harmonise their policies, programmes, procedures and practices so as to maximise the development effectiveness of aid resources’. With regard to co-ordination several levels (international, regional, national, sub-national, sectoral) can be distinguished, as well as differences in content (policies/principles/ priorities, procedures, practices) as in intensity (consultation, co-operation, collaboration). Co-ordination is seen as necessary, because a lack of co-ordination could lead to a donor driven agenda, excessive demands on scarce management capacities, inconsistencies of approach, etc

### *Complementarity*

Complementarity is intended to ensure that Community development policy ‘shall be complementary to the policies pursued by the Member States’. This indicates that development co-operation is a shared competence between the Community and the Member States which can be jointly exercised. It is confirmed that the Community has a specific, but not exclusive competence in the field of development co-operation. In this sense complementarity differs from the concept of ‘subsidiarity’, which refers to a distribution of competence and decision-making at the most appropriate level. In the case of complementarity both the Commission and the Member States can have competences and tasks at the same level.

The notion of complementarity poses the question of its direction, in other words, is it up to the Community to complement the activities of Member States, or the other way around? Another issue is the equal partnership between the Commission and Member States, and reciprocal participation in the elaboration of their respective policies.

### *Coherence*

Coherence, probably the most debated of the 3Cs, is defined here as ‘the non-occurrence of effects of policy that are contrary to the intended results or aims of policy.’

Much depends on the perspective of the viewer. For example:

- A narrow definition would be that objectives of policy in a particular field may not be undermined or obstructed by actions or activities in this same field.
- A wide definition would be that objectives of policy in a particular field may not be undermined or obstructed by actions or activities of government in that field or in other policy fields.

With regard to policy coherence this means that it can focus on one terrain or field of policy only, or try to make links with other fields, domains or policies. Along these lines, we distinguish three types of “coherence”, as a focus for evaluation:

- *Coherence 1*: between different elements of European development policy itself;



- *Coherence II*: between different sets or parts of European foreign policy and development co-operation policy; and
- *Coherence III*: between development co-operation policies and policies in other fields, which can in theory, be all parts of European policy making.

An important aspect is the distinction between intended and unintended incoherence in policy-making. This stresses that there is no hierarchy in policies and that given a certain set of goals and weighing them against a set of goals in another policy field, incoherence can also be deliberate.

## Annex 2: Articles 8, 9, 96 and 97 of the Cotonou Agreement

### Article 8

#### Political dialogue

1. The Parties shall regularly engage in a comprehensive, balanced and deep political dialogue leading to commitments on both sides.
2. The objective of this dialogue shall be to exchange information, to foster mutual understanding, and to facilitate the establishment of agreed priorities and shared agendas, in particular by recognising existing links between the different aspects of the relations between the Parties and the various areas of cooperation as laid down in this Agreement. The dialogue shall facilitate consultations between the Parties within international fora. The objectives of the dialogue shall also include preventing situations arising in which one Party might deem it necessary to have recourse to the non-execution clause.
3. The dialogue shall cover all the aims and objectives laid down in this Agreement as well as all questions of common, general, regional or sub-regional interest. Through dialogue, the Parties shall contribute to peace, security and stability and promote a stable and democratic political environment. It shall encompass cooperation strategies as well as global and sectoral policies, including environment, gender, migration and questions related to the cultural heritage.
4. The dialogue shall focus, inter alia, on specific political issues of mutual concern or of general significance for the attainment of the objectives of this Agreement, such as the arms trade, excessive military expenditure, drugs and organised crime, or ethnic, religious or racial discrimination. The dialogue shall also encompass a regular assessment of the developments concerning the respect for human rights, democratic principles, the rule of law and good governance.

5. Broadly based policies to promote peace and to prevent, manage and resolve violent conflicts shall play a prominent role in this dialogue, as shall the need to take full account of the objective of peace and democratic stability in the definition of priority areas of cooperation.

6. The dialogue shall be conducted in a flexible manner. Dialogue shall be formal or informal according to the need, and conducted within and outside the institutional framework, in the appropriate format, and at the appropriate level including regional, sub-regional or national level.

7. Regional and sub-regional organisations as well as representatives of civil society organisations shall be associated with this dialogue.

## **Article 9**

### Essential Elements and Fundamental Element

1. Cooperation shall be directed towards sustainable development centred on the human person, who is the main protagonist and beneficiary of development; this entails respect for and promotion of all human rights.

Respect for all human rights and fundamental freedoms, including respect for fundamental social rights, democracy based on the rule of law and transparent and accountable governance are an integral part of sustainable development.

2. The Parties refer to their international obligations and commitments concerning respect for human rights. They reiterate their deep attachment to human dignity and human rights, which are legitimate aspirations of individuals and peoples. Human rights are universal, indivisible and interrelated. The Parties undertake to promote and protect all fundamental freedoms and human rights, be they civil and political, or economic, social and cultural. In this context, the Parties reaffirm the equality of men and women.

The Parties reaffirm that democratisation, development and the protection of fundamental freedoms and human rights are interrelated and mutually reinforcing. Democratic principles are universally recognised principles underpinning the organisation of the State to ensure the legitimacy of its authority, the legality of its actions reflected in its constitutional, legislative and regulatory system, and the existence of participatory mechanisms. On the basis of universally recognised principles, each country develops its democratic culture.

The structure of government and the prerogatives of the different powers shall be founded on rule of law, which shall entail in particular effective and accessible means of legal redress, an independent legal system guaranteeing equality before the law and an executive that is fully subject to the law.

Respect for human rights, democratic principles and the rule of law, which underpin the ACP-EU Partnership, shall underpin the domestic and international policies of the Parties and constitute the essential elements of this Agreement.

3. In the context of a political and institutional environment that upholds human rights, democratic principles and the rule of law, good governance is 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 at the level of public authorities, transparent and accountable institutions, the primacy of law in the management and distribution of resources and capacity building for elaborating and implementing measures aiming in particular at preventing and combating corruption.

Good governance, which underpins the ACP-EU Partnership, shall underpin the domestic and international policies of the Parties and constitute a fundamental element of this Agreement. The Parties agree that only serious cases of corruption, including acts of bribery leading to such corruption, as defined in Article 97 constitute a violation of that element.

4. The Partnership shall actively support the promotion of human rights, processes of democratisation, consolidation of the rule of law, and good governance.

These areas will be an important subject for the political dialogue. In the context of this dialogue, the Parties shall attach particular importance to the changes underway and to the continuity of the progress achieved. This regular assessment shall take into account each country's economic, social, cultural and historical context.

These areas will also be a focus of support for development strategies. The Community shall 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 Community.

**Article 96, *changes 25/06/2005 in italics***

Essential elements: consultation procedure and appropriate measures as regards human rights, democratic principles and the rule of law

i. Within the meaning of this Article, the term ‘Party’ refers to the Community and the Member States of the European Union, of the one part, and each ACP State, of the other part.

*1a. Both Parties agree to exhaust all possible options for dialogue under Article 8, except in cases of special urgency, prior to commencement of the consultations referred to in paragraph 2(a) of this Article.*

2. (a) If, despite the political dialogue conducted regularly between the Parties, a Party considers that the other Party has failed to fulfil an obligation stemming from respect for human rights, democratic principles and the rule of law referred to in paragraph 2 of Article 9, it shall, except in cases of special urgency, supply the other Party and the Council of Ministers with the relevant information required for a thorough examination of the situation with a view to seeking a solution acceptable to the Parties. To this end, it shall invite the other Party to hold consultations that focus on the measures taken or to be taken by the party concerned to remedy the situation.

The consultations shall be conducted at the level and in the form considered most appropriate for finding a solution.

The 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.

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.

*2. (a) If, despite the political dialogue on the essential elements as provided for under Article 8 and paragraph 1a of this Article, a Party considers that the other Party fails to fulfil an obligation stemming from respect for human rights, democratic principles and the rule of law referred to in Article 9(2), it shall, except in cases of special urgency, supply the other Party and the Council of Ministers with the relevant information required for a thorough examination of the situation with a view to seeking a solution acceptable to the Parties. To this end, it shall invite the other Party to hold consultations that focus on the measures taken or to be taken by the Party concerned to remedy the situation in accordance with Annex VII.*

*The consultations shall be conducted at the level and in the form considered most appropriate for finding a solution.*

*The consultations shall begin no later than 30 days after the invitation and shall continue for a period established by mutual agreement, depending on the nature and gravity of the violation. In no case shall the dialogue under the consultations procedure last longer than 120 days.*

*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 no longer prevail.*

(b) The term ‘cases of special urgency’ shall refer to exceptional cases of particularly serious and flagrant violation of one of the essential elements referred to in paragraph 2 of Article 9, that require an immediate reaction.

The Party resorting to the special urgency procedure shall inform the other Party and the Council of Ministers separately of the fact unless it does not have time to do so.

(c) The 'appropriate measures' referred to in this Article are measures taken in accordance with international law, and proportional to the violation. In the selection of these measures, priority must be given to those which least disrupt the application of this agreement. It is understood that suspension would be a measure of last resort.

If measures are taken in cases of special urgency, they shall be immediately notified to the other Party and the Council of Ministers. At the request of the Party concerned, consultations may then be called in order to examine the situation thoroughly and, if possible, find solutions. These consultations shall be conducted according to the arrangements set out in the second and third subparagraphs of paragraph (a).

#### **Article 97, changes 25/06/2005 in italics**

##### Consultation procedure and appropriate measures as regards corruption

1. The Parties consider that when the Community is a significant partner in terms of financial support to economic and sectoral policies and programmes, serious cases of corruption should give rise to consultations between the Parties.

2. In such cases either Party may invite the other to enter into consultations. Such consultations shall begin no later than 21 days after the invitation and shall last no longer than 60 days.

*2. In such cases either Party may invite the other to enter into consultations. Such consultations shall begin no later than 30 days after the invitation and dialogue under the consultations procedure shall last no longer than 120 days.*

3. If the consultations do not lead to a solution acceptable to both Parties or if consultation is refused, the Parties shall take the appropriate measures. In all cases, it is above all incumbent on the Party where the serious cases of corruption have occurred to take the measures necessary to remedy the situation immediately. The measures taken by either Party must be proportional to the seriousness of the situation. In the selection of these measures, priority must be given to those which least disrupt the application of this agreement. It is understood that suspension would be a measure of last resort.

4. Within the meaning of this Article, the term 'Party' refers to the Community and the Member States of the European Union, of the one part, and each ACP State, of the other part.

## Annex 3: Correlations

### Consultations and the absolute level of polity problems

<i>Lack of ...</i>	<i>Nonparametric Spearman's Correlation Coefficient with Consultations</i>
... democracy	- 0.090 (lack of democracy makes consultations slightly more probable)
...ability to avoid autocratic characters in polity <sup>1</sup>	- 0.113* (autocracy makes consultations more likely, this correlation is meaningful)
...competitiveness of participation	- 0.075 (lack of competitive participation makes consultations more likely, meaningful correlation)
... freedom of participation	- 0.067 (lack of freedom makes consultations only slightly more likely)
... constraints on chief executive	- 0.130* (lack of constraints on chief executive makes consultations more likely, meaningful correlation)
... competitiveness of executive recruitment	- 0.074 (lack of competitiveness of executive recruitment makes consultations only slightly more likely)

### Consultation and the development of polity problems

<i>Deterioration of ...</i>	<i>Nonparametric Spearman's Correlation Coefficient with Consultations</i>
... democracy	- 0.248** (deterioration of democracy makes consultations much more probable, highly significant correlation)
...ability to avoid autocratic characters in polity <sup>1</sup>	- 0.352** (increased autocracy makes consultations much more likely, highly significant correlation)
...competitiveness of participation	- 0.265** (deterioration of competitive participation makes consultations much more likely, highly significant correlation)
... freedom of participation	- 0.085 (deterioration of freedom does not significantly make consultations more likely)
... constraints on chief executive	- 0.302** (weakening of constraints on chief executive makes consultations much more likely, meaningful correlation highly significant correlation)
... competitiveness of executive recruitment	- 0.360** (declining of competitiveness of executive recruitment makes consultations much more likely, highly significant correlation)

<sup>1</sup> Here, the original Polity score on autocracy is modified by reducing it from number 10, in order to harmonize the presentation with other scores (where high score means a positive situation).

### Cases where coup did not motivate consultations

<i>Lack of...</i>	<i>Nonparametric Spearman's Correlation Coefficient with Consultations</i>
... democracy	- 0.063 (lack of democracy does not systematically affect the choice on consultations)
...ability to avoid authoritarian characters in polity <sup>2</sup>	- 0.088 (authoritarianism does not systematically affect the choice on consultations)
...competitiveness of participation	- 0.038 (lack of competitiveness in participation does not systematically affect the choice on consultations)
... freedom of participation	- 0.016 (lack of freedom of participation does not systematically affect the choice on consultations, rather the other way around)
... constraints on chief executive	- 0.089 (lack of constraints on chief executive does not systematically affect the choice on consultations)
... competitiveness of executive recruitment	- 0.016 (lack of competitiveness of executive recruitment does not systematically affect the choice on consultations)
<i>Deterioration of...</i>	<i>Nonparametric Spearman's Correlation Coefficient with Consultations</i>
... democracy	- 0.144* (deterioration of democracy systematically increases the probability of consultations Correlation is significant)
...ability to avoid autocratic characters in polity <sup>2</sup>	- 0.234** (increased autocracy systematically increases the probability of consultations Correlation is very significant)
...competitiveness of participation	- 0.017 (deterioration of competitiveness of participation does not systematically affect the choice on consultations)
... freedom of participation	- 0.139* (deterioration of freedom of participation does not systematically affect the choice on consultations, rather to the contrary)
... constraints on chief executive	- 0.135* (deterioration of constraints on chief executive systematically increases the probability of consultations. Correlation is significant)
... competitiveness of executive recruitment	-0.091 (deterioration of competitiveness of executive recruitment does not systematically affect the choice on consultations, rather to the contrary)

2 Here, the original Polity score on autocracy is modified by reducing it from number 10, in order to harmonize the presentation with other scores (where high score means a positive situation).



## Annex 4: Figures comparing consultation and other ACP countries

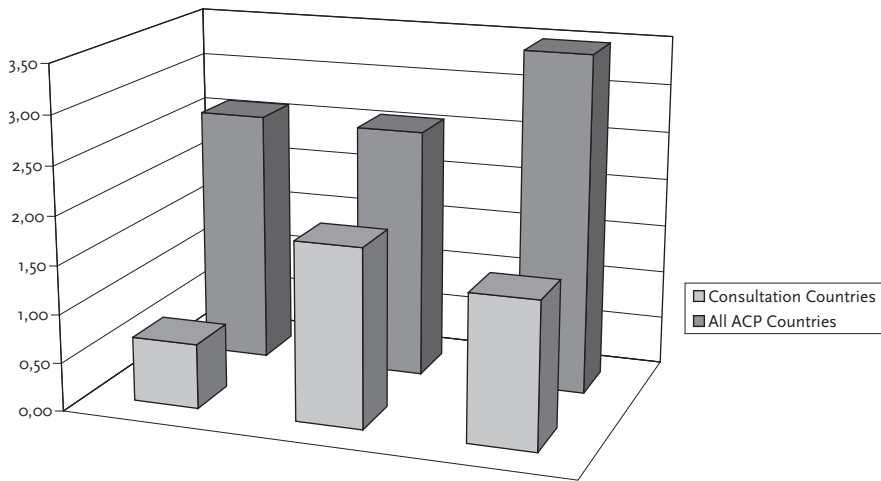
In the following Figures, the democracy scores for ACP countries show their average levels of human rights, governance and democracy in the period 1999-2003, while the scores for consultation countries reveal the average in the years when the crisis that led to consultations started. In most cases, consultations were started immediately after things deteriorated. However, in Côte d'Ivoire a *coup d'état* happened at the end of the year. The EU reacted the following year and thus consultations have to be seen as a reaction to deterioration, not during the year when consultations started, but during the previous year.<sup>1</sup>

1 Polity data is usually considered as ordinal, rather than cardinal (the distance between scores is assumed to be unknown). However, taken the very accurate descriptions on how score 1 differs from score 2, how score 2 differs from 3, etc., it is possible to treat the Polity scale as a cardinal scale. If this is done, one can make comparisons based on arithmetic averages, as is done in Figures 1 - 8.

The data on authoritarianism is normally presented so that the greatest number is given to a political system with most authoritarian characteristics. However, here the original Polity score is turned around. Thus the score here is 10 minus the original score. The data is shown as avoidance of authoritarianism rather than authoritarianism. This is done in order to be able to illustrate a positive situation by high scores, consistent with the other factors represented in these figures.

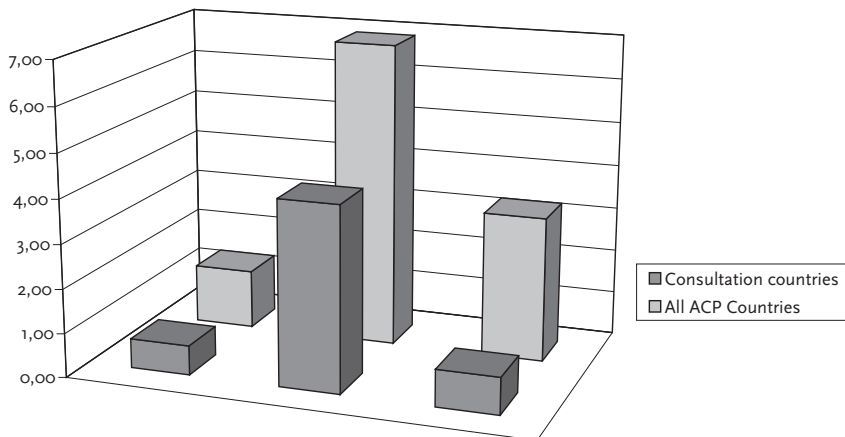
In the case of state collapse, *coup d'état* or uncontrolled transition, although the original source treats these cases as missing data, this study scores the situation as one with minimum democracy and maximum authoritarian characteristics. Military coups and state collapses are situations that highlight authoritarianism and do not give space to democracy or the protection of human rights, and they should therefore be seen as problematic situations rather than unknown or neutral ones. In most cases it has been sufficient to make this change. However, because there are relatively few consultation cases, the quantitative analysis for them has had to be more accurate. For this reason, the estimate of the transition in 1999 in Haiti (code -88 in the original Polity IV data) has been changed. In order to be able to present a more comprehensive analysis, Haiti's development has been assumed to have continued as in the previous year, as has been estimated by the qualitative analysis.

FIGURE 1: Human rights in ACP countries (averages)



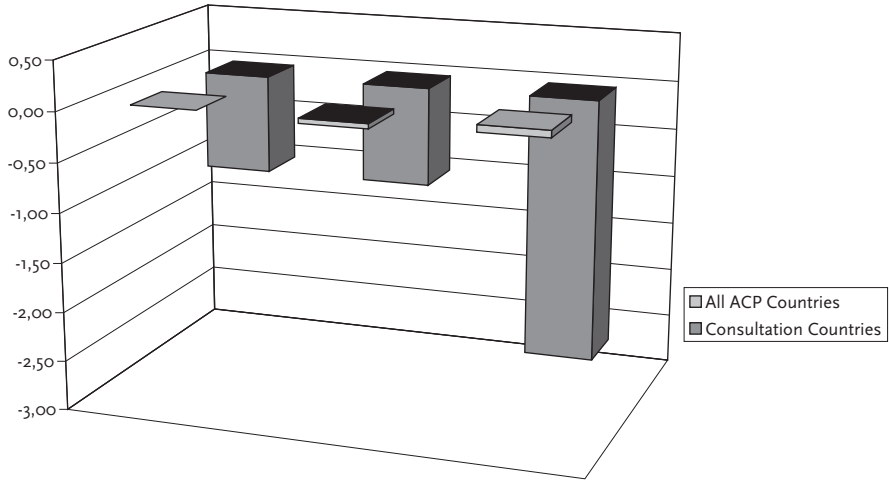
	Competitiveness of Participation	Freedom of Participation	Constraints on Chief Executive
Consultation Countries	0,67	1,83	1,50
All ACP Countries	2,61	2,58	3,49

FIGURE 2: Democracy and rule of law (averages)



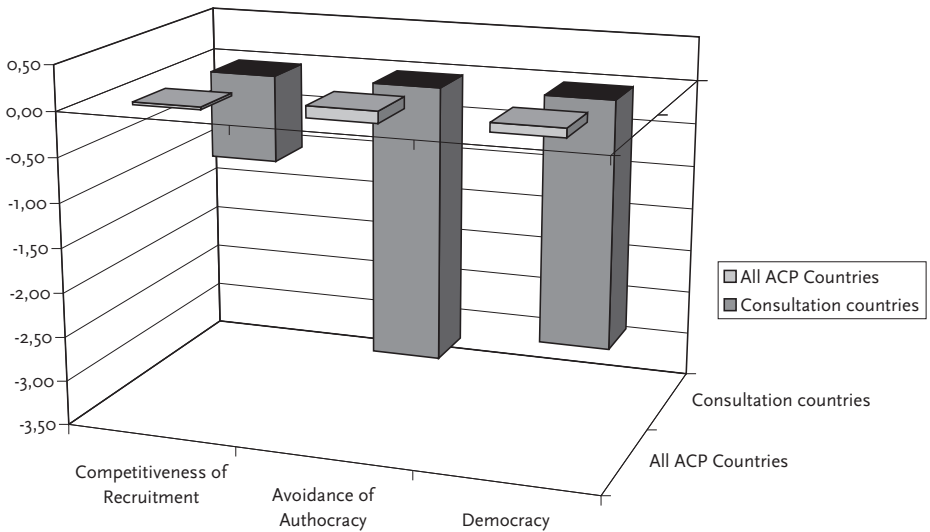
	Competitiveness of Recruitment	Avoidance of Authorocracy	Democracy
Consultation countries	0,67	4,17	0,83
All ACP Countries	1,34	6,89	3,28

FIGURE 3: Changes in human rights situation (averages)



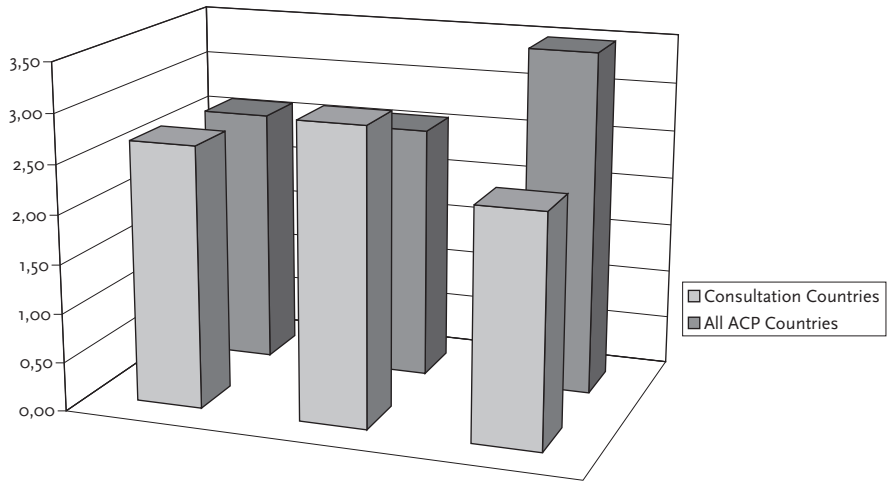
	Competitiveness of Participation	Freedom of Participation	Constraints on Chief Executive
All ACP Countries	0,00	-0,05	0,07
Consultation Countries	-1,00	-1,00	-2,67

FIGURE 4: Change in democracy and rule of law (averages)



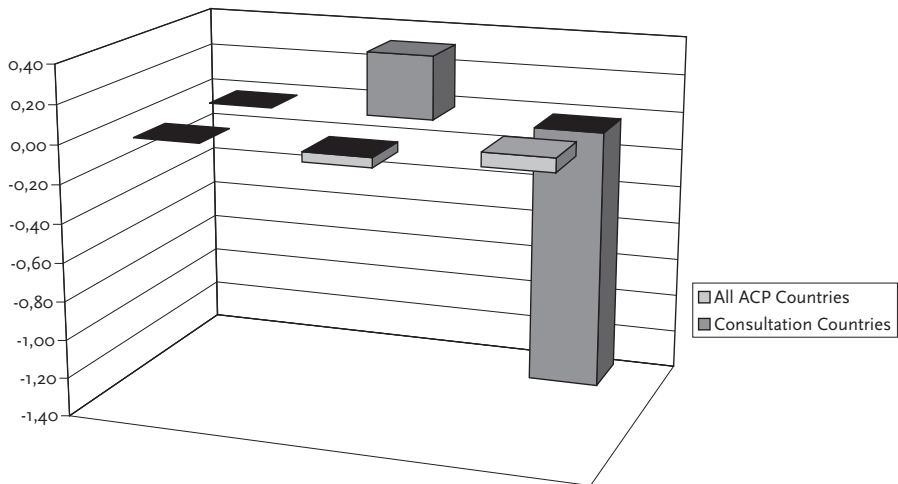
	Competitiveness of Recruitment	Avoidance of Authocracy	Democracy
All ACP Countries	0,03	0,13	0,10
Consultation countries	-1,00	-3,17	-2,83

FIGURE 5: Human rights in ACP countries (averages, excluding coup cases)



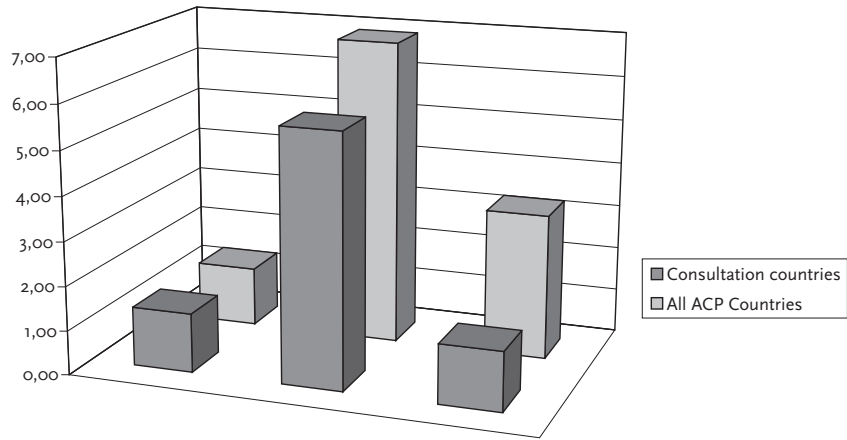
	Competitiveness of Participation	Freedom of Participation	Constraints on Chief Executive
Consultation Countries	2,67	3,00	2,33
All ACP Countries	2,61	2,58	3,49

FIGURE 6: Changes in human rights situation (averages, excluding coup cases)



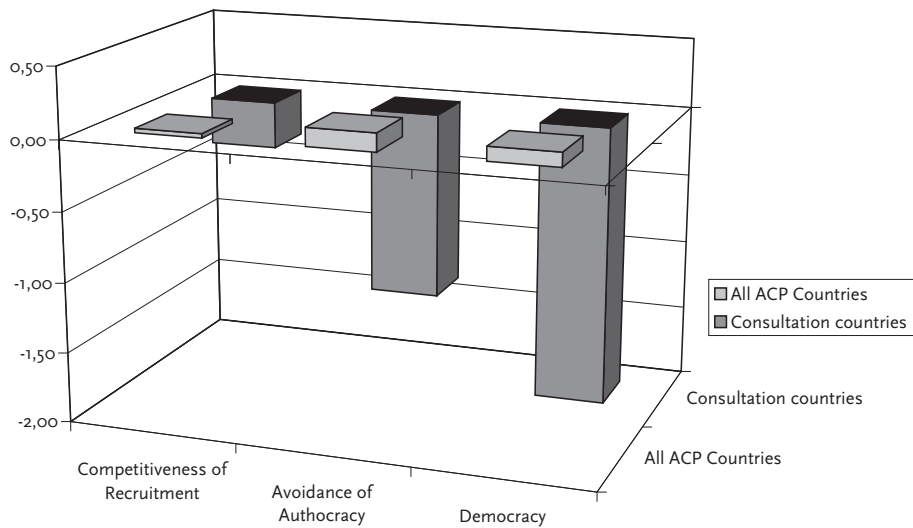
	Competitiveness of Participation	Freedom of Participation	Constraints on Chief Executive
All ACP Countries	0,00	-0,05	0,07
Consultation Countries	0,00	0,33	-1,33

FIGURE 7: Democracy and rule of law (averages, excluding coup cases)



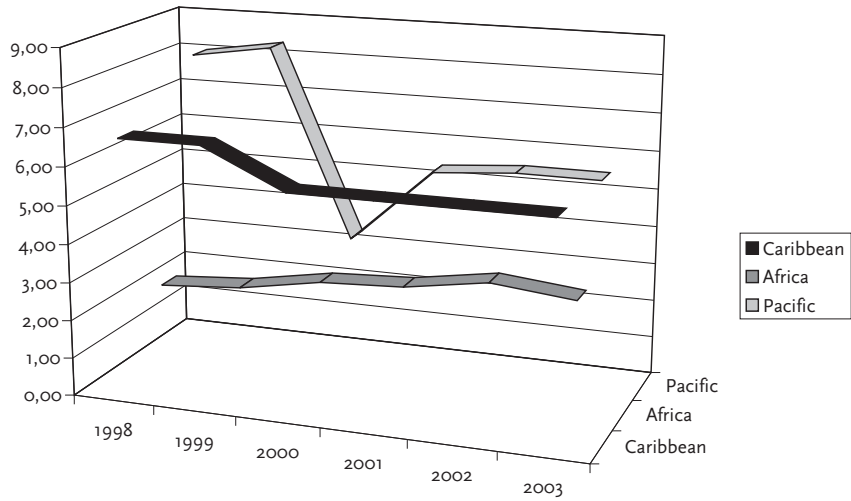
	Competitiveness of Recruitment	Avoidance of Authocracy	Democracy
Consultation countries	1,33	5,67	1,33
All ACP Countries	1,34	6,89	3,28

FIGURE 8: Change in democracy and rule of law (averages, excluding coup cases)



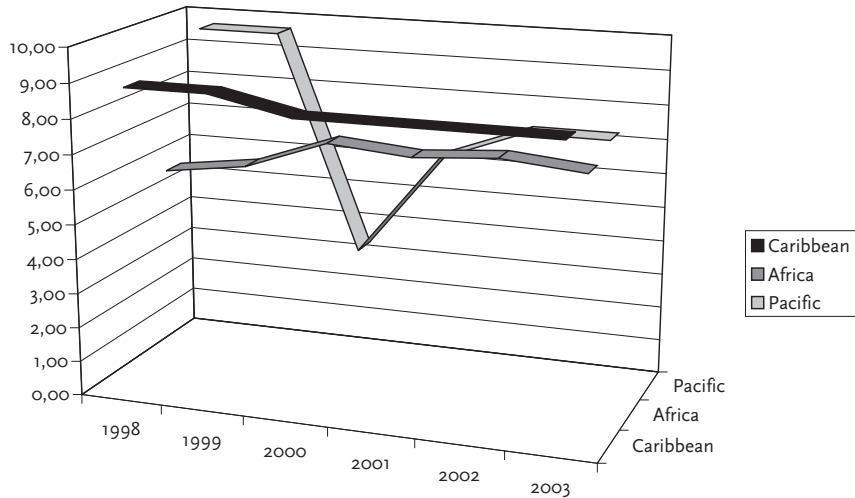
	Competitiveness of Recruitment	Avoidance of Authocracy	Democracy
All ACP Countries	0,03	0,13	0,10
Consultation countries	-0,33	-1,33	-2,00

FIGURE 9: Development of Democracy in ACP Regions



	1998	1999	2000	2001	2002	2003
■ Caribbean	6,67	6,67	5,67	5,67	5,67	5,67
■ Africa	2,22	2,38	2,76	2,87	3,22	3,00
■ Pacific	8,00	8,33	3,33	5,33	5,50	5,50

FIGURE 10: Avoidance of Authoritarianism in ACP Areas



	1998	1999	2000	2001	2002	2003
■ Caribbean	8,83	8,83	8,33	8,33	8,33	8,33
■ Africa	5,91	6,24	7,11	6,91	7,09	6,87
■ Pacific	9,67	9,67	3,33	6,33	7,25	7,25

### ANNEX 5: Timeline of commencement of consultations in Article 96 cases

Togo											
Fiji	Côte d'Ivoire	Haiti	Côte d'Ivoire	Liberia	Zimbabwe	Central African Republic	Guinea-Bissau	Republic of Guinea	Mauritania		
▲	▲	▲	▲	▲	▲	▲	▲	▲	▲		▲
Portugal	France	Sweden	Belgium	Spain	Denmark	Greece	Ireland	Netherlands	Luxembourg	UK	Austria
Poul Nielsen (DK)										Louis Michel (BE)	
2000 ▼	2001	2002	2003	2004	2005 ▼	2006					
Signing of the Cotonou Agreement											
EU Presidency											
Development Commissioner											
Mid-term review of the Cotonou Agreement											

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

This study focuses on the junction between foreign policy and development policy, through a particular focus on Article 96 of the Cotonou Agreement. This agreement, which was signed in the year 2000 by the European Union and the African, Caribbean and Pacific group, provides a solid basis for ACP-EU political dialogue regarding respect for human rights, democratic principles, rule of law and good governance. Article 96 of this agreement provides the legal basis for consultations and the possible suspension of cooperation in cases where one of the parties feels the agreement's essential elements are not being respected. The study looks at how coordination and coherence were handled in the preparation and conduct of different Article 96 consultation processes.

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