Post-Cotonou, the modernisation of the ACP partnership

Relations between the European Union and its 28 Member States and 79 States including 48 from Africa, 16 the Caribbean and 15 the Pacific (ACP) will be celebrating their 45th anniversary in 2020. That year will also mark the expiry date of the Cotonou Agreement, signed on 23rd June 2000. This framework was the cornerstone of cooperation and dialogue regarding politics, economy, trade and development aid. Discussions have been launched by all parties to identify the possible content and the shape of future relations in a context in which requirements are mutual. Reduction of poverty, trade relations, the management of migratory flows, the fight to counter global warming, this partnership is a strategic issue for all of those involved. The formal launch of discussions with the ACP States is to take place before August 2018 at the latest. This paper aims to provide food for thought regarding the future of this unique forum in terms of representation and partnership which covers 700 million citizens in 107 countries.1

An historic presence

During the period of decolonisation in 1957 the States of the European Economic Community aimed to maintain a type of cooperation with the "non-European countries and territories which held special relations with Belgium, France, Italy and the Netherlands."2

In 1975 the former French, British, Belgian, Spanish and Portuguese colonies joined forces to form the ACP group that led to the Lomé Agreements. This act granted them true legal status as well as a common identity. These States were now able to promote a development model and claim privileged access to the Common Market. This political formula provided greater weight to certain States of the Caribbean and the Pacific, which otherwise would not have benefited from this type of development model in bilateral agreements.

The revised Lomé Agreements introduced conditionality with the obligatory respect of Human Rights and support of the rule of law, otherwise any funds allocated would be lost. Phase by phase programming was introduced, thereby enabling the improvement of follow-up. But in spite of the introduction of a forum for dialogue, cooperation between the EEC and the ACP was in fact limited to targeted trade agreements offering the possibility for the entry of some products onto the European market, along with their protection if prices varied. Although poverty declined, the share of the ACP countries on the internal market decreased from 6.7% in 1976 to 3% in 1998. But the limits to these first 25 years of cooperation lie in the lack of awareness of the institutional situation in the partner countries.

2000, Cotonou Agreement for ever deeper relations

In addition to this the Cotonou Agreement has aimed to move to another political level by strengthening the goals of conditionality. Signed on 23rd June 2000 for a duration of 20 years, with a 5 yearly review, the Cotonou Agreement will expire on 29th February 2020. It has strengthened the partnership and comprises three chapters – political, commercial and sustainable development. This all-encompassing agreement naturally has aimed firstly to help development in the ACP countries. One of the aims has been the diversification of their economy by fostering a support policy to entrepreneurship and investment.

1. One of the authors moderated a seminar “For a sustainable partnership and development” organised by the Permanent Representation of France with the European Union on 24th April 2017. Talks helped in shaping this paper.

2. Article 131 of the Rome Treaty
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A political asset

More than a trade agreement it is based on the introduction of sustainable development projects that helps the ACP countries integrate the world economy. However this agreement has been notably more demanding than the previous ones since the funds granted according to requirements, but also to results produced by the countries in question, substituted automatic aid.

The Cotonou Agreement has strengthened the political aspect of cooperation by conditioning European Development Funds (EDF) with the good management of public affairs and the respect of the rule of law and fundamental rights. New support withdrawal procedures in the event of corruption or infringements of Human Rights were created (articles 96 and 97). This is therefore an asset for Europe since the agreement enables the spread of its “soft power” as it fosters the multilateral model and the appropriation of international standards by encouraging political and economic dialogue with all regional and local authorities.

Finally the Cotonou Agreement has demonstrated a new geopolitical goal: the consolidation of peace via dialogue between the State and civil society as a factor for political stability. Civil society hopes to be better integrated in the next framework by playing a full role beyond simple consultation. The last chapter has however been the focus of controversy since it did not provide sufficient added value to crisis settlement.

The difficulties experienced in a common approach in the identification of solutions to certain crises has also been an obstacle. During the 32nd Parliamentary Assembly ACP-EU (19th-21st June 2017) European expectations to approve a settlement to the crisis in Burundi did not find consensus3. This was also the case at the 31st Assembly regarding a decision on Gabon. A significant number of the ACP countries do not consider this framework as a diplomatic tool for the settlement of internal crises. This chapter has to be clarified in the next negotiations in order to strengthen its usefulness and for it not to appear as obsolete (which the MEPs presented implied).

Moreover this agreement does not offer the guarantee of minority rights, one of the EU’s political goals. For example in 2013 the European Parliament protested against the approach to homosexual rights in these countries.4

A common diplomatic tool

The European Commissioner, Neven Mimica, stresses that the agreement covers the “biggest, most comprehensive, most sustainable geographic group in the world; we are in the majority at the UN.” The partnership aims to be a powerful collective tool. Within the international instances and forums regarding global issues, post-Cotonou should be used to strengthen this powerful tool that is beneficial for everyone. The collective support and dynamic of the EU-ACP encourages the partners – who are sometimes reluctant – (cf. the American withdrawal) to counter climate change. The success of the Paris Agreements approved by 195 delegations on 15th December 2015 shows the benefits of acting together. Collective issues, from peace to security, demography and migratory crises could benefit from the same impetus thanks to this dialogue framework. This is why, the revised EU-ACP framework will have to take on board all new issues that have been included on the 2030 agenda for development to the full.

Integrating globalisation ...

The Cotonou Agreement comprises a significant dimension in terms of trade. Indeed in 2012 the EU was the second biggest ACP trade partner, after the USA. The EU takes the lead over Venezuela, China, Brazil, Canada and India. It represents 12.1% of the ACP countries’ trade after the USA (35.7%) and ahead of China (6.9%).

According to the International Trade Centre between 2003 and 2012 the market share of the ACP countries in the world economy rose from 1.4% to 1.7%. Better still, EU 28’s market share in the ACP market rose from 10.9% to 11.5% over the same period. In spite of its weakness the zone’s commercial weight increased between 2003 and 2012.5
However since 2010, the ACP countries have been impacted by consequences of the 2008 economic crisis. Hence the total value of their merchandise trade declined in 2015. Indeed in 2015 exports represented, 320.7 billion $ (in contrast to 495.1 billion $ in 2011); and in 2015 imports represented 439.6 billion $ (in contrast to 500.2 billion $ in 2014).

The revision of the Cotonou Agreement will therefore aim to reconcile the ACP countries with the expansion of trade, whilst 80% of the least developed countries still belong to the ACP group.

**Via asymmetric trade agreements**

Between 1975 to 2000 the four Lomé Conventions introduced a preferential trade system for the ACP countries. In a context of polarisation due to the Cold War, this agreement helped some States to introduce their economic almost non-aligned development model. The ACP countries’ economy is based on the export of raw materials and the Lomé Conventions introduced an asymmetric preferential trade system so that they could export their production to the EEC together with a system to compensate the loss of export revenues in the event of fluctuation in exchange rates or natural disasters. The privileged integration of the European Single Market was therefore identified as a vital source of development for these States.

As a follow up to its development strategy, strengthened by the limitations of multilateralism at WTO level⁶, Europe negotiated the economic partnership agreements (EPA) with 79 ACP countries in the agreement’s 6 “groups”⁷, the aim of which is to create a joint partnership in terms of trade and development, supported by development aid. From 2000 to 2008 access to the European market was made via non-reciprocal national preference, which comprised a system of derogations from the WTO’s rules. In the following decade free trade agreements were signed under the economic partnership agreements. However, their signature and then their implementation proved to be a difficult task. Hence six EPA’s were established but the ratification process was sometimes impeded. In 2008 Europe signed the first of these agreements with 15 Caribbean States. It provisionally came into force on 29th December 2008. In Africa the situation was rather more disorganised. In 2014 16 States from Western Africa, but also two regional organisations, the ECOWAS and the WAEMU, the community of Eastern Africa, introduced an agreement, but signatures are still ongoing. However, the countries of the South African Development Community signed the EPA in 2016. Finally the interim EPA between Europe and the Pacific States was signed by Papua-New-Guinea and by Fiji in 2009, since these two countries represent most trade between Europe and the Pacific.

The ACP States have noted considerable advantages in the preferential trade agreements but also problems linked to the EPA negotiations under the 2000 framework agreement. The differentiation between the ACP countries and regions, the length of the negotiations and certain effects have affected regional integration negatively. The EPAs are also challenged by civil society, which sees them as a destabilising factor between the least developed countries (LDCs) and the others. The LDCs have duty free access to the European Market with an “everything except arms” derogation system. The EPAs obliged them to open their markets to European exports but without anything in exchange. However, if there is a sudden increase in European exports safeguard clauses can be activated under certain conditions. The exit of the UK from the EU is also causing uncertainty. Legal security will have to be defined.

In addition to this one of the issues raised by the post-Cotonou revision will also be diversity. Agriculture represents 90% of exports, employing the majority of the working population. On average 20% of the national wealth comes from agricultural revenues with extremely different variations between the ACP countries. Half of the Chadian GDP for example comes from agricultural production against 1% on average in the Caribbean.⁸

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8. Press release by the ACP secretariat: “The new ACP policy highlights the transformation of the products from the agricultural sector”, 15th June 2017
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**REAFFIRMATION OF THE EUROPEAN DEVELOPMENT POLICY**

Post-Cotonou will be based on renewed European commitment in support of third countries. On 7th June 2017, the 28 Members of the European Union signed a strategic plan for the future European development policy. This new consensus represents a comprehensive cooperation framework. It takes up specific features of the European policy since the creation of the European Development Funds in 1959 and the framework of the 2030 sustainable development programme adopted by the UN in September 2015. This programme succeeds the Millennium Development Goals (MDGs) and notably sets 17 objectives. European consensus recalls that the eradication of poverty is still the main objective by integrating economic, social and environmental dimensions of sustainable development.

Europe’s leaders have confirmed their commitment in three areas. They firstly acknowledge the high level of interdependence between the factors of development: security, humanitarian aid, migration, environment etc. As a result the new consensus aims to link in traditional development aid with other more innovative sources of financing, notably of a private nature. Finally this consensus has promised to introduce better adapted partnerships between the various players.

The comprehensive framework can be complemented by individual initiatives on the part of the Member States vis-à-vis certain ACP regions. The African continent is of interest. In particular, oscillating between two approaches: a development policy and the promotion of trade to which new priorities can be added. To reconcile these two approaches the German Economy, Cooperation and Development Minister presented his Marshall Plan for Africa on 18th January 2017 recalling support to “value based cooperation’ but we also have a mutual interest. Germany and Europe have an interest in guaranteeing the survival of human beings, limiting climate change, preventing waves of migration”

**A diversified budgetary chapter**

The Post-Cotonou revision will take on board a diversified budgetary framework split between intergovernmental resources and funds that come directly from the European budget.

To implement this overall framework, the European development aid policy is equipped with several financial instruments and regional partnerships: the European development fund for the ACP countries and overseas countries and territories (OCTs), which finances projects resulting from the Cotonou Agreement, which is not part of the EU budget. It represents 30.5 billion € covering the period 2014-2020 (i.e. an increase of 8 billion in comparison with the period 2007-2013).

The sources of financing are therefore outside of the European budget, which implies limited parliamentary control. The future of the EU’s financing indicates a redefinition of the budgetary structure. Although scenarios remain open according to the concept paper presented in June 2017, will the perspectives for development aid be integrated into the general discussion regarding the multi-annual financial plan?

A proposal by the Commission is expected before June 2018, just before the start of negotiations over the future post-Cotonou framework in August. With this in mind the ACP States are calling for a “specific financing mechanism that is a vital part in any post-Cotonou agreement.”

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9. Africa and Europe - a new partnership for development, peace and a better future, German Minister for Economic Cooperation, Jan 2017
11. G20 Declaration “shaping an interconnected world”, 7th and 8th July 2017, p.2
12. “G20 African Partnership”, 7th and 8th July 2017
14. see “General Overview of the Development Policy”, European Parliament
15. ACP Secretariat “memorandum on the basic principle for ACP-EU relations after 2020”, 13th March 2017, p.4
And what of the future?

Since November 2016 discussions within the Council have been underway and European view-points have to converge if they are to agree on a negotiation mandate for the European Commission at the beginning of 2018.

It is up to the Commission to do the preparatory work to formally achieve a negotiation mandate from the MemberStates. On entering office Jean-Claude Juncker said he wanted to revise the Cotonou Agreement at the same time as the strategic partnership with Africa. Moreover, in his mission statement in 2014, he clearly set out the perimeter for the preparation and launch of negotiations for a revised Cotonou Agreement. In the organisation set by Jean-Claude Juncker the High Representative steers the Commissioners’ work. In addition to this Neven Mimica, with the support of the DG Development and Cooperation (DEVCO), is working in close cooperation with the High Representative.

A common roof, but distinct pillars

In its communication of 22nd November 2016 the Commission and the European External Action Service put forward three options based on the results of the public consultation launched on 6th October 2015. The first option suggested a revised partnership with the ACP countries. The advantage of this is that it would retain the ACP format, without any type of flexibility, it would not lead to an agreement that takes on board the specific factors expected by the parties involved. Indeed the situations in the ACP countries have developed differently since 1975. Finally this option would not enable the increasing importance of regional organisations (notably the African Union) to be allowed for.

Moreover the European Union also has established complementary development strategies such as the EU-Africa strategy (since 2007) and the EU-Pacific Strategy (since 2012) which in practice pursue most of the joint goals in the Cotonou Agreements (support to peace for Africa (FPA), the three ongoing peace support operations; AMISOM, MICOPAX and MISMA) and aid to infrastructures, the development of agriculture, the climate, innovation and the African Peer Review Mechanism (APRM) that targets the adoption of good governance. The new approach might lead to the rationalisation of all of these instruments as part of a common framework.

This proposal retains the acquis and the advantages of the EU-ACP format whilst allowing for differentiated development initiatives according to the regions. The idea of a common roof with distinct pillars, but supporting the entire structure is used regularly. This vision underpins the present approach by consolidating it, whilst one of the criticisms made of the present format is its geographical limitation. This is why there is a trend amongst some Member States, notably carried along by Germany and the Netherlands, which want to promote a global approach to the development policy. This would not challenge the continuation of the present framework with the ACP countries, based on the result of this partnership and the privileged links that it provides.

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16. European Commission, 1st November 2014
17. Joint Communication on the part of the European institutions “A renewed partnership with the countries of Africa, the Caribbean and the Pacific, 22nd November 2016
18. Since negotiations at the Council are ongoing, we might suppose – without any certainty – that the Commission’s 3rd option will be supported.
We should note that according to the scenario put forward by the Commission the possibility of integrating States outside of the ACP, such as those in North Africa or the least developed countries (LDCs) in the future, has not been ruled out even though they are the focus of different regional dynamics including in terms of their relations with the European Union.

A certain amount of flexibility would lead to the implementation and integration of the Addis-Ababa Action Agenda on Financing:\textsuperscript{22} “This programme provides for national action, strategic frameworks creating favourable conditions and the role of a dynamic private sector, with everything based on a favourable international environment. The work undertaken by the partner countries should tend, as a priority, to fill in the gaps left by national government funding, including an improved mobilisation of national resources, increase the efficiency and efficacy of public spending and manage debt. Tax systems and fair, transparent, efficient, effective public spending frameworks, should be promoted. Particular attention should be paid to the fight to counter tax evasion and fraud as well as flows of illicit financing.” \textsuperscript{21}

Logically binding

Finally, according to the European Commission, the partnership should be legal binding, recalling that it is in the Union’s political interest to reassert its long term commitment. The new partnership should remain flexible and responsive so that it can adapt as it progresses and also in terms of a constantly changing environment. Indeed it is not strictly established in the Cotonou Agreement that the latter is legally binding. The phrasing in article 2 (on fundamental principles) is that “ACP-EC cooperation, based on a judicial system and the existence of common institutions”. This might be strengthened and clarified in the future since the binding aspect is as political as it is legal, with consultation and also sanction procedures, in the event of infringements of Human Rights, democratic principles and notably the rule of law.

The position of the ACP countries is being considered but relies on the common will. The collective ambition to pursue this partnership was expressed during the Port-Moresby Summit in June 2016 which took up the Sipopo Declaration\textsuperscript{22} adopted in 2012 by the 7th ACP summit, recalling the group’s unity as an intergovernmental organisation. The ACP countries support the binding nature of the future agreement and the geopolitical and geographical upkeep of the ACP group structured in six regions. This legal strength would guarantee predictability, transparency and mutual responsibility. This approach is strongly supported by all sides.

However the future framework and the wish for a more balanced partnership are points that are regularly recalled by the ACP countries, which complain of a one-way relationship in which they cannot make their voice heard, sometimes noting that “Europe does not speak with Africa but at Africa”\textsuperscript{22}. As a result improving dialogue will be one of the aspects of the future negotiation. Overall it appears that the political chapter is still incomplete and has met with mitigated success.

**The context calls for a stronger partnership**

A change in paradigm is necessary to strengthen and improve the results of the post-Cotonou framework. Negotiations will have to go beyond this and strengthen the “partnership, rise beyond negative perceptions and also the colonial past, victimisation, charitable links involving dependency, the conditionality of aid, cumbersome procedures etc.”\textsuperscript{24}.

The new attitude of the American administration, the increasing influence of other regional powers, concern on the part of European public opinion about uncontrolled migratory flows, the risk of climate refugees and demography are encouraging a deepening of the future ACP-EU partnership. These geopolitical developments also highlight that the ACP countries are going to be under
pressure from players with diverse interests and also differing behaviours (China, India, Israel, Turkey). For some observers China has become Africa’s “big best friend” because it is providing a rapid solution to under development, even though it is sometimes over present. The Chinese make concessional loans: they lend money to African countries to build infrastructures and are paid back in mining concessions and the extraction of minerals; hence, according to Louis Michel, for a 10 billion $ loan, they withdraw 50 to 80 billion $ in minerals.

The ACP-EU framework does not aim to be limited purely to the economic sphere and trade. In an unsettled context the ACP framework is one factor of stability and enables the spread of European standards. This is what distinguishes it from other frameworks and there is a temptation to focus on the economic dimension. Is this strategic point of view, this necessary approach enough?

A risk also lies in the imbalance between the ACP countries. In terms of economic, strategic imbalances but also as a neighbour, all eyes seem to focus on Africa. And yet amongst the options presented the privileged approach would be the common framework. All sides should pay attention to equal and fair treatment, whilst great concern is now emerging about the “neglect” of the interests of economically weak countries in the Caribbean and the Pacific and also of those that are the most distant. In this framework post-Cotonou thought must integrate the OTC’s more and encourage the deepening of the idea of introducing a “Pacific” pillar to balance the partnership25. The integration of “North Africa” is also an open option even though present rationale is far from this. Intra ACP economic relations and a form of emancipation thanks to “south/south” relations will lead to the balancing of the various pillars in the post-Cotonou Agreement.

The joint, coordinated management of migratory flows is one of the European priorities but also that of the ACP countries. Invited to the European Parliament on 15th June 2016, Alassane Ouattara, the Ivory Coast head of State noted that “intra-African migration is much higher than that seen between Africa and Europe.”

The Cotonou Agreements also provide for a readmission clause of migrants who have entered Europe illegally. As part of the European’s overall thought about the management of legal and illegal migratory flows, relations with the ACP countries and those of Africa in particular, are a political priority. The European strategy, based on specific agreements with third States on the model signed with Turkey on 29th November 201526, might be reproduced with some ACP countries. In part the rationale of the framework agreement and regionally specific features might be support in the post-Cotonou Agreement.

The consultation of the European Commission27 has also led to the emergence of possibilities to improve the post-Cotonou framework as it has highlighted present limitations. More inclusive economic development, the effective nature of development of the private sector, connectedness, the promotion of foreign direct investments, migratory flows and governance issues have been the focus of progress noted by the authors28. Observers also point to the necessary modernisation and harmonisation of the legal business framework within the ACP countries. These points should find answers in the upcoming negotiations.

The modernisation of structures, notably given the cumbersome nature of conjoint institutions, has to be clarified. Rationalisation is hoped for in order to rationalise the efficiency of the present structure of ACP-EU relations.

A NEW BALANCE TO BE FOUND

Once the negotiation mandates have been approved discussions should be subtly balanced. The issues at stake and the challenges highlight a common strategic future. Vigilance regarding a balanced partnership both between the parties involved and within the ACP block will be one of

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25. Conference of 24th April 2017
28. Blog Post, Neven Mimica, 29th March 2016
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the aspects of the success of this agreement, which is an important tool in the project to spread economic and also political influence. However there seems to be a major temptation amongst some European leaders to focus on the first chapter, so as not to strain relations with certain States, which will be significant in responding to the migratory crisis. Moreover, it is a special balance that European negotiators will have to face in contributing to regional balance. The G20 Summit recalled that we cannot afford to be naive regarding development goals which are increasingly part of thought into mutual and even asymmetrical benefits.

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