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EU and Africa: Investment, Trade, Development

What a Post-Cotonou Agreement with the ACP States Can Achieve

Evita Schmieg

The EU is currently negotiating a successor to its Cotonou Agreement of year 2000 with the African, Caribbean and Pacific (ACP) states. The political and economic context has changed enormously over the past two decades, with trade relations between the EU and the more developed ACP countries now largely regulated by bilateral and regional Economic Partnership Agreements. Since 2015, in line with international sustainability targets, social and environmental aspects must be taken into account in international treaties, while in 2018 the African Union (AU) agreed to establish an African Continental Free Trade Area. A successor to Cotonou offers an opportunity to modernise the rules on issues including investment, services and migration. This could also generate greater interest in the talks in Germany and the EU. But the cooperation need to be placed on a new foundation and the African states will have to decide whether they want to negotiate together, as a continent.

The Cotonou Agreement and its predecessors, the Lomé Agreements, regulated the EU's relations with its member states' former colonies in Africa, the Caribbean and the Pacific during the decades following their independence. A successor needs to be negotiated before the Cotonou Agreement expires in 2020. In 2017 the European Commission published a proposal for future relations with the ACP group, which today comprises seventy-nine countries. It proposes a framework agreement with the entire ACP, concluded between all parties to the Cotonou Agreement and defining shared values, goals and principles for future cooperation, with additional regional

protocols for the three regions. In July 2018 the European Council adopted a negotiating mandate confirming the Commission's line. In its own negotiating mandate of May 2018, the ACP Council of Ministers underlines its interest in an overall ACP agreement. The negotiations began in September 2018.

The first, fundamental question is whether an agreement between the EU and the member states' former colonies is still relevant at all, given the enormous changes in circumstances over the past decades. Europe's political and economic significance to Africa has declined markedly. In 2017 it was still the most important desti-



nation for African exports with 29 percent (down from about 42 percent in 2000), but China has made up a great deal of ground. Even as recently as year 2000 China played almost no role in the global economy, with just 3.6 percent of world trade. Today it is responsible for the largest share of new investment flowing to Africa, namely 23.9 percent in 2016; the top two EU countries, France and the United Kingdom, account for almost 5 percent each, while Germany occupies tenth place with just under 2 percent. But Europe still leads the field for investment *stocks*. Finally, Europe's political interest in Africa has also revived. The continent is now viewed as a realm of opportunities, where a number of economies are developing very fast and the African middle class in particular is experiencing very rapid growth. At the same time migration from Africa to the EU has become an important issue – although migratory movements within Africa are actually much larger. The determining factors for trade and investment flows have changed too: tariffs have fallen globally, reducing their importance, allowing global value chains to arise, and making the economic and political framework even more important for national competitiveness. Foreign direct investment is regarded as a decisive factor for securing growth and employment.

Both the EU and the ACP states want cooperation to continue. The Cotonou Agreement built on three pillars: trade policy (with the EU granting non-reciprocal trade preferences), development policy (with the Agreement defining areas and procedures for the European Development Fund) and political dialogue. Both sides' negotiating mandates foresee discussions about all areas of cooperation addressed in the Cotonou Agreement. But the priorities will have to shift. Europe's biggest challenge in this connection will be to shape its relations with Africa.

Negotiating Partners

Below the level of the proposed framework agreement, it remains unclear whether the African Union will negotiate a regional protocol for Africa as a whole or the ACP Secretariat will seek a protocol just for the African ACP states. The Africa-EU Partnership – based on the Joint Africa-EU Strategy of 2007 – already links the European Union and Africa, with the latter represented by the AU. From the Union's perspective it would make sense to merge its cooperations with the AU and the African ACP states, which are also members of the AU. The EU's mandate therefore proposes keeping talks with ACP members open to other states that share the basic values of the Cotonou Agreement. It remains unclear how Africa will respond to this offer. The AU's role has grown enormously over the past two decades, driven by its interventions in peace and conflict resolution and its spring 2018 decision to create an African Continental Free Trade Area. So it was only logical for the AU's Executive Council in March 2018 to claim the role of lead negotiator for the African regional protocol. The final decision on this has not yet been made.

The states of North Africa are not members of the ACP group. Some of them, like Egypt, are sceptical towards the idea of joining the negotiations for a post-Cotonou agreement. They are already connected to the EU by bilateral association agreements, some of which are currently being renegotiated. So these states already possess a format within which they can assert their interests vis-à-vis the EU. It is unclear whether it would be advantageous for them to join the Cotonou successor agreement. Nor can it be automatically assumed that the African ACP states would welcome a pan-African protocol. With the question of development funding representing one of their main interests, they might fear possible disadvantages if all African states are included in the successor agreement. The ACP's negotiating mandate says nothing about this, and the African states have yet to adopt a position.

The “Political Dimension” of Cooperation

Both the ACP and the EU value the “political dimension” as an achievement of the Cotonou Agreement, and wish to retain it. It encompasses political dialogue about national, regional and global questions of mutual interest, as well as a commitment to human rights, good governance, and peace and stability. Article 9, which names the “essential elements”: “human rights, democratic principles and the rule of law”, is regarded as especially important. The Agreement created the framework and institutions for political dialogue (such as the Council of Ministers and the Joint Parliamentary Assembly) and a procedure for dealing with violations (Article 96). The latter has been used about fifteen times to date in response to coups, violent escalations and human rights violations in ACP states. Sanctions under Article 96 are regarded as having limited effect and the existing EU-ACP institutions are also seen as rather ineffectual. Meetings of the Council of Ministers to date have been regarded as ritualised and generally not high-level. A need therefore exists to make the institutions of the Cotonou Agreement more efficient and lend them greater political weight.

Formulations relating to human rights in the existing bilateral and regional economic partnership agreements (EPAs) between the EU and ACP states cross-reference the Cotonou Agreement, giving the EU further reason to include those provisions in the new agreement.

Cooperation with a large group of states on the basis of shared fundamental values can gain new significance for both sides, especially in times of growing foreign policy instability. This applies all the more when a dialogue is held not only on issues of bilateral concern but also as an exchange of views on international issues. The EU-ACP cooperation has proven to be helpful and constructive, for example in the processes leading to the adoption of international sustainability goals. The need to strengthen multilateral approaches, for

example in the international trade system, could play a role in future. In their mandates the EU and ACP both underline their interest in a strong multilateral system.

The EU treats migration as a high priority and would like to keep the relevant provision from the Cotonou Agreement. Article 13 outlines basic principles for dealing with migration, emphasises the observance of human rights, and obliges states to take back rejected migrants. Bilateral talks on these issues are foreseen if necessary. Although it is relatively detailed, however, this set of provisions has not to date played a role in EU-ACP relations. The ACP states have already indicated that they are not interested in including Article 13 in the post-Cotonou agreement.

Development Funding

It is currently an open question how development finance is to be regulated. To date the European Development Fund (EDF) has depended on successively renegotiated contributions from the member states under procedures defined in the Cotonou Agreement. The Commission would like to integrate the EDF, with a volume of €30.5 billion for 2014 to 2020, into the EU budget. This would place it under normal budget procedures and closer oversight by the European Parliament. Development finance would then operate in a context where all states followed the same rules. From the perspective of the Commission and some EU member states that would be more efficient and align better with the Union’s external relations today. Such an orientation on more objective criteria would satisfy the aims of the Global Strategy for the Foreign and Security Policy (2016), which places development funding in the context of global challenges and strategic interests. The Global Strategy and the proposal to integrate the EDF into the regular budget reflect the fact that the new EU member states that joined in 2004 have no colonial past and therefore also no specific interest in special relations with former colonies in

the form of the ACP group. They prefer to orientate (development) policy more clearly on objective criteria and their own interests. This tendency could be strengthened by Brexit.

Because the discussion about integrating the EDF into the EU budget is ongoing, the EU's negotiating mandate for the parallel talks on the Cotonou successor leaves this question open and merely reiterates the existing funding principles. These include the target of spending 0.7 percent of GDP on development cooperation, with 0.2 percent earmarked for the poorest countries. The role of bilateral and regional development channels had already been fading, while the number of thematic funds has grown. The latter include instruments like the Commission's External Investment Fund (EEIF) for third countries and the EU Trust Fund for Africa (EUTF). Brexit will also reduce the volume of the EDF, where the United Kingdom has to date contributed 14 percent.

Trade Preferences and Trade Facilitation

Non-reciprocal trade preferences granted by the EU represented a core element of the relationship with the ACP. Because they contravene world trade rules, the Cotonou Agreement proposed so-called economic partnership agreements (EPAs) between the EU and the ACP regions. The final negotiations were concluded in 2014, and the agreement has now been implemented in thirteen African states as well as the EU. The thirty-three African countries that belong to the world's poorest already enjoy tariff- and quota-free market access to the EU under the everything-but-arms initiative of the EU's Generalised System of Preferences. This again secures completely free access to the EU for goods exports from almost all African states (apart from North and South Africa). Preferences for products that the EU otherwise strictly protects – especially (processed) agricultural products and textiles – are especially valuable. But

the worth of trade preferences in general is declining as the EU also concludes trade agreements with other developing countries and lowers its tariffs for them too (preference erosion).

Against this background the most important trade-related question in the EU and ACP negotiating mandates is how the chances of ACP states to benefit from agreements can be improved. Some African states have already benefited. For example South Africa recorded export increases from 2016 to 2017 for fish (16 percent) and sugar (289 percent) and Madagascar from 2012 to 2016 above all for textiles (65 percent), after the rules of origin were simplified under the EPA. Ghana and Côte d'Ivoire were able to increase their exports of chocolate, cocoa butter, cocoa paste and cocoa powder by a factor of 4.5 and 2.5 respectively between 2008 and 2015. It is especially interesting that they succeeded in expanding local processing and thus boosting value creation and employment. In other words, EPAs are beginning to contribute to diversification of exports.

The ACP's mandate (Art. 67) puts the possibility of trade preferences back on the table via the topic of trade facilitation. The ACP countries want to facilitate trade in services, including movement of natural persons. It is unclear how this could be concretised. There would indeed be leeway for a further EU market opening vis-à-vis sub-Saharan Africa in this area (in contrast to goods) because trade preferences for service exports are neither part of the EU's Generalised System of Preferences nor has the issue to date been taken up in the African EPAs. If the ACP states were to propose that the EU grant them non-reciprocal preferences, however, the same problem of conformity with WTO rules would arise as with trade in goods: trade preferences may be granted on the basis of objective criteria, but not restricted to a specific group of countries. Improved market access for services could be negotiated in the scope of free trade agreements. From the EU's perspective the existing EPAs and the association agreements with North African states are

therefore the right context for preferences on services.

The WTO does permit non-reciprocal trade preferences for services to be granted to the world's poorest states until 2030. Although twenty-five industrialised states grant preferences under this arrangement they are of small economic significance according to the UN Committee for Development Policy, and largely restricted to the possibility of using services abroad. This is so-called Mode 2 under the General Agreement on Trade in Services (GATS). But there are already few restrictions in this area, so the preferences largely reconfirm the existing level of liberalisation. GATS Mode 4, which provides for people to cross borders to provide services abroad, is much more interesting for developing countries. It would be conceivable for the ACP states to demand preferences for services – in particular Mode 4 – in return for concessions in the area of preventing migration. The debate over movement of people involves the suggestion that it will be easier to restrict irregular migration if channels for legal migration are created.

The African Free Trade Area and Negotiations for a Post-Cotonou

In their mandate the ACP states place great weight on further African regional integration to boost value creation and initiate development processes. Today finished products such as cement, fertiliser, cleaning agents and iron already play a significant role in trade between sub-Saharan countries, accounting for 46 percent of trade volume. But raw materials still dominate exports to countries outside Africa (with 85 percent), while regional trade represents only about 20 percent of Africa's total foreign trade. Only in southern and eastern Africa have sub-regional integration communities succeeded in increasing the proportion to any significant extent. In March 2018, initially forty-four of the fifty-four African states decided to establish an African Continental Free Trade Area (AfCFTA)

under the auspices of the AU, to accelerate continental integration by dismantling 90 percent of tariffs. According to calculations by the United Nations Economic Commission for Africa the abolition of all tariffs could increase intra-African trade by more than half. But the AfCFTA is not seeking full liberalisation. And moreover, widespread enthusiasm for the initiative rather obscured the fact that it does no more than define the objectives, topics and structure of talks. The economically effective provisions, such as how far to lower tariffs and which rules of origin to apply, are still to be negotiated. Furthermore, economic heavy-weight Nigeria has to date refrained from participating; its employers and trade unions fear destructive competition among African countries. Nigerian industry also sees little point in ratifying a proposal whose substance is still completely unknown. So it will be a long time before the Free Trade Area has been finalised and implemented, and is thus actually able to expand trade flows within the region.

In September 2018 European Commission President Jean-Claude Juncker declared that the EU was willing to enter into trade talks with Africa as a whole if the AfCFTA came into effect. This would only be logical given that the EU has for decades been encouraging African regional integration. The EPAs were originally also meant to serve that end. In the interests of further pan-African integration it might be necessary to harmonise the different EPA tariffs of the countries and regions involved. It is right and proper that the EU declares its openness to (re-)negotiate already today – even if a great deal of time will pass before the problem actually arises.

Investment as the Crux

In order to achieve sustainable development and create jobs for the African population – which is set to double by 2050 – private investment in particular must increase. The negotiating mandates grant correspondingly broad space to this issue. The ACP states

“resolve to create an enabling environment to improve productivity and facilitate value creation and addition to ACP products and services, to foster trade competitiveness and encourage investment expansion”. The EU’s mandate provides for improvements in framework conditions in order to create an attractive and stable environment for investment. To that end the parties should establish transparent and open rules for investors, design a regulatory framework and develop mechanisms to facilitate investment.

New instruments to promote investment in Africa have been created in recent years. Under the G20 Compact with Africa (CwA) African states implement reforms to improve the environment for investment and in return the G20 governments use various instruments to encourage private investors to engage more strongly in Africa. The European External Investment Fund provides €4.1 billion, designed to mobilise €44 billion in private investment by 2020. The Africa-Europe Alliance for Sustainable Investment and Jobs unveiled by the Commission in June 2018 bundles existing initiatives in the area of development and trade of the EU-AU Partnership to strengthen dialogue and cooperation with Africa on the subject of investment climate, including investor protection. To this end various instruments are to be joined up.

If the African states and the EU take up the issues of investment protection, promotion and framework conditions this would lend great weight to the negotiations and the Cotonou successor agreement itself. ACP states and the EU could then join forces to create paradigmatic modern rules governing investment. Such agreements could also succeed the old bilateral investment protection agreements that were one-sidedly tailored to investor interests and also contained the now discredited investor-state dispute settlement. The latter is criticised – no longer only by civil society – for undermining the legitimate regulatory interests of states – for example on consumer protection – and permitting companies to sue governments outside their country’s system. The European Union is

therefore working in the international arena towards a transparent, multilateral replacement with an appeals system.

A modern investment agreement between the EU and Africa – or the ACP group – should guarantee investors security and stability for their investments, but also commit them to social and ecological goals in line with the international sustainability goals. With its Investment Policy Framework for Sustainable Development, the UN Conference on Trade and Development (UNCTAD) has presented guidelines and options for modern investment agreements designed to fulfil precisely that objective. Apart from that comprehensive compendium, the EU’s Economic Partnership Agreement with fifteen Caribbean states contains a number of formulations committing investors to social and ecological standards. Further orientation is supplied by the OECD Guidelines for Multinational Enterprises on corporate social responsibility. The parties could agree to establish national contact points, analogous to those for the OECD Guidelines, that also grant representatives of civil society the right to lodge complaints.

All discussions about promoting investment must include the aspect of strengthening local and regional investment, and not just foreign direct investment.

Outlook

The Cotonou Agreement was the last agreement that still breathed the spirit of the post-colonial ties of the EU and its member states. Its successor will be more strongly determined by political interests. In their mandate the ACP states particularly emphasise issues like regional integration, investment to increase value creation, trade in services and the framework for sustainable development of African states. They underline their interest in joining with the EU to create modern arrangements for cooperation in new fields and growth areas. The EU should grasp this opportunity to strengthen its position in Africa. As a continent with strong growth in many regions and a rapid-

ly growing population (and middle class), Africa is set to play a larger economic and political role in the world. Additionally Europe has a pressing interest in securing development and security in the continent to its south.

Investment has become a key question for Africa's future development and will be an issue in the negotiations on a successor to Cotonou. In view of the multitude of existing instruments, negotiations about an investment regime that combines investor protection with sustainability commitments promise especially great added value. The time until 2020 may be too short to achieve far-reaching progress in this direction. But it would be a good first step if the Cotonou successor agreement were able to set some important markers on the road to a comprehensive investment agreement. That would mean formalising the intention to conclude such an agreement and laying down the first ground rules.

In the area of trade the uppermost question will be what instruments are suited to further expand the benefit of existing trade rules for the ACP states. Successful examples where African exports and value creation have been increased are encouraging, but not yet enough for a great success of the EPAs. It would make sense to integrate the topics of investment and trade promotion. Finally, EPAs have created especially strong trade preferences in areas that are attractive to less developed countries. Generally, broad export successes are found primarily where trade liberalisation has been accompanied by internal reforms. Linkage of reform and investment is also a line pursued by the G20 Compact with Africa. An associated specific EU Compact with EPA Countries could take up the task of promoting new investments in connection with the EPA.

Certainly the discussion about trade and investment has taken a constructive turn. The debate about the point and dangers of

EPAs — about which there were hefty controversies between Africa and the EU and within the member states — may be a thing of the past. Certainly the negotiating mandate of the ACP states no longer calls EPAs into question, but instead seeks successful implementation.

The ACP states may conceivably demand trade preferences for Mode 4 services in the European market, possibly as quid quo pro for EU demands in the sphere of migration. Here the EU appears as “demandeur” seeking promises from the ACP states to take back rejected migrants. In the negotiations it will have to offer something in return, especially if the question of development funding — which is important to the ACP countries — is settled outside the negotiations. From the perspective of the ACP, it would be a consistent negotiating strategy to tie migration issues to trade preferences for services, especially Mode 4.

The negotiations about a Cotonou successor agreement certainly offer the EU an opportunity to discuss with a large group of states about value-based political and economic cooperation. Given the number of communication channels that have broken down over recent years, the Union should grasp this opportunity.

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