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Is the EU-ACP partnership still suitable for Africa?

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Table of Contents: 1. The EU/ACP Partnership. 2. The debate on the "post-Cotonou". 3. Negotiation at a standstill.

1. The EU/ACP Partnership

The Cotonou Partnership Agreement (CPA) establishes a broad partnership between the EU and 79 African, Caribbean and Pacific countries (ACP).¹ As a whole, the agreement brings together more than one hundred countries, representing a population of more than one and half billion people. The grouping was initially based on a shared colonial condition. In 1957, the Treaty of Rome, while not providing any competence in the field of development aid, envisaged the association with the fledgling European Economic Community of "non-European countries and territories which have *special relations* with Belgium, Denmark, France, Italy, the Netherlands and the United Kingdom" (art.131, italics added). Since then, a "special relation" with these countries has been maintained through the Yaoundé Agreement (in force from 1965 to 1975) and the subsequent Lomé Conventions (1975 to 2000). In 2000, the Cotonou Agreement notably enlarged the partnership, adding new fields of cooperation and increasing its ambitions.

The agreement is based upon three pillars: development, trade and "political dialogue". The first pillar, development, is currently implemented on the basis of joint programming, aiming to increase partners' ownership and accountability. The partnership receives multi annual resources from the European Development Fund (EDF), a financial instrument that is currently outside the EU budget.² In this field, the fundamental tenet of the ACP-EU partnership has become 'differentiation'. Accordingly, the allocation of resources depends not only on the needs of the recipient State, but also - in a growing part - on the State's

* Articolo sottoposto a referaggio.

* *Statements of fact and opinions reflect the personal view of the author and do not represent the views of the Italian Senate in any way.*

¹ Cuba, although a member of the ACP Group, did not sign the agreement.

² With 30.5 billion EUR allocated for the period 2014-2020.

advancements related to the objectives set out in respective National Strategies (poverty reduction, enhancement of the rule of law, human rights, etc.). This was a key change, compared to the previous Lomé Conventions. While in line with (and in some way anticipating) the more recent trends of EU policies on external aid, the change was severely criticized by ACP countries and constituted a big challenge for many of them.

The Cotonou Agreement also represents a major change also for trade, its second pillar. To a large extent, during the Lomé period (according to the spirit of the time) the EU/ACP commercial partnership was based on preferential trade relationships. With Cotonou this model was updated (also in order to comply with WTO rules) by establishing free-trade areas, based upon Economic Partnership Agreements (EPA) with regional groups within the ACP countries. This change, despite not being completely unexpected, (and not relevant for Least Developed Countries)³ proved to be challenging for many ACP countries. Not only was the EPA negotiation process has been longer and more complicated than initially anticipated, but it largely exceeded the deadlines provided for in the CPA itself. Several countries, such as Nigeria, still refuse to sign the EPA, arguing that these agreements, which open African markets to EU goods, are detrimental to national economies. The EPAs finally agreed upon are, with few exceptions, less comprehensive than expected, not including services and other trade-related issues⁴.

The third pillar of the CPA is a dense chapter on the "political dimension" of the cooperation amongst the Parties. It is one of the most significant aspects of the EU/ACP partnership, and, at the same time, one of the more contentious ones. Initially the inclusion of binding political clauses was hampered by various factors, such as a fragile legal basis for the EU and strong objections by several ACP countries. Furthermore, the Cold War environment did not favour shared understandings on social, civil or political rights. Nevertheless, references to "political dialogue" (and political conditionality) have slowly emerged and have constantly increased over the decades, making further inroads at every successive renegotiations of the partnership⁵. Cotonou represents an additional step, in that it establishes a direct link between economic development, human rights and political environment. As set out in art. 9, "respect for all human rights and fundamental

³ LDC countries still enjoys tariff and quota-free market access to the EU, according to the *everything-but-arms* initiative of the EU's Generalised System of Preferences.

⁴ See S. KRAPHIL, S. VAN HUUT, *A missed opportunity for regionalism: the disparate behaviour of African countries in the EPA-negotiations with the EU*, Journal of European Integration, Sept. 2019, www.tandfonline.com.

⁵ In 1985, the Lomé III Convention blandly refers to the need to respect "human dignity", while relegating to an annex the reference to "human rights". A significant change followed the collapse of the Soviet regime. In Lomé IV (1990), respecting and promoting human rights is considered an "autonomous" goal for the partnership, while in Lomé IV bis (1995) a "consultation mechanism" was inserted for the first time.

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" (italics added). The Agreement also strengthens the consultation mechanism should a Party (typically an ACP country) "*fails to fulfil* an obligation stemming from respect for human rights, democratic principles and the rule of law", possibly leading to sanctions (and, theoretically, to the suspension of the partnership).⁶ In its latest revisions (in 2005 and 2010), the CPA's political dimension was significantly enlarged, especially in all aspects broadly linked to "security" issues. The EU and ACP agreed to cooperate in new fields, such as fighting terrorism through international cooperation, countering the proliferation of weapons of mass destruction and supporting the International Criminal Court⁷. This may be not surprising, considering to what extent the global system is affected by new security threats. Even less surprising is the reference to migration issues. Article 13 of CPA provides for a vast array of reciprocal commitments in the area of migration, ranging from "supporting the economic and social development of the regions from which migrants originate", to ensuring that the treatment of legal migrants be "free of any discrimination based on nationality, as regards working conditions, remuneration and dismissal, relative to its own nationals." The essential aspect of this article is, however, the return of illegal migrants, which is a crucial point. The wording of the agreement on this point is twofold. On one hand, the Parties agree that all (ACP) States shall accept "without further formalities", the return and readmission of any of its nationals who have illegally emigrated. On the other hand, the same article states that, at the request of a Party, "negotiations shall be initiated with ACP States aiming at concluding in good faith and with due regard for the relevant rules of international law, *bilateral agreements governing specific obligations for the readmission and return of their nationals*" (italics added). To date, despite various attempts, the EU has not succeeded in rendering the "obligation" of readmission of art. 13 binding and effective.

Migration remains a sensitive issue and is undoubtedly the most contentious one at present in any dealing between the EU and Africa, no matter the scope of the specific agreement at stake. Indeed, the position of African countries is very different from that of other Cotonou partners. Not surprisingly, for non-African ACP countries migration is not a point of contention with the EU. These countries, ranging from the

⁶ Italics added. Sanctions have been used in several cases, as a response to gross violation of human rights or military coups, in Africa (such as in Zimbabwe, Togo or Burundi) but also elsewhere (such as in Fiji Islands).

⁷ The commitment to support the ICC eventually led the Sudanese government to withdraw from the amendments to the CPA made in 2005, after the ICC, in March 2009, issued an arrest warrant for the then Sudanese President Al-Bashir. The current Sudanese government has informed the partners that its position on the topic has now changed. On the contrary, ACP member Burundi is currently threatening not to sign any new agreement if this requires membership of the ICC, which it has recently left.

Caribbean to the Pacific, have different issues to discuss with the EU, such as, to mention a recent example, the allegedly unilateral compiled list of non-cooperative jurisdictions for tax purposes,⁸ but migration does not figure among these.

From this perspective, a challenge such as migration remains divisive, representing the avoided issue, “the elephant in the room”, not only in the EU/ACP partnership, but within the ACP Group itself, as well.

2. The debate on the "post-Cotonou"

Long before formal talks started between the two Parties, the "post Cotonou" debate was already haunted by an existential and unsettling question: is a "post Cotonou" necessary? Are not the three regional components perhaps too divergent to be effectively addressed through one and the same framework? Is an agreement between the EU and the Member State' former colonies (actually only a *few* Member States) still relevant at all, taking into account the profound changes in the political and economic context? Is an agreement necessary for trade, considering that relations between the EU and the more developed ACP countries are already regulated by bilateral agreements or regional EPAs (which are independent, at least formally, from the framework agreement)?

We have mentioned migration. This, however, is not the only issue that raises questions about the very existence of the EU/ACP format. In fact, due to the approaching deadline of the Cotonou Agreement, critical issues that have long accompanied the EU/ACP relations have been re-emerging. It should be noted that the ACP Group has always been rather loose. It assembles countries spread across three continents, increasingly diverse with regard to aspects such as size, population and economic situation. Not surprisingly, intra-ACP cooperation has always been very scarce. Since 1975, the ACP Group has greatly expanded, but without increasing internal relations. Moreover, ties with the EU are quite diversified. To group together countries such as Ethiopia and the Cook Islands, Niger and Belize, Sudan and Tuvalu in a broad and ambitious cooperation framework is not an easy task. Economic growth within the ACP has become markedly diversified, weakening the cohesion of the group. Today several ACP countries are today middle-income, some are economic powers (for instance Nigeria or South Africa). In addition, The ACP institutional structures, have not been great performers. Decision-making within the Group has often been influenced by national preferences, weakening the bargaining power of the group. It may be unfair to say, as some critics

⁸The issue has come up as contentious on many occasions, recently in the EU/ACP Council of Ministers 44th session (May, 23rd-24th).

do, that "the EU Development Fund is the glue that keeps the group together".⁹ Nonetheless, an ACP "identity" has clearly yet to be shaped.

From a EU perspective the ACP format also has its weaknesses. The Eastern Europe countries that joined the "club" in 2004, do not seem to be very interested in a partnership that may be seen as a historic relic, emblematic of a colonial past. In the ACP negotiations, some countries understandably appeared to prioritize national objectives (such as migration in the case of Hungary, or "sexual and reproductive health and rights" in the case of Poland). The Scandinavian countries and Germany also appear to be rather sceptical, however for different reasons. These countries, traditionally very generous in providing aid for development, continue to prefer the "One Africa Policy", and doubt that the CPA partnership is the best way to address the current challenges in development cooperation.¹⁰ Recent developments in EU policies also give rise to difficulties. The Lisbon Treaty has not only eliminated the reference to the ACP partnership, but, most importantly, it has remodelled EU external action policies, adopting approaches that are prevalently regional and continental. The loose homogeneity of the ACP group increasingly contrasts with the new rationale of EU external action, as envisaged in the EU Global Strategy, and subsequent documents.¹¹ ACP capitals, moreover, are often believed to view CPA basically as a funding provider.

The disconnect between EU/ACP and EU/Africa is not recent.¹² The point is whether it is still sustainable. Africa is more than ever at the centre of the EU's political debate. But for Brussels, or, rather, for national capitals, the priorities for partnering with Africa, today, are quite different from what they were in the past. Migration, peace and security are now at the top of the European agenda for Africa and have become "the lens through which the EU looks south, including for its development cooperation and investment".¹³ There is a significant debate as to whether this "re-balancing" of the EU perspective regarding Africa is fair, necessary, or even beneficial. This is not, however, the topic we are discussing here. Rather, what must be stressed here is the fact that, with regard to these issues, widely seen as increasingly important, the EU is not

⁹ V. CHADWICK, *What's at stake as EU, Africa, Caribbean, Pacific, negotiate new accord*, November 2018, www.devek.com.

¹⁰ Representatives of Germany expressed these doubts also recently, for example at the EU/ACP Council of Ministers 44th session (May, 23rd-24th). Other Member States, in particular France, are generally seen, on the contrary, as interested in keeping the current system in place as much as possible.

¹¹ M. CARBONE, *Purposefully Triggering Unintended Consequences: The European Commission and the Uncertain Future of the EU-ACP Partnership*, *The International Spectator*, March 2019, 54:1, p.53.

¹² It is enough to recall that the Cotonou Agreement was signed in the same year (2000) as the first EU/Africa Summit, in Cairo, as underlined in N. KEIJZER and MADINILLA A., *Can the EU prioritise both the African Union and the Africa, Caribbean and Pacific group?*, www.ettg.eu.

¹³ See previous note.

focusing primarily on the Cotonou Partnership. Other initiatives are at centre stage, such as the European Agenda on Migration, the Valletta Action Plan or the African Peace Facility.¹⁴ Furthermore, in the case of some accords, partners and conditions are chosen according to different, and often case-to-case, benchmarks. The EU's Emergency Trust for Africa, for example, which is specifically focused on addressing the root causes of migration, was agreed with selected countries, chosen on the basis of their role and position on the migration routes (a decision that was very much criticized). The EU External Investments Plan promises better deals. Other plans and policies are set up by the EU in a largely unilateral way. A series of other strategies, such as the Common Africa-EU Strategy, signed in 2007 with the African Union (AU), also deals with a number of sectors covered by the CPA. Potential or real trade-offs between these different processes are rarely discussed. Meanwhile, in the past twenty years, the international context has enormously changed. The current phase of great uncertainty and instability calls into question relationships, which can no longer be taken for granted. Despite the emphasis of official speeches, the EU's role in the continent is remarkably declining, both politically and economically. Brexit, despite the final outcome has greatly contributed to the loss of appeal of the EU, especially in Commonwealth Africa.¹⁵ Meanwhile other actors are emerging or re-emerging on stage (such as China and, more recently, Russia),¹⁶ offering African countries a different model of partnership and, perhaps, new leverages (the so called "Chinese card") when dealing with the EU.¹⁷

From the African perspective the ACP "format" is also under fire. It is often perceived as being an obstacle to regional integration and to the continent's growing international role. North African countries are not part of the CPA. In fact, these countries, such as Morocco, Algeria, Tunisia, and Egypt,¹⁸ do not appear to be very interested in joining this particular agreement with the EU as they already interact with Bruxelles through a large number of bilateral agreements such as the more profitable and comprehensive EU Neighbourhood Policy. Nor would their participation likely be greatly welcomed by current (African) ACP members, especially concerning development funding. We should also consider that the African Union is experiencing a phase of great activism. Its role has notably become stronger in the last few years, due to its commitment to peace

¹⁴ Some of which strongly rely on the EDF, which, according to CPA, should be co-managed by the EU and the ACP.

¹⁵ The UK is already prospecting bilateral trade agreements with Commonwealth African countries, while stepping up its investments, for example, in the framework of its Commonwealth Development Corporation.

¹⁶ See the Russia/Africa Summit recently held in Sochi on October 23rd and 24th, as reported in *The art of darkness*, The Economist, October, 26, 2019.

¹⁷ See L. BARANA, *Negotiating a New EU-Africa Agenda: Playing the Migration and Chinese Cards?*, December 2018, www.iai.it

¹⁸ Putting aside Libya and not considering the Saharawi Arab Democratic Republic, which is member of the AU but not of the ACP.

operations and conflict resolutions, Morocco's renewed membership and the initiatives of the Rwandan presidency. In 2017, AU hosted an important summit with the EU in Abidjan, with a rather ambitious agenda (though not including the “post-Cotonou”). According to EU negotiation directives, “relevant regional organisations (*e.g. Africa Union*) will be assigned a prominent role in governing the regional partnership, *taking into account their capacity and performance*” (italics added). In this context, in March 2018, AU's Executive Council claimed (and, apparently, obtained) the leading role for the African regional pillar in the post-Cotonou negotiations. After only a few months, however, African governments made “a sudden U-turn”¹⁹ (or maybe only corrected a misunderstanding), confirming the ACP Secretariat (which, non-irrelevantly, is based in Bruxelles) to negotiate with the EU. Moreover, the AU's decision to create an African Continental Free Trade Area is possibly (*if* and *when* implemented) one of the major challenges for Africa's future. How would this affect EPAs and their implementation? Will there be room for re-negotiations to ensure that these agreements are consistent with this new economic scenario?

3. Negotiation at a standstill

The EU and the ACP have a very long standing partnership, lasting 40 years. The results are, of course, very mixed. In spite of this, however, advocates of the renewal of the partnership have always been in a strong position. Not surprisingly, the Cotonou's framework and its *acquis* are considered valuable by both sides. For ACP countries, the financial flow it provides is clearly welcomed. Despite setbacks in key objectives, the partnership has recently achieved success in less-anticipated areas, such as international cooperation (which, in current negotiations, is established as one of the main objectives of the new partnership).²⁰ Vested interests are deep-rooted in the partnership, in both private and public sectors as well as in NGOs. The same applies to institutions. On both sides, institutions have gradually evolved exchanging and working together. It is natural and legitimate that they wish to continue doing so, although this may involve under-the-radar power struggles.²¹

¹⁹ See *Who will speak for Africa with Brussels?*, December 2018, www.euroactiv.com.

²⁰ According to the EU negotiations directive, indeed, “building effective alliances in international settings” is one of the three main objectives of the new agreement (and a specific chapter of the document is devoted to international cooperation). The EU/ACP alliance was particularly successful in the adoption of Sustainable Development Goals and in the preparatory stages of the Paris Agreement on climate change). See Schmieg E., *EU and Africa: Investment, Trade, Development*, January 2019, www.swp-berlin.org/en/ and Carbone, 2019, 52.

²¹ As Carbone, 2019, points out, “the renewal of the EU/ACP partnership was not considered a desirable outcome within EU foreign policy circles”, pushing for a regional approach to Africa. Having taken the decision to renew the agreement, EEAS pushed at least “to place emphasis on strengthening the regional compacts, ensuring that the centre

In October 2015, the post-Cotonou debate emerged in the agenda at the Foreign Affairs EU Council. Accordingly, the European Commission and the EEAS launched a public consultation, to identify new ways to promote common interests and address common challenges. The results were published in March 2016. Three months later, in June, the EC issued an impact assessment of the first 15 years of the Cotonou agreement, highlighting the positive impact of the partnership on bilateral trade and partners' economies (while recognizing poor results in political dialogue). Meanwhile, discussions were also being held on the other side, within the ACP countries. A "Group of Experts" was established to broaden the discussion within the different regional groups. Following the results of this work, in June 2016, the ACP Heads of State and Government reaffirmed their commitment to maintain the existence and unity of the Group, and to renovate and reinforce the relations with the EU. In December 2017 the EC issued a proposal for a new legally binding agreement. After long and tense negotiations, Member States agreed to it, and in June 2018 the EU Council adopted its negotiating directives. The ACP Council of Ministers was slightly (but notably) faster: its mandate was approved in May. Negotiations were formally launched in New York, on the side-lines of the UNGA, in September 2018.

Although they have been underway for a long time, the negotiations are blocked and seem to be at a standstill. The Cotonou Agreement is due to expire on 29 February 2020. The chances that a new agreement will be finalised and approved by then are currently nil. Therefore, the Parties (overcoming the initial opposition by the EC) have agreed that transitional measures to extend the application of the current agreement are needed. The EU is aiming to extend Cotonou until the end of 2020, to have enough time to finalize the new agreement and to have it ratified by Member States. Commissioner Mimica is trying to complete as much work as possible before the current Commission's mandate comes to an end.

The EU proposes to drastically change the architecture of the partnership. The post Cotonou agreement would be constituted by two interlinking components. An umbrella one, representing a "common foundation agreement", containing values, principles and objectives common to the entire area and applicable to all ACP countries and three differentiated protocols (EU-Africa; EU Caribbean and EU-Pacific) which would take into account the different region's priorities and needs, establishing a more "region-tailored" partnership. The institutional architecture - according to the EU directives- would also reflect "the shift of the centre of

of gravity of the new EU-ACP Agreement effectively moves towards the three regions". By contrast, it is likely that trade and environmental circles would likely support a "solid" general part of the new agreement (pp. 56-57). See also *No reset on EU-Africa relations under von der Leyen*, Sept. 2019, www.euroactive.com.

gravity to three regional partnerships", with a "regional ministerial Council" and "a parliamentary dimension at the level of each regional partnership"²².

The EU proposal reflects the impact assessment of Cotonou and truly attempts to address the criticism which has emerged in the post-Cotonou debate. The effort, however, may be not enough. The stumbling blocks remain the same, as Commissioner Mimica outlined in his last EU Council²³. Five out of the six "strategic priorities" that will compose the "umbrella" agreement are almost completed and agreed on (in diplomatic terms, "few brackets" and "the final wording" remaining). The sixth priority is "Migration and Mobility". Which is *not* almost completed and agreed on. Here the Parties' positions are still quite far one from another, we may say they do not focus on the "wording", not yet. The EU, pressed by some Member States, is hardly pushing to re-enforce the partners' "obligation" to readmission, thus making finally CPA's art.13, somehow, binding and effective (also providing for detailed procedures and timing). ACP States, as a group, have formally indicated that they are not willing to include the topic in the new agreement, and insist that returns must take place on a "voluntary basis"²⁴. Indeed, non-African ACP countries are not defending these points strenuously. Accordingly, they are discretely attempting to convince their African colleagues to soften their position, so the new agreement may be delivered as smoothly as possible. As for regional agreements, the situation is similar. The EU-Pacific and the EU-Caribbean partnerships have nearly been drafted (especially the former). Diversely, progress on the EU-Africa agreement is much slower. Moreover, if the EDF, which up to now represented a dedicated financial tool, will be included in the EU budget, another unique feature of the Cotonou system will vanish. Perhaps the EU/ACP partnership is simply no longer suitable for Africa.

²² This latter point is challenged by the EP, which insist on preserving a EU/ACP Joint Parliamentary Assembly, with its own agenda setting prerogatives.

²³ Foreign Affairs Council (Development), November 25th, 2019.

²⁴ African ACP Countries also underline that, to address illegal migrations, not only development aids are needed, but also real opportunities for regular migration.