

20 April 2010

Revision of the Cotonou Agreement

On 20 January 2010, the Plenary Session of the European Parliament adopted a resolution, proposed by the Committee on Development, concerning the revision of the Cotonou Agreement⁽¹⁾. On that occasion Parliament affirmed that the scope of principles such as respect for human rights and fair treatment of ACP countries' nationals 'is seriously compromised by bilateral readmission agreements with transit countries in a context of externalisation by Europe of the management of migration, which do not guarantee respect for the rights of migrants and which may result in "cascade" readmissions which jeopardise their safety and their lives'.

The negotiations related to the revision of this agreement in general and to Article 13 in particular have not ended. On 9 February 2010 Parliament adopted a resolution on relations with the Commission⁽²⁾ where it is clearly stated that the agreement concluded between the two institutions includes 'a commitment by the Commission for reinforced association with Parliament through the provision of immediate and full information to Parliament at every stage of negotiations on international agreements'.

How will the Commission inform Parliament on the current status of these negotiations and on all steps taken by the Commission itself in order to guarantee that migrants' rights will be truly respected?

8 June 2010

Answer by Andris Piebalgs on behalf of the Commission

Negotiations on the revision of the Cotonou Agreement were concluded at an African, Caribbean and Pacific (ACP) – EU extraordinary Ministerial meeting on 19 March 2010. The agreed texts were initialled by the negotiators of both sides. On this basis, the Agreement, amending the Cotonou Agreement for the second time will be established and signed at the Joint Council at the end of June 2010 in Ougadougou. Further to the signature, the ratification process will start, which will be completed by a Council decision on the conclusion of the Amending Agreement. The Parliament is required to give its consent to the Amending Agreement without which it cannot enter into force.

Throughout the negotiations, the director from Directorate-General Development responsible for conducting the negotiation process kept the Committee on Development informed in monthly ‘in camera’ meetings.

With regard to migration, both sides had notified Article 13 of the Cotonou Agreement for possible modification. The EU side aimed at reflecting a more comprehensive approach, focusing not only on maximising the contributions of migration to development and synergies between migration and development, but also on the management of legal migration and the fight against illegal migration. These three dimensions are the pillars of the Global Approach to Migration defined by the EU in 2005.

However, the Commission's negotiation directives also foresaw to include operational details in the part of the text on readmission, which was firmly opposed by the ACP side, as they preferred to address such details on a bilateral basis with Member States. At the end, whilst Article 13 as such will not be changed, the Parties agreed on a best endeavour to strengthen and deepen a dialogue in line with the global approach.

The joint declaration on Article 13 reads as follows:

‘The Parties agree to strengthen and deepen their dialogue and cooperation in the area of migration, building on the following three pillars of a comprehensive and balanced approach to migration.

1. Migration and Development, including issues relating to diasporas, brain drain and remittances;
2. Legal migration including admission, mobility and movement of skills and services; and
3. Illegal migration, including smuggling and trafficking of human beings and border management, as well as readmission.

Without prejudice to the current Article 13, the Parties undertake to work out the details of this enhanced cooperation in the area of migration.

They further agree to work towards the timely completion of this dialogue and to report about the progress to the next Joint Council.'

The readmission provision contained in Article 13 of the Cotonou Agreement, similarly to the fully fledged EU readmission agreements, does not limit the applicability of the relevant international protection and Human Rights instruments (*inter alia*, the Refugee Convention and the ECHR⁽¹⁾) to the persons being readmitted. This means that any person who is eligible for the protection under those instruments may not be subject to readmission. Furthermore, no person may be removed and/or be subject to a readmission procedure from any Member State before the risk of ill-treatment in the country of destination has been fully evaluated and excluded. Finally, the persons subject to return under readmission agreements with third countries, whether they are concluded at EU or bilateral level, benefit from the rights granted under the various human rights instruments as well as, in the future, from rights guaranteed under the Return Directive that is currently being transposed by Member States, such as free legal assistance.