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## The future of the EU-ACP relations: possible scenarios after the end of the post-Cotonou negotiations

by

Matteo Oreglia\*

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## Abstract

This article provides an analysis of the recent negotiations between the European Union (EU) and the representatives of the African, Caribbean and Pacific Group of States (ACP) for the signature of a new agreement, following the expiry of the Cotonou Partnership Agreement of 2000 (CPA). In particular, we focus on the outcome of the last 20 years of cooperation under the Cotonou Convention, highlighting the positive aspects of the Agreement, but also and above all its criticalities and failures. Taking into consideration such results and the interaction between the two organisations, we analyse the main issues to be solved during the recently concluded negotiating process. The different proposals on the table to revitalise the partnership are particularly important in this paper: whilst the EU is in principle favourable to a so-called ‘umbrella agreement’, consisting of a single agreement applicable to the EU and all ACP countries and regional protocols, the ACP States look more in favour of maintaining the *status quo*. Moreover, the financing, the legal basis, the model of implementation and the main players of the partnership are key points that will be discussed in the essay.

## Key-words

Cotonou Partnership Agreement; ACP-EU relations; post-Cotonou negotiations; development cooperation; trade; regionalism promotion



## 1. Introduction

It is well-known that Africa is the European Union's trade partner of choice. The roots of this 'special relationship' date back to the period of colonial expansion of the great European powers in the second half of the XIX century, when due to its proximity on the other side of the Mediterranean and its immense natural wealth, the so-called 'Scramble for Africa' began.

When the majority of African States had gained independence, the European Economic Community (EEC) signed its first association agreement with 18 African ex-colonies, in Yaoundé, on the 20<sup>th</sup> of July 1963. This was followed by the second Yaoundé Convention of 1969. The aim of these agreements was simple: it consisted in the promotion of trade, economic independence and social development of the State Parties.

The Yaoundé Conventions were rapidly surpassed by the Lomé Convention of 1975: the agreement was meant to provide a new framework of cooperation between the EEC and the developing ACP countries, that for the first time participated to the negotiations as a unit. It was characterised by two main aspects: firstly, the duty-free export of most ACP agricultural and mineral products to the EEC and the preferential access based on a quota system for products, such as sugar and beef, in competition with EEC agriculture. Secondly, the EEC committed European Unit of Account (EUA) 3 billion for investment and aid in the ACP countries (Correa 2007: 17). The Lomé Convention was renewed multiple times, in 1980, 1986, 1991 and 1996<sup>I</sup>, and formed the basis of a new type of pact.

The Lomé *acquis* was in fact adapted and modified in order to create a more comprehensive agreement on political, social and economic cooperation: this led to the signing of the Cotonou Partnership Agreement on the 23<sup>rd</sup> of June 2000 in Cotonou, Benin<sup>II</sup>. At the time, the agreement was a significant innovation: never before had a cooperation agreement had such a wide scope<sup>III</sup>. Structured in three pillars – development cooperation, economic and trade cooperation and political dimension – the CPA relies on 4 main principles: the partners to the agreement are equal; the ACP countries determine their own development policies; cooperation is not only among governments: parliaments, local authorities, civil society and the private sector play a role as well; cooperation arrangements and priorities vary according to aspects such as countries' levels of



development (ECDPM 2001: 3). Moreover, the Cotonou Agreement provided for the establishment of a complex structure of ACP-EU joint institutions<sup>IV</sup>, whose task is to supervise the implementation of the Agreement<sup>V</sup> and to carry on the dialogue between the organisations. These practices are funded through the European Development Fund, established by voluntary donations of the EU Member States outside the EU budget and usually lasting 6 years. The CPA is also the framework agreement for the negotiation of the Economic Partnership Agreements (EPAs) between the EU and regional organisations comprising the ACP States<sup>VI</sup>.

Now, after 20 years of existence, the Cotonou Partnership Agreement (CPA) should have expired in February 2020. However, as the negotiations on the future agreement finished beyond this deadline, the CPA was extended to December 2020. Undoubtedly the negotiating process proved to be extremely complex and time-consuming, given the high number of institutions and interests involved. In addition, the COVID-19 pandemic further complicated the process and created more delays (Pelz 2020).

This being so, this article firstly provides an overview of the history of the negotiations for a post-Cotonou agreement, that formally began in 2018 with the adoption of the negotiating mandates of each counterpart, but that were preceded by important proposals and discussions. Then, taking into considerations strengths and weaknesses of the CPA and the position of the European Union (EU), its Member States and the ACP Group of States, we focus on the results of the negotiations. As it will be shown in this article, the ACP States are particularly resistant to change and seem unwilling to abandon the traditional donor-recipient nature of the CPA, worried as they are to lose their financial privilege granted by the European Development Fund (EDF). Their position is also weakened by the increasing representativeness of the African Union (AU), whose plan is to conclude an intercontinental agreement with the EU. On the other hand, the EU went through a difficult reflection on the possible changes to the structure of the agreement. The transition towards a more regionally owned cooperation framework has been discussed and finally adopted, showing its pros and cons. In general, European negotiators are aware that the global context has changed radically in the past 20 years and that the primacy of the EU as economic partner of the ACP States is threatened by new international actors (Schefer 2019: 20; Bossuyt, et al. 2016a: 22). It is possible to say that a



rethink of the EU-ACP agreement is a fundamental step towards a more comprehensive rethink of the role of the EU as a key actor in the global landscape.

## 2. The Cotonou Agreement: what worked, what didn't

There is no denying that the undertakings given by the Cotonou Partnership Agreement are ambitious and virtuous. However, it has to be said that its achievements are rather meagre and the evidence of its dilution significant.

The CPA seems to have a weakened political status: a remarkable part of its stakeholders has been excluded from its processes – because of their limited knowledge and interest – and more in general the performance of the Agreement has been unsatisfactory. Moreover, a scarce ‘use’ of the partnership has been made in multilateral fora, despite the considerable demographic and geographic weight of the CPA.

There are many reasons behind the disappointing outcome of the Cotonou partnership so far. The first one is the ‘erosion’ of the three-pillar structure of the Agreement (Bossuyt 2017: 3): the fields of migration and security have been neglected, while the trade and political dialogue pillars have been externalised from the CPA framework and regionalised with the EPAs. Given this structural weakness, the CPA looks to be simply a development cooperation tool.

Another reason of the poor record of the Agreement is the significant implementation gap between its provisions and practice. The fact of being a legally binding agreement has not guaranteed the CPA an effective action on many levels: the use of Article 13 has been limited, there has been a lack of non-state actors participation and the political dialogue between the parties has been insufficient. In this regard, Article 96 has been often triggered at a late stage of political crises – only once on a corruption case – and not in a preventive manner<sup>VII</sup> (EC: 5). Moreover, the loss of internal leverage that the ACP experienced with regard to its Member States has made the dialogue on some sensitive issues, for example the support to the ICC and LGBTI rights, even more difficult between the parties (Bossuyt 2017: 9). In addition to this, limited results have been achieved concerning poverty eradication: 50% of the ACP countries are still Least Developed Countries (LDCs) and the whole OACPS only accounts for around 5% of global trade and 2% of global GDP (EP 2016: 5). ACP States economies, still characterised by a significant informal economy, tax



avoidance and tax evasion, remain fragile due to external economic shocks and natural disasters. Not enough progress has been made towards the achievement of the MDGs and the following SDGs, in particular as regards conflict-afflicted countries where population growth and urbanisation are an issue and increasing inequalities have a negative impact on human development. Lastly, meagre results have been achieved with regard to environment protection: the main problem of the CPA is that the environment is not enough integrated in other policy sectors<sup>VIII</sup>, while the JAES is more advanced in this sense, foreseeing a ‘Common But Differentiated Responsibility’ regime (Adelle, Lightfoot 2018: 254).

Furthermore, the marginal position of the EU-ACP partnership within the European External Action had had a negative impact on the CPA performance. In fact, the EU’s recent tendency is to go bilateral and regional rather than multilateral with its foreign policy agreements – especially when it comes to the regulation of illegal migration<sup>IX</sup>. The trend will probably intensify after 2020 and if so, the ACP Group may lose even more importance as compared with the AU-EU partnership. Moreover, an erosion of the EDF<sup>X</sup> has been taking place, caused by the implementation of different financial instruments among which the EU External Investment Plan (EIP). As a consequence, the EU-ACP joint institutions were marginalised – especially the Council of Ministers<sup>XI</sup> – and their marginalisation was confirmed by the 2016 EU Global Strategy, that does not mention the ACP States at all and recommends a new way to address global challenges (Bossuyt, et al. 2016a: 14).

Finally, wider geopolitical factors contributed to the partial failure of the Cotonou Agreement. The emergence of a multipolar world, the globalisation process, the marginalisation of post-colonial structures and the growing heterogeneity within the ACP States undermined its foundation. The growing economic and geopolitical influence of new important actors in the global landscape, such as Brazil, India, Arab States and China, considerably affected the EU’s role of ACPs’ partner of choice. Especially the growth of China in Africa is perceived as a threat. It is not by chance that the EU signed more bilateral agreements with African States and put the JAES in place, willing to reinforce the political dialogue and, according to some, *de facto* replacing the Cotonou Agreement. Also, on the EU side, the process that led former soviet bloc countries to join the European Union created some problems: these new members do not have a colonial history, need to strengthen their economies and institutions and do not have any interest in development



cooperation. Add to this that Brexit confirmed the exit from the Union of one of the leading members in this sector. Ultimately, the 2030 Agenda goes far beyond the traditional north-south cooperation that the CPA embodies. It foresees new partnership modalities, based on the sharing of responsibilities, the negotiation of common interest, the attraction of alternative source of funding and a multi-actor approach: all things that the CPA does not provide for (Bossuyt, et al. 2016a: 9).

All this is highlighted in the November 2016 EC Joint Communication on ‘A renewed partnership with the countries of Africa, the Caribbean and the Pacific’. In this document, the European Commission and High Representative of the Union for Foreign Affairs and Security Policy pointed out that, although considerable progress has been made in the EU-ACP cooperation, the overall results of the CPA are poor and some ‘worrying trends’ are emerging (Bossuyt 2017: 4).

### 3. Towards a post-Cotonou agreement: the timeline of the negotiations

The negotiating process of the agreement between the EU and the ACP Group started well before 2018. In fact, the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy adopted a joint communication on the future partnership with ACP countries on the 22<sup>nd</sup> of November 2016. In this proposal, the main aspects considered were the structure of the future agreement, its legal nature and its geographical scope, being possible an enlargement to include African neighbouring countries (EC, HR/VP 2016: 23-29). Immediately after, on the 28<sup>th</sup> of November, the Foreign Ministers of the EU Member States reunited in the Council and began discussions on the nature and structure of the future relations between the EU and ACP (Council of the EU 2016: 3). Important meetings were held also on the other side of the partnership, notably the 7<sup>th</sup> and the 8<sup>th</sup> Summits of ACP Heads of State and Government. During these sessions decisions were taken on the official position of the ACP Group in the upcoming talks with the EU (ACP Group 2017: 1).

These steps were followed by a joint statement by the Parliament, the Council and the Commission, that also took into account the compliance with the UN 2030 Agenda and the Sustainable Development Goals (SDGs) (Council of the EU 2018: 1-4). Afterwards, a



Commission recommendation to the Council, including a proposal for the negotiating directives, was discussed by the Foreign Ministers in a meeting on the 22<sup>nd</sup> of January 2018 (Council of the EU 2018: 4). Concurrently, the EU was carrying on the talks with the African Union: formally, the EU-ACP negotiations were not in the agenda on the fifth EU-AU Summit that took place in November 2017, but the two negotiations could show some sign of incompatibility (Keijzer et al. 2017: 1-2).

According to the time schedule, in May and June 2018 the negotiating mandates were adopted by the ACP countries and the EU respectively (CEU 2018b: 16). The negotiations formally started on the 28<sup>th</sup> of September 2018, one month later than established by Article 95 of the CPA. After the appointment of their chief negotiators<sup>xii</sup>, the parties launched their talks on the future partnership in the margin of the UN General Assembly in New York (Medinilla, Bossuyt 2019: 1-3). The first round of negotiations, focused on the structure of the future agreement and strategic priorities, was concluded on the 14<sup>th</sup> of December 2018 (European Council 2020: 1), while the second, devoted to the drafting of the foundation text, lasted until the 4<sup>th</sup> of April 2019 (European Council 2020: 1). Later, the chief negotiators met each other in May to start their consultations on the new institutional set-up (European Council 2020: 1).

Thereafter, however, no progress was made in order to draw the final text of the treaty until the 14<sup>th</sup> of February 2020, when the EU and the ACP's negotiating teams, led by Togolese foreign minister Robert Dussey and EU International Partnerships Commissioner and new chief negotiator Jutta Urpilainen, agreed to extend the existing agreement until December 2020. The reason of the extension is that more time was needed to discuss the content of the regional protocols of the agreement<sup>xiii</sup>. Urpilainen's schedule for the continuation of the negotiations, foreseeing new meetings and talks until April and seven months of legal scrubbing of the final agreement, was subsequently abandoned after the pandemic outbreak (Fox 2020: 2). Finally, on the 3<sup>rd</sup> of December the chief negotiators reached a deal on the text of the new agreement, creating the new legal framework for economic and political cooperation between the 79 ACP Members and the EU. At this stage the text will go through internal revision procedures (EC-press release 2020: 1). The signature will take place at a later stage of 2021. To enter into force, the agreement must be ratified by a minimum number of States for each party. With regard to the EU, signature, provisional application and conclusion will require the Commission's proposals to be





approved by the Council. These proposals will be forwarded to the Council in early 2021. With the European Parliament's consent, the Council will decide on the conclusion of the agreement, as set out in Article 218.6 of the Treaty on the Functioning of the European Union (TFEU). In any case, during this process the CPA will remain applicable: in order to allow the EU to carry its internal process out, its application has been extended until the 30<sup>th</sup> November 2021 (EC-press release 2020b: 1).

Simultaneously, the EU proposed a new strategy with Africa: the European Commission and the High Representative for Foreign Affairs and Security Policy proposed to intensify cooperation through partnerships in five key areas: green transition; digital transformation; sustainable growth and jobs; peace and governance; and migration and mobility. The strategy was meant to be endorsed at the European Union-African Union Summit in October 2020, but the event did not prove to be immune to COVID-19 and the decision to postpone it to 2021 was finally taken (Laporte 2020).

#### **4. The position of the parties with regard to the new agreement.**

##### **4.1 The position of the EU.**

The European Union has significant interests in the revision of the Cotonou Partnership Agreement. According to the words of its chief negotiator, Jutta Urpilainen, the EU considers the post-Cotonou agreement a key point of its external action<sup>XIV</sup>. But which are the main reasons why the EU strongly wants to renew its partnership with the ACP Group?

First of all, the EU wants to preserve the Cotonou *acquis*, the set of rights, obligations and political objectives shared by the parties. The *acquis* includes legally binding nature of the CPA, which is something that the EU desires to retain in order to make progress on fundamental values and strategic interests. The EU also wants to keep at the centre of the new agreement the political dialogue provisions of the CPA, trying also to strengthen them, and the EPAs articles.

Moreover, the EU could in theory appreciate the limited expenses deriving from the preservation of a single interlocutor – the OACPS – in the negotiating process with 79



countries, even without ruling out a series of regional and sub-regional strategies (Bossuyt, et al. 2016a: 13)<sup>xv</sup>. In fact, the EU, aware that the traditional north-south cooperation scheme of the CPA has been outgrown and regional integration has become a remarkable force of change, wants to ensure the continuity of the actual institutional framework, but also to create the conditions for a further regionalisation of the partnership (Medinilla, Bossuyt 2019: 1). Consolidating the partnership with regional institutions can be also a way to preserve the EU's role of main partner of the OACPS, given the growing competition from China and other emerging global powers. This applies especially to Africa, where the main interests of the EU lie. The African continent – traditionally seen as continent of opportunities on one side, source of potential threats on the other – is a key focus of the EU's External Action for migration, security and investment reasons (Medinilla, Bossuyt 2019: 1).

But this has not been the case. The ACP construct has progressively disappeared from the EU's External Action priorities. The EU ostensibly prefers bilateral and regional partnerships. In addition to this, the proposed 2021-2027 Multiannual Financial Framework (MFF) for external action does not mention the ACP Group and envisages the budgetisation of the EDF, depriving it of its separate functioning (Jones et al. 2018: 5). In this context, it is likely that the AU-EU partnership will gain importance at the expense of the ACP-EU partnership, thanks to its effectiveness in addressing common interests including peace, security, migration and youth employment (Fox 2018a: 3-4). But the European Commission does not want to make a clear connection between the AU and the ACP dossiers, keeping the two negotiating processes separate. Anyway, the EU is still trying to frame its relations with its main African partners within the ACP-EU scheme. Clearly, the EU is reluctant to abandon the post-Cotonou negotiations because it is worried about losing control on its partners and being overcome by other key geopolitical actors.

In short, the EU still wants to proceed with the negotiations with the ACP institutions – despite the ACP-EU relations not being high on its priority list – and reach an agreement of which regions are the new 'centre of gravity'. The ACP institutions are considered to be more accommodating and less resistant: negotiating with them could be a way to avoid a deeper rethinking of the ACP-EU model of cooperation<sup>xvi</sup>.



## 4.2 The position of the EU Member States...

Within the EU, the Member States have taken up different positions concerning the renewal of the Cotonou Agreement. The discussions on the new agreement started in 2015, when the European Commission launched a consultation process among the Member States. Conversations took place in the Development Cooperation formation of the Foreign Affairs Council (Tindemans, Brems 2016: 1).

First of all, the so-called EU13, the new members that joined the EU after the implementation of the Cotonou Agreement, think that the ACP-EU partnership should be rebuilt from the foundations, with no preconceptions. They did not participate to the CPA negotiations and for the first time can actively take part to the shaping of the future relations with the OACPS. In addition to this, they are not enthusiastic about a donor-recipient model of cooperation and they believe in a conditional approach to development cooperation: these Member States think there should be some reciprocal benefit returning to all the EU contributors to the EDF. Above all, their interest in the partnership is not obvious: their focus is on the EU Eastern Partnership countries<sup>XVII</sup>, with whom they have much closer ties and shared historical background (Tindemans, Brems 2016: 3).

On the contrary, the EU founding Members with former colonial ties have bilateral relationships with the ACP countries and, consequently, the biggest interest in this partnership.

With regard to the model of cooperation, the majority of the Member States agreed on giving more importance to shared interests – security, mutual trade and employment, migration and climate change – going beyond development cooperation. They also want the SDGs to have a more significant impact on the new agreement.

Concerning the geographical scope of the new convention, some States agree on the fact that the differences among the ACP Member States have to be accommodated and more differentiated regional agreements are necessary to pursue a ‘tailor-made approach’ (Tindemans, Brems 2016: 4). Germany, the Eastern countries and the Scandinavian countries are the main sponsors of this course of action, while France and Spain are more in favour of maintaining the actual structure of the agreement.



All the EU Member States then acknowledge the limited role of the ACP-EU partnership in multilateral fora. This is considered as an argument in favour of ‘going regional’ by those who want a deeper regionalisation of the partnership, putting the centralised ACP institutional structure aside: common positions with smaller groups of countries can be better supported on the international scene. Those in favour of keeping the actual structure reply saying that the collaboration between the EU and the OACPS during the negotiation of the 2015 Paris Agreement on Climate Change and the possible partnership in Multilateral Environmental Agreements (MEAs) are a sign of the renewed geostrategic importance of the partnership (Waruru 2018).

With regards to the legal nature of the agreement, the majority of the Member States endorses its actual legally binding status, given the uniqueness of the CPA as a legally binding agreement with a specific focus on poverty eradication. Some other European States, however, ask for change: in their opinion, different kinds of agreements – like those between the EU and Colombia or Russia – have proven more effective.

Conversely, an element on which all the Member States agree is political dialogue. The political dialogue between the parties is considered a crucial element that must be kept after 2020 and the most important reason for strengthening the Cotonou *acquis*. To do so, all the Member States believe that the partners of the future agreement should be equal, but they should also have the chance to take fundamental values up when some ACP members violate them. Looking in detail at Articles 8 and 96, the Member States evaluate their mechanisms as overwhelmingly positive, as well as that of Article 9<sup>XVIII</sup>. They provide the Agreement with a sufficient level of conditionality. However, Member States argue that these provisions were not used enough (Tindemans, Brems 2016: 7). Focusing on Article 13, all the EU Members consider migration a key point of the CPA. Some of them then stress the importance of readmission agreements, while others prefer to have a more holistic approach to this issue and not to use the EDF as ‘carrot and stick’ (Tindemans, Brems 2016: 7).

In connection with the EDF, there is a consensus that it has been the main driver of the partnership. However, in some Member States’ opinion, the EU should present an alternative: a new financial instrument requiring a stricter conditionality for the ACP States to receive their money would be preferable. This possible new format would grant the EU Member States more return from the investments in the ACP countries. Also a better



coordination between the EDF and the other European financial instruments, in order to better take into account regional differentiation, would be appreciated by many European countries.

Another important aspect of the partnership is trade, which has been mainly taken over by the EPAs. Despite their noticeable shortcomings, many Member States want the latter to remain as self-standing agreements outside the Cotonou framework, since they perfectly comply with the WTO rules. Nevertheless, other States argue that a new comprehensive partnership without the trade pillar would be almost useless. Outside Cotonou or not, there is universal agreement that more attention has to be paid to intra and inter-regional trade among developing countries and trade must go hand in hand with development, trying to close the gap that prevents LDCs from joining the EPAs.

### 4.3 ... and the ACP Group.

It only remains to analyse the position of the ACP Group of States in this negotiation. The OACPS is considered as a group that can advance cooperation among countries with different religions, cultural and ideological orientations, as stated in its founding act, the 1975 Georgetown Agreement. The organisation declared his willingness to become the leading transcontinental group working for better standards of living through both north-south and south-south cooperation. In order to achieve this goal, it promotes good governance and sustainable development and pursues poverty eradication and the equitable integration of its Member States in world economy. The ACP-EU partnership can be of great help in reaching these objectives. In fact, the ACP heads of State and Government, at their 8<sup>th</sup> Summit<sup>XIX</sup>, identified three areas that would benefit from the renewed agreement: equitable and sustainable development, ACP role in global governance for development and peace, security and stability (ACP Group 2017: 4). To achieve these goals, the ACP leaders believe that the structure of the organisation has to be redesigned, making it more effective through a greater political engagement of the Member States, an institutional reform and an increased financial stability (ACP group 2017: 4). Moreover, ACP policies should be always guided by the principles of unity and solidarity, giving the group a strong foundation and making its international influence more incisive. Only through the



combined political authority of all the ACP States, the agenda of the Group can be truly ground-breaking. Obviously, this unity of purpose is also expressed with regard to the post-Cotonou negotiations: the ACP ambassadors in fact declared that the ACP countries ‘remain as an entity’ (Frisch 2015: 1).

The urgent issues of the OACPS at the moment are the conclusion of the post-Cotonou agreement and ensuring that its trade interests are not harmed by Brexit<sup>xx</sup>. The ACP group recognises the radical changes that occurred since 2000 and that should shape the basis of the Cotonou successor agreement. Its main goal is to achieve a rapid and sustainable development for all its Members, in line with the 2030 Agenda. Having said that, the OACPS wants to renew the partnership with the EU without abandoning the intergovernmental and asymmetric mode of the partnership.

Three strategic pillars should shape the future agreement, according to the ACP States: trade, investment and services; development cooperation, technology and research; political dialogue (Laporte 2018). In addition to this, the Group wants the vulnerability of the Caribbean and Pacific members to be particularly taken into account and African regional integration to be encouraged<sup>xxi</sup>. All this has to be included in a single legally binding agreement with the EU and in a single negotiating framework, which is essential for the predictability, transparency and mutual accountability of a ‘contractual partnership’ (Medinilla, Bossuyt 2018: 14). The agreement should also rely on the Cotonou *acquis* and preserve flexible and predictable aid through the EDF, which has granted enough ODA. Moreover, essential elements of the new agreement should be, according to the OACPS, a return to more development oriented preferential trade arrangements, given the bad results of the EPAs<sup>xxii</sup> and a structural support for debt management, given that the majority of the ACP States is attaining the middle income countries status (ACP Group 2017: 3).

In short, the OACPS’ interests are very close to the *status quo*: even though the ACP Aide Memoire calls for a ‘radically transformed relationship’, however the organisation wants to keep the traditional aid-driven north-south partnership, willing to access to ‘adequate and predictable resources’ more than mobilising domestic funds and still asking the EU to sustain the ACP Secretariat and bear the costs of the existing joint institutions. It seems clear that there is no space in the ACP conservative agenda for new partners, notably the AU. Indeed, African countries generally seem not in favour of transferring



powers to their continental organisation and tend to consider the AU as a threat to their own interests with regard to the EU.

The AU, however, during its extraordinary session organised in Kigali in 2018 expressed the determination to negotiate a new continent-to-continent cooperation agreement with the EU outside the ACP framework (AU 2018: 5; AU-press release 2018: 2, Fox 2018b). This new partnership would replace, or at least complement, the ACP-EU one after the expiration of the CPA – that in the eyes of the AU representatives is a ‘mere bureaucratic system for delivering ODA’ (Medinilla, Bossuyt 2019: 2). In general, this calls for a separate negotiating process outside the ACP-EU framework – which is not a novelty, considering that the Cotonou Agreement was signed in the same year of the first Africa-EU Summit in Cairo – and somehow marks the disagreement and confusion that reigns supreme among the ACP Member States.

## 5. Post-Cotonou negotiations: what’s next?

The renegotiation of the Cotonou Agreement is a rare opportunity to modernise the cooperation and go beyond the state-centric donor-recipient partnership that the CPA launched in 2000. What is unclear is whether the parties are ready to do this or not. Some experts argue that the EU is not ready to ‘cross the Rubicon’ and to start a deep refoundation of the partnership, looking more inclined to ‘put old wine in new bottles’ instead (Bossuyt 2017: 1).

On this basis, the key issues of the current negotiations will be examined in this section. The link between a central agreement and the ACP regions will be analysed first, then the funding of the future agreement, the legal basis and the actors of the new agreement will be taken into account, highlighting strengths and weaknesses of each possible solution.

### a. The role of regional organisations

The first issue to be considered while analysing the possible outcome of the ACP-EU negotiations is the relevance of regions. The regionalisation of the ACP-EU relations has



evolved since 2000 and the centre of gravity of the future agreement has to be shifted towards regional bodies. But the parties may have different expectations about how regionalisation should be implemented. Four alternative scenarios will be presented for the structure of the upcoming agreement. For each one of these, pros and cons will be pointed out, as well as the position of the parties and the possible consequences of their adoption. The options are as follows: a revised Cotonou Agreement, a series of coordinated regional protocols, a thematic and multi-actor partnership and an ‘umbrella agreement’ linked to regional conventions. As we shall see, it is the last one of these hypotheses that the parties agreed to fall back on.

The first scenario envisages a follow-up agreement almost identical to the CPA, but adapting the ACP-EU framework to new demands and geopolitical circumstances. This agreement would encourage continuity with the expiring agreement, since no changes would be made to its basic principles and format (Bossuyt et al. 2016a: 7). Also the joint institutions and the legally binding nature would be maintained. With this solution, regionalisation would not evolve so much. As mentioned above, this solution is backed by the ACP Group, which is in favour of the maintenance of the *status quo*.

A positive aspect of this option could be that keeping the same structures would make the management of considerable amounts of aid easier. Additionally, continuity of cooperation funding would be granted to ACP States.

However, this scenario does not lie on solid foundations: this new agreement would miss international weight, given the global trend towards bilateral agreements, and would be reduced to a mere development cooperation tool. The appearance of different ways of funding and the increasing intra-ACP differentiation would also adversely affect the effectiveness of the partnership. Moreover, some atavistic problems of the CPA – the protection of LGBTI rights, the recognition of the ICC, the difficult management of migration and a cumbersome institutional framework – would not be solved with this kind of agreement. Also Brexit could have a negative impact on the partnership: the UK was one of the few EU countries with post-colonial ties and strong national interests in the ACP regions (Bossuyt et al. 2016a: 9-11). Finally, the growing fragmentation of competencies and decision-making, split between the ACP Group and the AU as regards Africa, would not help.





The second scenario consists in a deeper regionalisation of the ACP-EU partnership, rebuilding the partnership around regional relations and avoiding the intermediation of the ACP structure. The Regional Economic Communities (RECs) of Africa and the regional institutions of the Caribbean and the Pacific should be reviewed and strengthened, creating a new interest-driven form of cooperation (Bossuyt et al. 2016a: 16).

This scenario, unlike the previous one, would be coherent with the actual trends of international relations and the goals of the 2030 Agenda. It could represent a way of accommodating the increasing differentiation among the ACP Member States. This solution would also allow the EU to go deeper into the ACP regional dynamics and to better shape tailor-made agreements with its regional bodies. It would also transform the existing regional institutions into more effective frameworks for cooperation and development<sup>xxiii</sup>, making the negotiations for a new comprehensive agreement unnecessary (Bossuyt et al. 2016a: 16).

Nevertheless this scenario is very difficult to implement. It would require a paradigm shift from the actual framework and from the actual wavering approach of the EU towards regionalisation<sup>xxiv</sup>. Its realisation is also made difficult by the complexity of the regional panorama within the ACP Group, the presence of overlapping institutions, slow integration procedures of certain regions, the risk of marginalising the Caribbean and the Pacific and the need of a deep reform of financial instruments. Furthermore, the ACP Group would be for sure at odds with this solution, given the potential marginalisation of the ACP.

The third scenario consists of a mixed regional and thematic multi-actor partnership. This scenario requires a step further in the diversification of the agreement and a more functional approach. This option assumes that the era of north-south cooperation is over and that the new partnership should ensure global governance in a multipolar world (Bossuyt et al. 2016a: 21). To do so, it would be better not to put all the provisions in a single agreement, but to negotiate core interests according to a more strategic prioritisation. Each partner – EU and Africa, Caribbean and Pacific individually – should autonomously identify their external action priorities, and partner with the most suitable actor in order to achieve mutual interests only at a later stage. This would lead to a series of strategic



partnerships along thematic and regional lines, enhancing the efficiency, pragmatism, political backing and legitimacy of the partnership.

Although this scenario seems unapplicable, given the abandon of the actual treaty-based model of cooperation, however it is the one that better reflects the current state of play of the ACP-EU partnership (Bossuyt et al. 2016a: 4). Clearly, those in favour of a more traditional solution will not be enthusiastic about this scenario. However, a shift towards this kind of strategic cooperation is already underway between the parties. To go along with this change also at an institutional level could be beneficial for both the EU and the ACP Group: a stronger commitment to invest in regional and thematic groups would result in increased competition. Migration is a blatant example of that: migration-related issues would be better tackled by a multi-layered scheme of dialogue in global fora, continental organisation and local institutions. Also climate change is one of the sectors benefitting from this scenario. Environment is overshadowed in the actual agreement: due to a lack of environmental ambitions, it is not mentioned by the Articles concerning political dialogue and no reference is made to biodiversity, although it is a crucial cross-cutting theme (Schefer 2019: 8). The EU negotiating mandate, recalling both parties' commitment to the respect of the 2015 Paris Agreement in title IV (Council of the EU 2018a: 17), already marks a significant step forward compared to the Cotonou Agreement. However, the thematic approach presented in this paragraph is even more suitable for environmental policies, making it possible to involve many stakeholders including civil society<sup>xxv</sup> and local organisations.

In conclusion, this final scenario, albeit difficult to put in place and very ambitious, would probably be the most ground-breaking and modern solution. However, as things stand, it seems that the parties found a compromise based on the following 'umbrella agreement' scenario.

Finally, the fourth scenario is the one of the so-called 'umbrella agreement'. The focal point of this 'hybrid formula' (Laporte 2018: 4) is to safeguard the Cotonou *acquis* through an overall ACP-EU agreement, legally binding and including the basic principles of the partnership - notably Articles 8, 9, 12<sup>xxvi</sup>, 96, 97 and minimum requirements for the EPAs, that regulate the now externalised trade pillar<sup>xxvii</sup> – but also to deepen regional partnerships through three separate agreements with the local institutions of Africa,



Caribbean and Pacific respectively. Again, the agreement would be legally binding, in the wake of the CPA (EP 2016: 7), and could also allow an outreach to non-ACP countries, namely EU's African neighbourhood countries (Bossuyt 2017: 6). This fourth hypothesis is the one supported by the EU, and by the Commission's Directorate-General for International Cooperation and Development (DG DEVCO) and the EEAS in particular (EC 2016: 3). Also the European Parliament stressed the need to rebuild the partnership on these 'fresh foundations', with the primary aim of achieving the SDGs, promoting human rights, facilitating predictability and strategy ownership in development cooperation and tackling present global challenges – such as climate change, terrorism, migration biodiversity and economic instability (EP 2016: 13).

It clearly looks like a compromise solution: the regions would become the centre of the agreement (EC 2016: 3; Schefer 2019: 2) but without 'shaking things up too much' (Bossuyt et al. 2016a: 14), since the comprehensive agreement also remains<sup>xxviii</sup>. This scenario, guided by subsidiarity and complementarity, would be consistent with today's international tendencies of 'going regional', and would also introduce new means of implementations in accordance with the 2015 Addis Ababa Action Agenda, that envisages more domestic resources mobilisation and more efficient and transparent tax systems.

However, a problem could be the readiness of many regional bodies – especially those of the Caribbean and the Pacific – to become key actors of the ACP-EU partnership and to deliver on the 2030 Agenda. Moreover, the interaction between the regional conventions and the umbrella agreement seems difficult to operate, with special regard to the principles of complementarity and subsidiarity.

Consequently, some issues have to be necessarily addressed in order to make this scenario viable. First of all, the parties have to discuss on how far they are actually willing to go with regionalisation, deciding if this process of 'Regions first' will be guided by the ACP institutions or by the Member States. Then, a scrupulous allocation of competencies between the central agreement and the regional ones has to be made, avoiding overlapping powers and responsibilities. Otherwise the risk of conflicts on mandates and increased transaction costs would make this scenario unprofitable. In this regard, consultations on regional priorities ended in spring 2019 (EC-press release 2019b: 1).

In short, if on one side this umbrella agreement solution can be positive for its clear commitment to regionalisation and differentiation, on the other side it looks fragile for the



challenge of negotiating different on levels – ACP-EU, regions-EU – the possible conflict between the comprehensive agreement and the regional conventions and the possible risk of increased asymmetry between the counterparts (Bossuyt et al. 2016a: 15).

As it turns out, this last scenario is the one adopted for the freshly signed agreement. As expected, it foresees a ‘common foundation’, setting out the shared principles between the parties and the strategic priorities of their common agenda. The latter are: human rights, democracy and governance, peace and security, human and social development, environmental sustainability and climate change, sustainable economic growth and development, migration and mobility (EC-press release 2020b: 2). The regulatory set concerning migration is particularly expanded in the new text: instead of a single article – Article 13 – an entire title of 14 articles and an Annex are devoted to the issue. The main focus is on managing migration flows and fighting irregular migration and trafficking, although not enough seems to be stated about the readmission and repatriation of illegal migrants. In addition to these domains, already present within the Cotonou Agreement, some new sectors are also added: digital economy, cybersecurity, fight against drugs, organised crime and trafficking, data protection and fight against the proliferation of weapons of mass destruction (WMD). However, the trade pillar will keep its externalised position and will be still handled through the EPAs (Boidin 2020: 1-2). To complement the comprehensive agreement, three specific regional protocols are adopted – Africa, Caribbean, Pacific – focusing on each region’s specific needs. These protocols will equip regions with their own governance – including joint parliamentary committees – to manage cooperation with the EU. Alongside this new regional institutional system, the central joint ACP-EU framework will remain and will be more parliament-oriented<sup>xxix</sup> (EC-press release 2020b: 2). Like the CPA, the new agreement is concluded for 20 years, and it could be prolonged for 5 extra years through silent procedure. The mid-term review that is scheduled for 2030 will coincide with the target-date for the SDGs. It will be an opportunity to update the agreement in view of the future commitments made on the global scene. After reaching agreement, the chief negotiators publicly expressed their satisfaction. They both believe that the OACPS and the EU will now be better equipped to address today’s global challenges, such as the COVID-19 pandemic, peace and security, migration, climate change and ocean governance (EC-press release 2020b: 1).



In conclusion, this scenario looks like an ‘half-baked reform proposal’ (Bossuyt 2017: 12). It gives voice to regional organisations but constrains them within the usual post-colonial framework of the CPA, which could limit their scope, action and responsibilities. The fact that the parties are negotiating on this kind of EU’s proposal probably means that both the EU and the OACPS want, more than anything else, to avoid excessive controversy (Keijzer et al. 2017: 4).

#### **b. Financing the new partnership after 2020**

The question of the funding of the upcoming agreement is central in the ongoing negotiation. The amount of money that will be intended to the ACP-EU partnership will strongly influence the future of the cooperation.

The new MFF starting in 2021 will define the EU’s overall budget and, as a consequence, the money the Member States will allocate to the ACP Group. At present, not many Member States want to increase the budget, in the light of the 2008 and 2020 economic crises. In addition to this, the EU is going through a challenge of internal legitimacy, as Brexit demonstrates. The aim of the EU is to better combine its commitment to development, its geopolitical interests identified in the 2016 EU Global Strategy and the international pledges set out by the 2030 Agenda. To do so, financial instruments have to be reformed – since the simultaneous expiry of the MFF and the CPA is a unique occasion of reform (EP 2016: 22) – in order to grant simplification and more flexibility (Medinilla, Bossuyt 2018: 12), although this outcome would encourage the ACP States to be less amenable during the negotiations on sensitive issues like human rights and democracy.

The EDF has already proven ineffective in promoting human rights protection, providing ineffective support to civil society and private actors. The future financial instrument should be reinforced in this sense, even if the ACP countries do not like it. A serious decision concerns the budgetisation of the EDF. This solution would enable the democratic scrutiny of the EP on the funding and increase its transparency and efficiency<sup>xxx</sup>. A compromise hypothesis could be budgetisation conditioned by a ring-fencing of development funds, in order to maintain a predictable level of financing for poverty eradication and to separate this kind of expenses from the security ones (EP 2016: 10). Some asked for the budgetisation of the EDF, but it is clear that this move would have



both pros and cons: on one hand the functioning of the EDF would be more transparent, it would involve the EP and contributions would be easier; on the other hand, the EDF would be probably reduced in size, would be no longer suitable for financing off-budget Peace Support Operations (PSOs) and would not allow to discuss its allocations with regional partners (Tindemans, Brems 2016: 7). In addition to this, a solution would have to be found with regard to the African Peace Facility (APF), which is financed today by the EDF precisely in order not to support military expenditures on the EU budget (Tindemans, Brems 2016: 8).

Also important for the EU is to decide whether to fund regional bodies or the central ACP institutions and how to differentiate funding among the ACP States, considering that some ACP Member States are now MICs and may no longer need traditional aid. Shifting the ‘centre of gravity’ from the central organisation to the regional ones will also imply that there will be less need to use the future financial instrument to maintain joint institutions. The ACP Group may not like it, but if it wants to become a key global player it must be able to finance its own Secretariat (Medinilla, Bossuyt 2018: 12).

The recently released text of the future agreement seems to give quite clear answers to all this questions. The EDF will be abolished and the new funding channels will be incorporated in the EU budget. As a consequence, the financing management will come under the responsibility of by EU internal rules, namely the Neighbourhood, Development and International Cooperation Instrument (NDICI) regulations<sup>xxxI</sup>. Conversely, only a little section of the new agreement will be devoted to the means of cooperation and implementation.

This is a tough break for the ACP countries, that will lose financing predictability – despite this being reaffirmed in the new text – and aid management (Boidin 2020: 5).

### **c. The legal basis of the partnership for political dialogue and cooperation**

With respect to the legal foundation of the post-Cotonou agreement, the main issue for the parties is to keep the *acquis* in place in order to preserve the ‘shared values’ of the Cotonou Agreement – human rights, democracy, rule of law and good governance above all. Particular importance is given to the enforcement of Articles on political dialogue and



conditionality. These provisions emphasise the will of the EU's external action to favour control on the counterpart over strategic cooperation on sensitive topics.

Anyway, the EU and the OACPS seem to agree on the legally binding nature of the new agreement<sup>xxxii</sup>, but the choice has to be made between merely replicating the rules of the CPA or revising the contractual nature of the agreement and implementing a more flexible convention. In the first scenario the predictability of the partnership would be preserved and the negotiations would be much easier. However, the deficiencies of the CPA political dialogue provisions would remain and, given their limited effectiveness, the EU would see its influence in the ACP States fall. In the second scenario the general principles of the partnership would be preserved, but the functional approach would be emphasised. New lighter procedures would make political dialogue more effective and a greater involvement of existing regional actors would allow for a more context-driven normative agenda (Medinilla, Bossuyt 2018: 16). Subsidiarity would be put in the foreground as the new leading principle of the agreement (EP: 7). However, such a pragmatic approach is not necessarily a 'trump card ensuring impact' (Bossuyt et al. 2016a: 9). A lighter agreement can be seen as a reduction of the EU's involvement in the partnership and radical changes to the agreement require a much more decisive shift in the EU's approach to foreign policy, both in terms of political dialogue and cooperation practices.

That said, a lighter and agile partnership is preferable: it would help the dialogue with regional institutions and make cooperation way more flexible and adaptable to new circumstances. The parties should agree on core essential principles – preserving the necessary parts of the aforementioned *acquis* – streamline the heavy formal procedures of the CPA, negotiate regionally differentiated provisions, give more space to political talks and arrange a more pragmatic agenda (Medinilla, Bossuyt 2018: 17). Apparently, this is the solution adopted in the freshly signed agreement: the latter remains a legally binding agreement, keeping the same joint institutions legal basis, but its exact legal nature is still to be decided (Boidin 2020: 2).



#### d. New protagonists in the ACP-EU relations?

One of the main shortcomings of the CPA is the scarce involvement of non-State actors, despite numerous provisions encouraging their participation to political dialogue. In line with the provisions of the 2030 Agenda, the new agreement must rely on other actors than States and governments – civil society, private sector and local authorities – to achieve sustainable development. These subjects should be no longer targets, but drivers of change (Medinilla, Bossuyt 2018: 18).

The State-driven model of cooperation must be set aside in favour of a ‘multi-stakeholder involvement’. This requires to deeply reform the text of the existing agreement but can bring satisfactory results. The parties should be prepared to remove institutional and formal barriers to cooperation, make the political environment for favourable to consultations, prioritise multi-stakeholder partnerships, give more autonomy to local governments, encourage the participation of civil society and private sector<sup>xxxiii</sup> and allow EU delegations to engage with new non-governmental actors.

Moreover, the possibility of merging the Cotonou structures of the ACP-EU partnership with the JAES structures of the AU-EU partnership should be taken into account (EP 2016: 13). The EU has recently proposed to intensify its relationship with Africa through a new partnership in five key areas: green transition; digital transformation; sustainable growth and jobs; peace and governance; and migration and mobility (EC-press release 2019a: 1). This proposal lays the foundation for an intensified cooperation between the two continents. In order to produce an innovative agreement, the EU went through internal discussion with the Member States, the European Parliament and civil society, basing its work on the 2017 jointly agreed Agenda (EC-questions and answers 2020: 2). Then it was confronted with its African partners during several continent-to-continent meetings. With this new strategy, the AU is seeking a change of course in its relationship with the EU. The AU wants to put in place a mutually beneficial partnership (AU 2018: 4), that matches the needs of the continental Free Trade Area (AfCFTA) and promotes social and economic transformation of Africa. Its representatives believe that such solution is compatible with the preservation of a common set of shared principles with the Caribbean and Pacific members of the ACP Group, while they hope that the financial and technical





aspects of the partnership will be regulated by the new continent-to-continent agreement (AU 2018: 5).

However, despite its growing importance in the EU's external action agenda, the AU was side-lined during the first phase of the ACP-EU negotiations and did not receive the negotiating mandate from the African countries (Schefer 2019: 18), making it clear that the ACP-EU and the AU-EU relationships will remain separate. Therefore, what kind of coexistence we should expect between the two partnerships?

The hypothesis of an African protocol involving the AU within the ACP-EU framework was rejected. Initially some African countries were in favour of this solution, but then changed their mind and preferred to continue on the path of the ACP-EU negotiations (Fox 2018b: 2). The debate over who can legitimately represent Africa in the partnership was not solved and the AU still considers itself as the only institution entitled to negotiate the new agreement with the EU (Medinilla, Bossuyt 2019: 5). In this scenario, the upcoming agreement will be applicable only to the African States members of the ACP Group and not to the continental institutions, leaving intact the overlap between the CPA and the JAES.

A solution to this impasse could be the creation of an additional protocol, applying only to North African countries and associating them to the post-Cotonou agreement (De Groof et al. 2019: 16). The EU recognises the importance of mobilising this part of Africa, where there is no integration whatsoever, but these countries seem reluctant to adhere to the future agreement (Medinilla, Bossuyt 2019: 6; EP 2016: 7). Under these circumstances, the only viable solution is an 'hybrid approach', creating parallel partnerships with the ACP and the AU. However, this approach could weaken African integration, preserve inefficient and overlapping institutions, overemphasise the role of traditional aid and fragment the EU's external action in Africa. A complementary agreement bringing together the ACP Group and the AU would not be affected by these vulnerabilities (Frisch 2015: 5).

By the look of it, the agreed text of the future agreement provides increased space for non-state actors: private operators, local authorities, civil society are expected to be actively involved in the dialogue with the ACP-EU and regional institutions and should be involved as much as possible in the enforcement of cooperation programmes (Boidin 2020: 3). Furthermore, the African regional protocol attempts to merge the AU and the ACP agenda: it involves 49 of the 55 African States and contains numerous references to the AU



continental agenda, instruments and strategies. It also recognises both the political and economic competencies of the AU<sup>xxxiv</sup> and foresees the possible future recognition of the observer status to the North African countries (Boidin 2020: 7). In other words, the African protocol and the AU-EU relations seem to be structured in a complementary way.

## 6. Conclusions

The objective of this paper has been to analyse the evolution of the ACP-EU relations in the light of the negotiations for a post-Cotonou agreement. It has been tried to highlight each party's interests in the renewal and to identify the best solution for the revival of the ACP-EU cooperation.

The Cotonou Agreement had run its course. Despite being arguably ahead of its time for 2000 and a great step forward from its predecessors Lomé Conventions, after 20 years it had lost momentum and needed a major overhaul. Particular attention has been paid to the political dialogue provisions: their enforcement failure has been one of the main signs of the need of reform of the CPA.

Already in 2016, the parties started to discuss the content of the future agreement. They first launched internal consultations with the aim of preparing their own agenda and identifying their core priorities. Later they adopted their negotiating mandates and the real negotiations began. The negotiating procedures proved to be long and rich in treacherous obstacles. For this reason, the EU and the ACP Group decided, on the expiry date of the Cotonou Agreement, to extend it until December 2020. The EU tried to defend its own interests, namely the preservation of the Cotonou *acquis*, the maintenance of a single counterpart and the deepening of its ties with the ACP regional bodies, and to keep its role of OACPS' special partner. Also the EU Members expressed their views, the ones with ex-colonial ties in a positive sense, the EU13 in a negative one. They all agreed on the budgetisation of the EDF and an increased conditionality of the funding. However, the pivotal role of the UK was lost because of Brexit. On the other side of the fence, the ACP States showed more interest in keeping a high level of ODA and the EDF outside of the EU budget, persisting with a legally binding agreement and without diverging too much from the *status quo*.



In December, the chief negotiators finally reached an agreement on the text of the post-Cotonou agreement. With regard to the importance of regional integration, the parties opted – unsurprisingly – for the ‘umbrella agreement’ scenario. In essence, the comprehensive agreement remains, but it is complemented by three regional protocols. The agreement looks more political and less economic than its predecessor, focuses of development in all its forms and adds new domains, in line with the actual global trends of cooperation. Concerning Africa in particular, it seems that the regional protocol could act as a bridge with the AU and EU’s neighbouring countries. We will see if, when the agreement enters into force, this compromise solution will pay dividends.

Something on which the parties disagreed on the eve of the negotiations is the financing of the partnership. It seems that the EU’s opinion prevailed, since the EDF will be suppressed and the funding will be incorporated into the EU budget. Time will tell if this solution will be effective or whether it will encourage – as some says – ACP States to be more reluctant to strengthen human rights protection.

As expected, the new agreement will be legally binding. The legal nature of the regional protocols is still uncertain, but in any case the most important thing in this sense is that formal procedures will be streamlined and bureaucracy will be simplified.

Finally, the new text bodes well for a greater involvement of non-state actors in the partnership. The provision of new private sector funding methods and an increased willingness to stimulate local investment could revitalise a multi-stakeholder participation, unless discrepancy between promises and practices will emerge again, as in the case of the CPA.

In conclusion, the new agreement was much awaited by public opinion in the EU and ACP Member States. It comes in a very complex time, because of the limited effectiveness of its predecessor, the crisis of internal legitimacy the EU is going through and the COVID-19 pandemic outbreak. All that remains is now to follow closely the ratification process: only when completed judgements can be given on the new agreement.

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\* Master student in Diplomacy at Istituto per gli Studi di Politica Internazionale (ISPI), Milano. My sincere gratitude to Professor Annamaria Viterbo, whose precious advice was very important for the writing of this essay.

<sup>I</sup> The renewals of the agreement were named Lomé II, Lomé III, Lomé IV and Lomé IV-bis. Concurrently, the 1975 Convention became known as Lomé I.

<sup>II</sup> It is one of those association agreements governed by Article 217 of the TFEU.

<sup>III</sup> In accordance with Article 1 of the CPA, the agreement is aimed at the reduction and eventual eradication



of poverty, the contribution to sustainable development and to the gradual integration of ACP countries into the world economy.

<sup>IV</sup> Namely the ACP Council of Ministers, assisted by the Committee of Ambassadors, the ACP-EU Joint Parliamentary Assembly, the joint ACP-EU ministerial trade committee and the ACP-EU development finance cooperation committee.

<sup>V</sup> Including the mandatory revisions foreseen by the revision clause (Article 95.3), that indeed took place in 2005 and 2010.

<sup>VI</sup> The groupings of ACP States are six: Central Africa, West Africa, Eastern and Southern Africa (ESA), East African Community (EAC), Southern African Development Community (SADC), Caribbean and Pacific.

<sup>VII</sup> In case of violation of the CPA essential principles, different channels of consultation can be activated within the Cotonou framework. Article 8 and Articles 96-97 provide for ad-hoc political dialogues in the event of a breach of human rights and in case of serious corruption cases by a counterpart respectively. These provisions were implemented with the objective of engaging the counterpart – notably the stronger one, the EU – in the event of serious difficulties of the partner – especially ACP Group members.

<sup>VIII</sup> Despite the insertion, in the 2010 revision, of Article 32.a which makes explicit reference to ‘climate change’ and gives an inter-regional approach (Durán, Morgera 2012: 95).

<sup>IX</sup> In this sector the EU follows an internal security driven agenda of external action, which is reflected in the EU Communication on Establishing a new partnership framework with third countries under the European Agenda on Migration (Bossuyt, et al. 2016a: 9).

<sup>X</sup> The EDF is not part of the EU general budget and it is financed by the EU Member States. It is subject to its own financial rules, set in Annex I of the CPA itself, and managed by a specific committee consisting of members of both the European Commission and the European Investment Bank (EIB). Each EDF has a duration of 5 years, after which it has to be renegotiated. The EP has no scrutiny and power over the EDF.

<sup>XI</sup> It must not be forgotten, talking about the shortcomings of the CPA, that the EU finances 50% of the ACP Secretariat, while some OACPS don’t pay their contribution for its maintenance.

<sup>XII</sup> Robert Dussey, Togolese Minister of foreign affairs, is the chief negotiator for the ACP Group. Neven Mimica, European Commissioner for International Cooperation and Development, was the first chief negotiator for the EU. The latter is assisted by a team of experts called post-Cotonou Task Force (Schefer 2019: 15).

<sup>XIII</sup> Minister Robert Dussey stated about the protocols: "Regional protocols that focus on the needs and aspirations of African, Caribbean and Pacific countries will ensure that the new agreement is inclusive and at the same time sensitive to the diversity of the ACP group" (EC 2020b: 1).

<sup>XIV</sup> "The ongoing negotiations with OACPS countries remain a priority. Despite the disruption caused by the coronavirus pandemic, the negotiations are progressing in the same cordial spirit that has guided our talks until now. I am pleased to see that we are getting closer and closer to the finishing line" (EC-press release 2020a: 1)

<sup>XV</sup> These strategies could be also helpful with regard to the compliance with the Agenda 2030 for Sustainable Development and the 2016 EU Global Strategy, both bearing a more flexible and pragmatic idea of cooperation.

<sup>XVI</sup> As noted by Keijzer and Medinilla, “leaving Post-Cotonou from the agenda may be convenient for short-term political purposes, but in the long run it could be a major missed opportunity” (Keijzer et al. 2017: 2).

<sup>XVII</sup> Namely Armenia, Azerbaijan, Belarus, Georgia, Moldavia, Ukraine.

<sup>XVIII</sup> Article 9 of the CPA contains the Essential Elements Clause, which requires the parties to adopt domestic and international policies compatible with the fundamental values agreed in the convention (DG for External Policies 2017: 9).

<sup>XIX</sup> That took place in *Port Moresby, Papua New Guinea, on the 1<sup>st</sup> of June 2016*.

<sup>XX</sup> Concerning the new agreement, the commitment of the organisation clearly emerges from the declarations of its chief negotiator, professor Robert Dussey: “The negotiation for renewed and revamped relations with our European partners have moved forward satisfactorily, despite COVID-19, thanks to modern technology. I am happy to say that the Members of the OACPS remain committed and are on course to conclude a partnership agreement that will also take into account the unprecedented challenges that now confront us at national, regional and global levels due to COVID-19” (EC press release 2020a: 1).

<sup>XXI</sup> In fact, in their official Aide Memoire, the ACPs underline that the relation with regional groupings has to be ‘formally structured’ in the new agreement (ACP Group 2017: 2-3).

<sup>XXII</sup> "The agreements are perceived as unfair in Africa", says John Maré, a South African diplomat who



negotiated several agreements with the EU (Pelz 2020: 3).

xxxiii This transformation could be facilitated by the fact that this kind of regionalisation is already valid for the trade pillar, due to the existence of the EPAs. It would be simply extended to other aspects of cooperation. However, some experts consider the EPAs one of the main obstacles on the way to regionalisation: "A new agreement cannot fundamentally influence the partnership agreements. They are independent international treaties that cannot be substantially changed by a new agreement" (Pelz 2020: 3).

xxxiv Which is attested by the disconnection between the AU-EU and the ACP-EU relations.

xxxv This would be consistent with the provisions of the 1998 Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, usually known as the Aarhus Convention.

xxxvi That concerns the coherence of Community policies and their impact on the implementation of the Cotonou Agreement.

xxxvii In order to ensure continuity with the CPA in this sector.

xxxviii Assuring the EU the maintenance of its role of noble patron linked to its longstanding relationship with the ACP countries, particularly important in today's volatile times (Bossuyt 2017: 8).

xxxix The agreement now foresees for those institutions to operate a double operational level: a plenary level when the dialogue involves the EU and the entire ACP group, and a regional level for discussing specific African, Caribbean or Pacific issues (Boidin 2020: 2).

xxx But this would probably jeopardise the financing of the African Peace Facility and the Africa Trust Fund (EP 2016: 7).

xxxI It was proposed by the EC in 2018. It is a single financial instrument incorporating all the existing ones, including the EDF. It is perfectly in line with the EU's orientation towards new kinds of interest driven cooperation like the EIP and removes to the EDF its role of privileged instrument of the ACP-EU partnership (Schefer 2019: 26).

xxxii Which is understandable: 'soft strategic partnerships' have proven generally less effective.

xxxiii That can massively contribute, with an increased assistance of the European Investment Bank (EIB), to the financing of development (EP 2016: 9). This applies especially to Micro, Small and Medium Enterprises (MSMEs).

xxxiv They include on one side the fields of peace and security, human rights, governance. On the other side they cover all the AU's economic integration plans (African Economic Community - AEC, African Continental Free Trade Area (AfCFTA), Comprehensive Africa Agricultural Development Plan (CAADP), Programme for Infrastructure Development in Africa (PIDA) (Boidin 2020, 6).

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