*POSITION PAPER*

# *"EU-ACP Cooperation AFTER 2020: TOWARDS A NEW PARTNERSHIP?"*

***By the European Business Council for Africa (EBCAM)***

## The background

The Cotonou Agreement (CA) was signed in 2000 for a period of twenty years, including a review clause every five years. It is the current legal framework for the relationship between a the EU and the 78 countries, including 48 African states, from three very distinct and widely differing regions constituting the ACP group. This agreement includes three essential dimensions:

- A political dimension: Article 96 of the CA includes the political dialogue as the basis for limiting the EU development policy to the establishment of a "coherent political framework" in the beneficiary countries: human rights, democracy and rule of law, political pluralism, good governance, peacekeeping and security. The two revisions of 2005 and 2010 to the agreement added new political substance, principally the fight against terrorism and weapons of mass destruction.

- A commercial and economic cooperation dimension: Regarding the economic and commercial pillar, the main innovation of the Cotonou Agreement is its objective to conclude Economic Partnership Agreements (EPAs) between the EU and regions (groups of countries) of the ACP. These agreements aim to replace gradually the non-reciprocal trade preferences, incompatible with the rules of the World Trade Organization, and will be the new system of governing ACP countries' access to the EU market.

- A development cooperation dimension: The instrument adopted at that time, for historic reasons outside the budget of the EU, was the European Development Fund (EDF), a multiannual intergovernmental fund sourced primarily via donations and direct contributions from the EU member states. The financial commitments have been very important: in the 9th EDF (2000-2007): 22,5 billion Euros, in the 10th EDF (2008-2013): 22,6 billion Euros and in the 11th EDF (2014-2020): 30,5 billion Euros.

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## The framework has changed since 2000

The Cotonou Agreement, and the substantial resources allocated towards it, laid the foundation for a partnership between the EU and the ACP countries in 2000, but the world has changed since the signature of the agreement. It is facing new challenges related to demography, security, climate, migration, etc. Furthermore, there is a new international landscape with emerging countries assuming a growing share and influence. These facts are making a simple extension of the Agreement after 2020 impossible. A reform of the partnership is therefore necessary to go further in this relationship that needs to adapt more to the global challenges of today and in the future.

During the last fifteen years, the guiding principles have been the Millennium Development Goals (MDGs). A new global framework on Sustainable Development Goals (SDGs), and the related funds, was adopted by the United Nations in September 2015.

In June 2017, the European Commission (EC), the European Parliament and the European Council signed a new **European Consensus on Development**, acting as a framework to reflect on the new Post Cotonou EU-ACP Partnership and to deliver on the SDGs by 2030.

This framework, currently going largely beyond the Cotonou Agreement, also integrates other international programmes, such as the Addis Ababa Action Agenda (AAAA) on financing for development and the Paris Agreement on climate change.

On the occasion of the AU-EU Summit in Abidjan, the EU and its Member States presented a common revitalised integrated action framework establishing a roadmap for 2018-2020. This outlined in some detail the common priority actions, in response to the African Union’s Agenda 2063 and based on the global strategy for EU Foreign Affairs and Security Policy

## The new framework reflects a series of major evolutions since 2000:

1. ***The economic and political weight of the ACP group has evolved since the year 2000***

Historically, the EU-ACP Partnership has been an exclusive pact between former colonial powers and their respective colonies. Hence, the Cotonou Agreement became the archetype of a North-South partnership based on unilateral aid transfers from one side to another.

Beyond this common colonial past, the cohesion and unity of the ACP Group (48 countries in Sub-Saharan Africa, 16 from Caribbean, 15 from Pacific, but none of them from Maghreb) is very low. The members of the ACP states have little in common, apart from their stake in climate change and in some lesser development matters. Undoubtedly, the peace and security challenges in the Caribbean and Pacific countries are very different from the ones faced by African states. Several European Union Member States would therefore like a complete redefinition of the system.

One option could be for the EU to open up any future agreement to all the developing countries. This would allow the creation of a new pillar for Africa, incorporating just Sub-Saharan Africa. However, some countries of Northern Africa are opposed to this idea as they are doubtful about the EU's motivation and would prefer to maintain the current agreements, as regulated by the treaties stipulated with the EU in the framework of the European Neighbourhood Policy.

Despite its population of over one billion, the ACP group represents only 3% of global trade. Indeed, it still depends to a large extent on the preferential income generated by the EU. The Secretariat of the ACP group plays an intermediary role and only advocates loosely with the EU institutions to access EU aid. There is a perception that it is surviving only thanks to the EU subsidies.

### *2. The African Union (AU) has a more central role in EU-Africa cooperation*

Morocco's reintegration into the African Union in January 2017, after 33 years of absence, has also had an impact on the EU-AU relations. Previously, this was a partnership between Africa and the EU, with the AU playing a more ambiguous role. Now, the AU represents 54 African States, plus Western Sahara. The process giving the AU a more prominent role has already started, and this became more formalised with the fifth triennial AU-EU Summit, held in Abidjan in November 2017.

### *3. The results from the commercial part of Cotonou (e.g. EPAs) have been limited*

European Partnership Agreement (EPAs) negotiations were started in 2002 to replace the non-reciprocal trade preferences scheme, which were incompatible with WTO rules. These lengthy and painstaking negotiations have led to only limited results for Africa: apart from the EU-SADC regional agreement, the four remaining EPA projects are still stalled. Four temporary agreements have been concluded. The entering into force of these temporary bilateral agreement, made inevitable by the lack of regional agreements, entails the coexistence of various European commercial schemes: three in West Africa (EPA, LDC, GSP which will disappear with the ECOWAS EPA) and four in Central Africa (EPA, LDC, GSP and MFN), fragmenting and weakening the regional integration process in both areas.

### 4. EU-ACP cooperation is still largely a state-to-state relationship, from red tape to red tape

The participation of different stakeholders was one of the big evolutions of the Cotonou Agreement in comparison with the Lomé Conventions, considered as a reserved space for State administrations only. In that context, it was clearly specified in the Cotonou Agreement that "the development activities of the EU would have to consider economic development as depending first on the enterprises, and, more specifically, on the initiatives of the private sector". Despite very high expectations, the private sector has not really been involved, partly due to the fact that the DNA of the Commission's Services deeper structures (despite declarations at senior level) is still marked by a mistrust towards the private sector, privileging the older "partners" better tuned to the language of ODI and DEVCO.

**The consultations with the private sector, as prescribed in the Cotonou Agreement, have remained virtual and not tangible**. The platform of the ACP-EU private sector (EU-Africa Business Forum) in its many editions remained largely ineffective and powerless regarding the operating conditions of the private sector in ACP countries.

### 5. Things are evolving, since the development of the private sector's investments and financial flows into Africa is considered to be increasingly important

Today, private investment on the African continent is three to four times greater than public development aid. Africa's huge investment needs can only be guaranteed by a mix of private financial flows and public funding. Increasingly, African leaders are acknowledging this reality: on the occasion of the Brussels European Development Days in 2017 (EDDs) or the G20 Conference on Africa 2017 in Berlin, most of their statements focused on the need to promote private investments over public aid, to improve their continent's economic prospects.

The European **External Investment Plan (EIP),** to which the European Union budget contributes 4.1 billion Euros, with the objective of leveraging more than 44 billion Euros in supportive investments by 2020, aims to encourage the private sector to invest in African countries and the EU neighbourhood region.

This EU approach, in line with the G20 Africa Partnership launched by the German presidency, should result in concrete, collaborative and transparent partnership arrangements, opening up participation by companies, as well as in new business models. The overall aim is to encourage sustainable investments by the private sector as a lever for development

The future EU-ACP Partnership agreement will have to take this evolution into account, including a substantial chapter dedicated to the improvement of the business climate and the protection of investments within the target countries.

## Some reflections from the European private sector

The newly opened debate requires a clear redefinition of the European interest on two essential questions: The first is to know whether the relationship with the ACP countries can strengthen the position of the EU on the international stage. The second is to know whether the EU-ACP cooperation, in its present form, optimally serves the development goals of both the EU and the ACP countries.

For the European private sector, there are doubts about the role, usefulness and cost effectiveness of the partnership as translated in the cooperation between European Commission, ACP secretariat and related national bureaucracies. This questioning though is not about ending the EU-ACP countries partnership in 2020. This is not considered desirable and requires very substantial political and technical work.

On the contrary, the European private sector is convinced of the need to build a new partnership with the ACP countries, removed from the old model of "donor–beneficiary". The new partnership should be based on mutual interest, to be able to deal with the current international challenges.

The European private sector considers that the EU has to continue to express a strong interest for the different regions of the ACP group, particularly on the African continent. Most of the African countries are in expansion and the establishment of strong relations with them represents a major interest for the EU. The Caribbean and Pacific regions should also stay in the focus of the attention of the EU, mainly because of their proximity with the American and Australian regions.

EBCAM, as a major representative of the European private sector, with strong interests in Africa and it recommends leading the negotiations towards this direction. However, some aspects of the current arrangements should be reviewed, particularly regarding the ACP present grouping of the three regions, which needs to be restructured to reflect better its component parts, cohesiveness and objectives. It remains to be seen if the current formal structure of the ACP can be transferred to the new international agendas, to become an actor more relevant than it is today.

## Four major areas of change seem not only desirable but also unavoidable:

1. **Integrating a substantial chapter on the improvement of the business climate and the protection of investments.**

- ***Provisions on mutual protection of investments.*** Until recently, these kinds of provisions have only been included in bilateral agreements (between Member States and single African States). The idea of a EU-Africa agreement on investment, though, is already contained in the EPAs, which foresee a periodic review clause. However, this clause has never been applied. Instead of maintaining it in the controversial framework of the EPAs, it would be better to foresee a version adapted to Africa, with its innovative guarantee instrument and its link to the European Fund for Sustainable Development (EFSD), to be integrated in the "Africa" pillar of the future EU-ACP agreement. This would imply the launch of an ambitious negotiation process on an investments agreement between the EU and Africa.

- ***The public-private dialogue (PPD) has to be recognised as a key instrument for development and a growth accelerator.*** EBCAM supports in principle the EC position as an effective application of this new approach. as it promotes a systematic, organised and structured public-private dialogue on the field by the EC and the European delegations with the companies at the national, sectorial and regional level. This can mainly be achieved through the promotion of business forums at European and local level, aiming at fostering a conducive business climate in African countries, compatible with an acceptable level of risk-taking.

- ***A dispute settlement mechanism linked to the Euro-African investments*** needs to be created, on the basis of the Investment Court System (ICS), in line with the EU approach on the settlement of State-investors disputes. This could be modelled on the EU-Canada Comprehensive Economic and Trade agreement (CETA), a formula between the Court of Arbitration and the traditional court. It would then be more likely to overcome the concerns of African partners about the notion of arbitrage.

- ***The need to fight together against tax fraud and evasion, but also fiscal harassment***. A more generalised, non-double taxation clause appears unlikely, because taxation is not a Community competence. However, the need to fight together against tax fraud and evasion, but also against fiscal harassment – sources of considerable revenue loss for both European and African States – could be reviewed, taking into account the work of the OECD in this field, developed in the framework of the Global Forum on Transparency for Tax purposes. l 13 African countries are already amongst its members, but the harmonisation of the tax inspection practices have until now been conducted only at the technical level amongst administrations.

- ***The fight against corruption.*** This should be a crucial element of the future agreement, not only because of the loss of resources allocated to development projects, but also because it distorts commercial competition, often at the expense of European businesses. Recovering what is now regulated by articles 9 and 97 and strengthening the dialogue, together with the possibility of taking restrictive measures – as is already done with respect to human rights and governance with articles 8 and 96 – could be a solution, to be accompanied by a technical assistance facility. Amongst the restrictive measure, the publication of black lists of businesses and people could be considered, as it is already practised by the World Bank.

2. **Priority to the South-South cooperation**. This is now acknowledged as an excellent growth leverage mechanism. Certain Southern emerging countries have experiences and successful models of economic development that can be applied to less developed countries. Furthermore, some countries have developed models that could be useful for others. The ACP countries group should define a South-South and tripartite (with the EU) strategic cooperation arrangement in the ACP area, while making sure that the emergence of new actors from emerging countries does not happen at the expenses of the future framework. Every country in the long-term should aim to fit into the new global arrangement.

3. **Accelerating regional integration**. The most developed regions in the world are those promoting intra-regional trade: i.e. North-America with NAFTA (60%), the EU (69%), ASEAN (45 to 50%), MERCOSUR (30%), compared with the ECOWAS (less than 15%) and the CAEMC (11%). The most relevant and realistic option for the ACP group is to strengthen its own economic integration within its respective regions. The ACP Secretariat should increase its cooperation with regional integration institutions (REC) to follow the path of a markets-and-enterprises-targeted development system. This should be a primary aim. Strengthening the regional organisation has to remain a priority, especially within the context of the establishment of a Continental Free Trade Area (CFTA), since these organisations (WAEMU, ECOWAS, CAEMC…) are still far from having implemented the legislation on the free movement of goods and individuals and on the common external tariffs within their respective regions. Moreover, trying to extend these objectives immediately to the whole continent, is perhaps over-ambitious and unrealistic.

4. **Separate the three ACP regions for better effectiveness and homogeneity. The blueprint for this is to promote a differentiated cooperation system with the EU. Each of the three regions would then take into account the specificities, the different needs and degrees of development of the individual countries in each region.** This could help to reposition the EU on the international stage thanks to strategic bilateral and regional partnerships such as the Joint Strategy Africa-EU (2017), but also the Common Strategy between the Caribbean and the EU (2012). This scenario implies

accepting and promoting the coexistence of strengthened Regional Economic Communities (RECs) and of a global partnership that could cover in a coherent manner all three regions in question.

## Some more considerations and recommendations

This regionalisation should not be viewed as an obstacle to conceive a future for the ACP countries as a united group. Facilitating the emergence of a "framework-partnership ACP-EU" and, at the same time, strengthening RECs is possible. This would recognize the heterogeneity of each Africa, Caribbean and Pacific region, while preserving a unique North-South transcontinental framework. This would also allow the Union, as well as the ACP countries, to reinforce their position on the international stage.

In this respect, it would be appropriate to establish stronger links with the African Union, which includes the North African states. The question deserves to be considered further as the EU has just launched a revision of its neighbourhood policy.

This objective may seem ambitious but could contribute to adapting (and not abolishing) the ACP-EU partnership after 2020. Indeed, if the ACP groups of countries can clearly develop and express their political blueprints, reaffirm their independence (even for the ACP secretariat in Brussels, financed mostly by the EU contributions), and diversify their international partners, then this two-level modus operandi could add value to the current partnership. A relocation of the ACP headquarters –from Brussels to an ACP country - could be a symbolic but significant step representing this transformation. This is also an opportune time to perhaps end the use of EDF, which, having served its purpose for so many years, now looks as an anachronism-aberration, and to streamline the management of all EU contributions through the normal budgetary procedures (Everything on Budget) as well.

The European private sector believes that it is now necessary to explicitly bind EU-ACP cooperation to the SDGs. This includes acknowledging the role of the private sector and the respective mutual interests in the global management of public goods. In this context, EBCAM calls for a public/private dialogue with the European Institutions.

Whether the dialogue takes place at a national level or at a sectorial level, it is necessary to include the national, regional and European private sector at each step of the review of the respective development policies. It begins with the <u>necessary reform of the current tools</u>:

- By expanding the advantages given to the ACPs to other bankable sectors, to allow a wider access to subsidies earmarked for the funding of private enterprises (equity capital and credit) beyond traditional sectors: agriculture, social sector (health) or urban sector.

- By pursuing and extending the EU policy of delegating the management of the funds to bilateral and European development agencies with expertise and experience of the field and the related sector.

- By simplifying the procedure for the creation of trust funds. Their objectives and modalities of fund release could be managed with more flexibility. For this, it is necessary to develop new procedures to allocate the funds directly to the operators, without the control of the Recipient States' administrations.

- By diversifying the financial mechanism to maximise the leverage effect, i.e. establishing guarantee funds for the benefit of local financial institutions (in this area, the providers of funds are often risk-averse because these guarantees are not accounted in the PDA). There is also a need to establish those guarantees to the benefit of bilateral development institutions serving the funding of the PPPs.

On a wider perspective, the new partnership will have to focus on security issues, which should be viewed more in terms of a **global public benefit** and cannot be financed only by the concerned countries. Two other questions are relevant:

- Rural and agricultural development should be the main priority sector to create jobs over the short and long-term.

- Demographic transition and improved birth control measures should also be a priority, assisted by substantial resources and the recourse to expertise, including non-European expertise.

**To conclude, the EU and the ACP countries must now translate their ambitions post Cotonou" in new forms**. It should not be about improving the implementation of the Cotonou Agreement but about a new collaborative and sustainable partnership for the future. This could be perceived as a threat to the parties that have an interest to maintain the traditional North-South partnership, but it is a unique opportunity to build a new, more ambitious one that is adapted to the current realities. This could generate a huge political interest for the stakeholders involved.