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## A green light for a renewed cooperation?

Gauthier Schefer



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## **Abstract**

The Cotonou Partnership Agreement, signed in 2000 and set to expire in 2020, is allegedly the most advanced collaboration between the EU and some of the lowest-income countries in the world. In practice, however, its achievements are meagre and contested. Nonetheless, the EU and ACP countries officially launched in 2018 the negotiation of the post-Cotonou agreement, which aims to deepen the Cotonou's acquis. While environmental concerns in the EU-Africa relation often fall under the radar of scientific literature, this paper aims to show how the prism of environmental and climate mainstreaming helps in explaining the declining relevance of the post-Cotonou framework. Even though a rhetoric of a 'deepened partnership' became the leitmotiv of post-Cotonou, 'far reaching' environmental provisions in the future agreement are impeded by structural deficiencies. This reflects in post-Cotonou's current draft, trying hard to push environmental ambitions but maintaining a 'coherence' between regional protocols that is detrimental to any real environmental mainstreaming progresses. A 'greener' post-Cotonou will be achieved only if references to other external policies are made due to the progressive 'externalisation' of Cotonou's original pillars: political dialogue, trade and development cooperation into other agreements reducing therefore post-Cotonou's added-value to a minimal.



At a time where the European Union and African countries are negotiating the future of their relationship through the post-Cotonou Agreement, critics are raising an essential point: is post-Cotonou still the right way to go? The Cotonou Agreement, signed in 2000, is a prime example of the “special relationship”<sup>1</sup> that ties the European Union (EU) with the Africa-Caribbean-Pacific group (ACP). Emerging from colonial ties, Cotonou builds on a succession of agreements that developed in parallel to the European integration’s history.

Even by its critics, the Cotonou framework was recognised as “today’s most comprehensive North–South partnership”<sup>2</sup> covering three essential pillars: political dialogue, trade and development cooperation. It became even more salient in 2018 when the official launch of the negotiation for an agreement post-Cotonou started. The European Commission (EC) recognised the role of “a changed context” as an element to be considered when reflecting on a more than half a century long relationship, hindering “a simple rollover of the [Cotonou Agreement]”.<sup>3</sup>

Moreover, the role of environmental degradation and climate change in developing countries was increasingly recognised for its political and economic consequences after it gained momentum in multilateral forums under the banner of the United Nations Framework Convention on Climate Change (UNFCCC). Furthermore, the environmental is a shared competency of the EU under article 4 of the Lisbon Treaty, which added to the mainstreaming obligation of environment into all the EU policies under article 11 TFEU. Additionally, the political momentum gained by the ‘climate question’ also had influence on the Cotonou framework, and its 2010 revision explicitly included climate change among

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<sup>1</sup> Adrian Flint, “The End of a ‘special Relationship’? The New EU-ACP Economic Partnership Agreements”, *Review of African Political Economy*, vol. 36, no. 119, 2009, p. 80.

<sup>2</sup> Niels Keijzer and Mario Negre, “Outsourcing a partnership? Assessing ACP–EU cooperation under the Cotonou Partnership Agreement”, *South African Journal of International Affairs*, vol. 21, no. 2, 2014, p. 279.

<sup>3</sup> European Commission, *Joint communication to the European Parliament and the Council. A renewed partnership with the countries of Africa, the Caribbean and the Pacific*, JOIN(2016) 52 final, Strasbourg, 22 November 2016. p. 4.

priorities for action, with arguable results.<sup>4</sup> Since then, the legally binding Paris Agreement has been signed in 2015 by all the African and European parties.

Considering all these developments, the post-Cotonou negotiation has been launched under the rhetoric of a “renewed partnership”.<sup>5</sup> It is composed of the Foundation, laying down the cross-cutting priorities and the values upon which the agreement is based, and of three regional protocols. The protocols are at the centre of the future agreement and constitute the operational basis for the future agreement.

Most analyses centred on the role of migration and the political conditionality in Cotonou and the post-Cotonou.<sup>6</sup> The study of environment and climate, overwhelmed by the aforementioned topics (especially in the case of Africa), catches little attention. For that reason, the environment is an interesting lens to look through in order to better understand the inscription of post-Cotonou in the overall African-EU relationship and its difficulty to catch up with recent policy evolutions. *How does the environmental prism helps explain the declining relevance of the post-Cotonou framework?*

### **Theoretical framework:**

In order to evaluate from different angles the post-Cotonou negotiation through an environmental focus, I use several theories that complement each other. In order to evaluate from different angles the post-Cotonou negotiation with an environmental perspective, I use several theories that complement each other. The concept of ‘environmental integration’ is essential throughout the paper. Dupont defines a high level of Environmental Policy Integration (EPI) as the “incorporation of environmental objectives into all stages of

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<sup>4</sup> Cécile Barbière, “L’accord de Cotonou a-t-il tenu ses promesses ?”, *Euractiv*, 27 August 2018, retrieved 25 April 2019, <https://www.euractiv.fr/section/aide-au-developpement/news/laccord-de-cotonou-a-t-il-tenu-ses-promesses/>

<sup>5</sup> European Commission, JOIN(2016) 52 final, *op. cit.*, p. 1.

<sup>6</sup> “The Cotonou Agreement – what will happen next?”, *CONCORD*, 31 July 2017, retrieved 3 March 2019, <https://concordeurope.org/blog/2017/07/31/cotonou-negotiations-position/>

polycymaking in non-environmental policy sectors, with a specific recognition of this goal as a guiding principle for the planning and execution of policy”.<sup>7</sup> Additionally, it must be:

accompanied by an attempt to aggregate presumed environmental consequences into an overall evaluation of policy, and a commitment to minimise contradictions between environmental and sectoral policies by giving principled priority to the former over the latter.<sup>8</sup>

One of the most important ideas to be taken from Dupont is that environmental integration first concerns a political prioritisation and its repercussion on the entire policy cycle. Therefore, evaluating the environmental ‘integration’ in the post-Cotonou means that a higher benchmark is achieved with regards to the ‘principled priority’ of environment in policy design and output. ‘Policy design’ mainly refers to the negotiating process that led to the mandate and the draft, whereas ‘policy output’ refers to the outcome of the negotiation i.e. the mandate and the draft text. A second essential point is the linkage between degrees of ‘integration’ and policy coherence. This means that prioritisation means a high degree of integration only if coherence is ensured.

Carbone and Orbie identify four types of coherence: horizontal, vertical, multilateral and partners.<sup>9</sup> I leave aside multilateral coherence i.e. the EU’s relation with multilateral organisations.<sup>10</sup> Horizontal coherence i.e. the synergy between the different EU policies<sup>11</sup> is of essential importance when assessing the consistency of the post-Cotonou with recent development of Africa-EU policies outside the post-Cotonou framework. Vertical coherence refers to the interaction between the supra-national level and the Member States,<sup>12</sup> which

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<sup>7</sup> Dupont, *op. cit.*, p. 32.

<sup>8</sup> *Ibid.*

<sup>9</sup> Maurizio Carbone and Jan Orbie, “Beyond Economic Partnership Agreements: EU and the trade-development nexus”, in: Maurizio Carbone, Jan Orbie (eds.), *The Trade-Development Nexus in the EU*, Routledge, 2015, p.4.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

will help in explaining the debates that led to the adoption of the EU mandate. Finally, the question of partners coherence, i.e. the EU's consistency when interacting with partner developing countries,<sup>13</sup> will bring added value to the analysis of the 'path dependency' effects impacting the ACP-EU relationship and the struggle to involve the African Union in the negotiation.

My main sources are legal texts, negotiating mandates and interviews, due to the ongoing nature of the political process examined. Various institutional papers are also used to provide background elements. Overall, I conducted close to twenty interviews with actors from civil society, the European Commission (several Directorate-General), the European Parliament and from the Council. First, a textual analysis of the evolution of the original Cotonou in terms of environment integration helps in having a closer look at the negotiating mandates (ACP and the EU) and at a technical draft of the agreement. This raises points on the (in)consistency of the new approach to bring in a 'greener' post-Cotonou. Next, the paper explains how the negotiations in the Council, the mandate the Commission elaborated from it, and the fight between the African Union and the ACP secretariat over the lead negotiator for Africa on post-Cotonou, shaped the inconsistency. Finally, I analyse the progressive 'externalisation' of each of three pillars from the original Cotonou in other policies, namely the Joint EU-Africa Strategy, the Economic Partnership Agreements, and the Neighbourhood, Development and International Cooperation Instrument (NDICI) and its consequences on post-Cotonou's environmental ambitions.

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<sup>13</sup> *Ibid.*

## **COMPARATIVE ANALYSES OF THE CURRENT COTONOU AND THE POST-COTONOUR AGREEMENTS: A STRONG TEXTUAL INTEGRATION?**

The Cotonou agreement was concluded in June 2000 and entered into force in 2003.<sup>14</sup> It includes general objectives, principles and options for the future EU-ACP relations<sup>15</sup> and is structured in three pillars: political dialogue, trade and development cooperation. It contains a revision clause to be triggered every 5 years, leading to two revisions in 2005 and 2010. In order to understand the ‘special’ nature of Cotonou, it is useful to recall that it constitutes an association agreement, governed by article 217 TFEU.

### **From Cotonou 2000 to Cotonou 2010: a progressive greening**

From the 2000 version to the 2010 version, the general architecture of the agreement remained the same. Most of the amendments were done to articles themselves, mainly by adding sub-articles and elements that have an environmental focus.

Overall, the 2000 version is quite comprehensive with regards to environmental provisions in the cooperation or integration clauses. Sinou notes that the original Cotonou Agreement is the most blatant example of a new reading of political conditionality for the environment.<sup>16</sup> But it is not the case. The environment is part of the political dialogue (in article 8 paragraph 3). It means that even if the political dialogue must help promote environment, it is not considered an “essential element”<sup>17</sup> that can trigger sanction procedures included in Cotonou under article 96.

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<sup>14</sup> Official Journal of the European Communities, “Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000”, L 317/3, 2000. (Cotonou 2000)

<sup>15</sup> Gracia Marín Durán and Elisa Morgera, *Environmental Integration in the EU's External Relations : Beyond Multilateral Dimensions*, Oxford, Hart Publishing, 2012, p. 83..

<sup>16</sup> Despina Sinou, « Le droit répressif de l’environnement et l’alternative diplomatique ou *hard law vs. soft law* : le cas de l’Union européenne », *Revue juridique de l’environnement*, vol. 43, issue 1, 2018, p. 84.

<sup>17</sup> Cotonou 2000, Art. 9.

This leads to the important idea of environmental mainstreaming explicitly mentioned first in the general objectives of the partnership in the article 1 and then in article 20 paragraph 2.<sup>18</sup> The important priority it constitutes is consistent with the fundamental ex-art 6 of the Treaty establishing the European Community (TEC) and current article 11 TFEU “Environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development”.<sup>19</sup>

The mainstreaming objective is restated in the only article of the Cotonou 2000 that specifically focuses on environment, article 32 “environment and natural resources”. Sinou writes of a “holistic approach”<sup>20</sup> with regard to the link that is made in the article between sustainable development and the environment.

When it comes to sectorial integration in environmental integration clauses - the integration of environment in other policy sectors (economic, etc.)<sup>21</sup> – the Cotonou 2000 is not really far-reaching. It is the full object however of an article on “trade and environment” (article 49), with an explicit reference to multilateral engagements and more detailed areas where trade and environment must operate in synergy, albeit without explicit goals or means of measurement stipulated either here or in the annexes.

The Cotonou revision of 2005 made few environmental progresses. The Cotonou 2010,<sup>22</sup> however, is remarkable for its many amendments. In light of the changing global contexts, it tried to adapt to the global multiplication of actors by including provisions on regional organisations, taking into account the creation of the African Union in 2002, but

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<sup>18</sup> Cotonou 2000, Art. 20(2).

<sup>19</sup> Art 11. TFEU

<sup>20</sup> Sinou, *op. cit.*, p. 84. Author's translation.

<sup>21</sup> Marín Durán and Morgera *op. cit.*, p. 56.

<sup>22</sup> European Commission Directorate-General for Development and Cooperation, *L'accord De Cotonou, Signé À Cotonou Le 23 Juin 2000, Révisé À Luxembourg Le 25 Juin 2005, Révisé À Ouagadougou Le 22 Juin 2010 Et Le Cadre Financier Pluriannuel 2014-2020*, Luxembourg, 2014. (Cotonou 2010)

also regional cooperation in Africa (ECOWAS, etc.). The consequences of these new actors' emergence will be addressed in the next point. It marked the essential integration of climate change in the text, reflecting a political impetus in domestic and multilateral fora that progressively prioritised climate change. Cotonou was indeed revised right after the failure of the Conference Of Parties (COP) 15 in Copenhagen and while preparing the COP 17 in Durban. The Cotonou revision of 2010 “should be singled out for its approach to environment protection as a thematic and cross-cutting issue”.<sup>23</sup>

Numerous climate change references have been added in this version. For instance, the revised article 20 integrate climate change under the thematic and cross-cutting themes to be mainstreamed<sup>24</sup> and the article 32A on climate change.<sup>25</sup> A novelty of importance is the reference to the article 1 and 20 with an inter-regional approach<sup>26</sup> This accounts for the progressive shift from the all-encompassing ACP approach to the differentiated approach that is the basis of the current post-Cotonou mandate and led to the debate on the design of the mandate developed above.<sup>27</sup>

Therefore, Cotonou as an association agreement achieved a relatively comprehensive and new *acquis* on which to build a greener partnership. When comparing it with the Central America Association Agreement, for instance, it “seems ground-breaking”.<sup>28</sup>

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<sup>23</sup> Durán and Morgera, *op. cit.*, p. 85.

<sup>24</sup> Cotonou 2010, *op. cit.*, Art. 20(2).

<sup>25</sup> *Ibid.*, Art. 32(a) and (d) ii.

<sup>26</sup> *Ibid.*, Art. 28(2) c.

<sup>27</sup> The African Union and regional organisations of the ACP are mentioned on several occasions in the Cotonou 2010.

<sup>28</sup> Durán and Morgera, *op. cit.*, p. 95.

## The EU and the ACP mandates: textual analysis

This section casts a preliminary light on the reasons path dependency effects and incoherence (horizontal and partners coherence) impeded the post-Cotonou greening ambitions through the progressive externalisation of Cotonou's pillars.

A strong debate in the Council on whether to keep or not the ACP structure led to a compromise<sup>29</sup> that *de facto* rendered the present ACP mandate obsolete. The ACP mandate's<sup>30</sup> overall architecture is based on the original 3 pillars of Cotonou, referred to as "thematic strategic pillars": aid, trade and political cooperation. It also contains a "cross-cutting themes" umbrella part that sets the priorities in "development programme and policies".<sup>31</sup> Three of the cross-cutting themes are directly addressing environmental issues and could show greater political prioritisation than in the original Cotonou, where only articles were raising the issue. However, in the theme's content the phrasing is relatively disappointing and predictable: not a single point focuses on environment nor biodiversity.

When it comes to environmental integration clauses, the word "environment" is not referred to a single time in the 'development' and 'political dialogue' pillars. Although "climate" is mentioned, it is not singled out and mostly referred to in enumerations, or in the specific case of poorest countries.

The main criticism the mandate received originates not in its (lack of) environmental ambitions but mostly on its complacency with the status quo. It barely acknowledges the role of the African Union or Regional Economic Communities (RECs).<sup>32</sup> Moreover, the ACP

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<sup>29</sup> Interview with a policy officer from DG DEVCO, Brussels, 18 March 2018. The point is developed in the next section.

<sup>30</sup> ACP Secretariat, *Mandat de Négociation ACP sur un Accord de Partenariat Post-Cotonou avec l'Union Européenne* Lomé, ACP/00/O11/18 FINAL, 30 May 2018. (ACP Mandate). The mandate is in French, all the quotes are translated by the author.

<sup>31</sup> *Ibid.*, paragraph 125.

<sup>32</sup> Geert Laporte, "The ACP group and the African Union in the post-Cotonou negotiations: Survival of the fittest?", *ECDPM blog*, 25 June 2018, retrieved 17 April 2019, <https://ecdpm.org/talking-points/acp-group-african-union-post-cotonou-negotiations-survival-fittest/>

mandate gives a prominent role to aid and commitment of ‘predictable’ financial resources. Climate and environmental issues are directly linked to it.<sup>33</sup> But, more than an ambitious phrasing that accounts for an awareness in the ACPs of their vulnerability to climate and environmental degradation,<sup>34</sup> it rests on a ‘donor-recipient’ approach that is outside of the EU agenda since at least Cotonou 2010.

At the same time, the mandate does not really acknowledge the importance of climate change and the environment aside from vague and broad phrasing that are actually less far-reaching than the Cotonou *acquis* itself. It appears obsolete when compared with the recent evolution of the EU-African partnership, “a conservative document, unfit for a world post-2020”.<sup>35</sup>

A well-documented effect of the EU’s mandate adoption is the effect it has on its negotiating partners who do not have a large margin of negotiation, especially in the case of aid recipients like the ACPs.<sup>36</sup> The EU mandate adopted on 21 June 2018 significantly deviates from the original Cotonou framework, while at the same time maintaining the ACP-EU relationship at the centre of the negotiation. This translates in the original architecture described in the introduction.

The Foundation is a part of the negotiated text that made large progress. EU negotiators actually pushed for a phrasing they see as a “strong” manner of stating the values the cooperation is based on.<sup>37</sup> In DEVCO and the EEAS, the essential idea when it comes to the Foundation section is essentially to restate the EU and ACP international engagements

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<sup>33</sup> ACP Negotiating Mandate, paragraph 7.

<sup>34</sup> Interviewees at DG ENV and DEVCO confirmed the awareness on the ACP side.

<sup>35</sup> Laporte, *op. cit.*

<sup>36</sup> Tom Delreux, “Multilateral Environmental Agreements: a key instrument of global environmental governance”, in: Camilla Adelle, Katja Biedenkopf and Diarmuid Torney (eds.), *European Union External Environmental Policy. Rules, Regulation and Governance Beyond Borders*, London, Palgrave Macmillan, 2018, p. 31.

<sup>37</sup> Interview with a policy officer from DG DEVCO, *op. cit.*

and the Cotonou *acquis* whilst trying to push for more environmental integration.<sup>38</sup> Important changes can be observed in the mandate compared to the 2010 Cotonou, most importantly title IV on “environmental sustainability, climate change and sustainable resources” has been added, and is found in the “strategic priority”.<sup>39</sup> In comparison with the two environmental articles (article 32 and 32A) of Cotonou, it constitutes a significant political step in the sense of an environmental prioritisation. A technical draft<sup>40</sup> of this specific Title was obtained as it was used during the ACP-EU senior officials meeting on 15 March 2019. Therefore, my analysis will use both the draft and the mandate.

Title IV in the mandate recalls the international commitment of both parties, namely the Paris Agreement and SDGs.<sup>41</sup> Its generally incentive vocabulary reflects in the technical draft of the Title IV (renamed “Environmental sustainability and climate change” from the mandate) through four chapters: environmental sustainability; oceans, seas and marine resources; climate change; and natural disasters.<sup>42</sup> The text is not specific but highly exhaustive and far more detailed than the 2010 Cotonou and the view of DG DEVCO on a “strong legal wording”<sup>43</sup> is visible. Certain issues remain in brackets and will be developed later. The draft is not revolutionary, however, it essentially restate points of Cotonou with additional elements. Implementation details is the role the regional protocols.

In order to prevent *à la carte* effects if environmental prioritisation were too different between each protocols, the Commission officially tried to maintain cohesion between the pillars. However, this created horizontal incoherence between policies. Indeed, the environment and climate chapters in the three protocols are literally a copy-paste of each

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<sup>38</sup> Interview with a policy officer from DG ENV, Brussels, 4 April 2019.

<sup>39</sup> Council of the European Union, *Negotiating directives for a Partnership Agreement between the European Union and its Member States of the one part, and with countries of the African, Caribbean and Pacific Group of States of the other part*, 8094/18 ADD1, Brussels, 21 June 2018, (EU Negotiating Mandate), p. 19.

<sup>40</sup> Meeting CNG level, *Technical draft*, 14 March 2019.

<sup>41</sup> EU Negotiating Mandate, *op. cit.*, p. 19.

<sup>42</sup> The document is not public and cannot be quoted here.

<sup>43</sup> Interview with a policy advisor from the post-Cotonou Task Force, Skype interview, 11 April 2019.

other.<sup>44</sup> Only one or two sentences are changed that relates to specific regional problems. While not much is yet disclosed on the exact content of the protocols, the main idea of the Commission is – as previously mentioned – to make them technical and very specific.<sup>45</sup> The exact opposite happens here. Additionally, the draft protocols<sup>46</sup> veered far from their operational purpose. From a critical perspective, it actually creates an inherent inconsistency in the mandate itself, as the coherence advocated by the EU officials potentially undermines in itself the principle of differentiation that is at the basis of the protocols.

## **AN INTRICATE NEGOTIATING PROCESS UNDERMINING POST-COTONOU ENVIRONMENTAL AMBITIONS**

### **The EU's position in the negotiation: cohesiveness and path dependency**

As expected, the most publicized controversies of the EU-ACP partnership related to debates around migration that arose in the preparation of the mandate. Though not related to environmental issues, these oppositions are an introduction to the very divided approach that prevailed in the ACP Working Party of the Council when internal negotiations on post-Cotonou first started in 2015.

Indeed, following discussions that took place in 2015 and 2016, a compromise was found on a quite difficult question: should we maintain the ACP group and the ACP Secretariat? The ACP Secretariat, created following the Georgetown Agreement in 1975, is highly dependent on the EU. Its operational budget is partially provided by the EU under the European Development Fund (EDF) and is therefore dependant on European funds. In the

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<sup>44</sup> See EU Negotiating Mandate, *op. cit.*, p. 43-47; 50-55; 65-71.

<sup>45</sup> Interview with a policy officer from DG DEVCO, *op. cit.*

<sup>46</sup> Although I do not have any written version in our possession the Caribbean and Pacific draft were shown to me during an interview.

Council, the debate on whether or not to keep the ACP took place in early 2015.<sup>47</sup> A number of countries, among which Germany, the Nordic Countries and Eastern countries, were in favour of separate agreements with Africa, Caribbean and the Pacific regions outside of the ACP framework. On the other hand, countries like France, Spain and the UK wanted to keep the ACP structure.<sup>48</sup> The countries that wanted to get rid of the ACP group broadly constitute the Members States that joined the EU after the Cold War, and the countries with no ‘special’ interests in Africa.<sup>49</sup> In the European Parliament (EP) – that has low powers over the negotiation process – the conclusion of the mandate was not at all controversial.<sup>50</sup> Only the Greens opposed the mandate because they wanted the dissolution of the ACP group due to its perceived lack of relevance.

The bloc against the ACP expressed the idea that the proven added value of the ACP secretariat was weak. Germany for instance, through the German Agency for International Cooperation (GIZ), stated that the future of the partnership could only be regional, in the form of a partnership with continental Africa.<sup>51</sup>

Among the countries in favour of the ACP group, an ‘environmental’ argument from the French government found support. For French negotiators, the ACP still is a relevant assembly because they strongly collaborated with the EU during the negotiation of the Paris Agreement.<sup>52</sup> Therefore, the ACP group might be a basis for a viable partnership in Multilateral Environmental Agreements (MEAs). This combination of strategic interests – having more influence in multilateral settings – with a normative approach – the EU capacity

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<sup>47</sup> Tina Tindermans and Dirk Brems, “Post-Cotonou: Preliminary positions of EU Member States”, *EDPM*, Briefing Note, no. 87, February 2016, p. 1.

<sup>48</sup> Interview with a senior expert from DG TRADE, phone interview, 11 April 2019.

<sup>49</sup> Interview with a German delegate to the ACP Working Party, *op. cit.*

<sup>50</sup> Interview with two parliamentary assistants, *op. cit.*

<sup>51</sup> Tancrede Voiturez et al., “Les relations entre l’UE et les pays d’Afrique, Caraïbes et Pacifique (ACP) après 2020”, *IDDRI*, Issue Brief n. 3, February 2018, p. 3.

<sup>52</sup> Maina Waruru, “Are Africa’s climate negotiators ready for COP24?”, 4 September 2018, retrieved 03 May 2019, <https://www.equaltimes.org/are-africa-s-climate-negotiators?lang=en#.XMyRdKTgo2x>

to be a normative leader –succeeded in the Council.<sup>53</sup> Clearly showing its impact, the argument is directly restated in the post-Cotonou impact assessment from the Commission of November 2016.<sup>54</sup>

Indeed, the impact assessment screened a number of possible outcomes for the post-Cotonou agreement:<sup>55</sup>

- Option 1. No partnership
- Option 2. New partnership with ACP countries
  - Option 2.1 Revised common agreement (all ACP countries)
  - Option 2.2: Separate regional agreements (Africa, Caribbean and the Pacific)
  - Option 2.3: Three separate regional partnerships under a common umbrella.

The document analyses the different consequences these options could have on five specific objectives, among which environmental protection and climate change.<sup>56</sup> As regards environmental objectives, the two first options are rejected on the basis of the low critical mass it would give in MEAs.<sup>57</sup>

However, the Commission has greater difficulty in rejecting options 2.2 (the German bloc's position in the Council) and option 2.3 (France's bloc). It seems not farfetched to see here an example of a sort of institutional path dependency in the relationship, expressed though environmental considerations. Among two options, a continuity-based one clearly was preferred by the Council actors over one whose outcome was difficult to evaluate due

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<sup>53</sup> Interview with a German delegate to the ACP Working Party, *op. cit.*

<sup>54</sup> European Commission, *Joint staff working document. Impact assessment*, SWD(2016) 380 final, Strasbourg, 22 November 2016, p. 54.

<sup>55</sup> *Ibid.* p. 31-32.

<sup>56</sup> *Ibid.*, p. 54.

<sup>57</sup> *Ibid.*, p. 55.

to its novelty.<sup>58</sup> The difficulty in justifying the choice raises the point of the horizontal incoherence – an inconsistency between the multiple policy engagement of the EU with Africa – that the compromise mandate failed to address.

At the same time as the Commission published the impact assessment, it also released a “Joint communication to the European Parliament and the Council” that proposed a new architecture of the agreement. The architecture is the one found in the mandate and developed in the previous section. From a number of divergent voices, the EU came up with a consensual position among Member States that was able to become the basis on the post-Cotonou negotiation. However, in reaching cohesiveness, the EU consolidated the path of its long term asymmetrical relationship with the ACP in an quasi-unchanged way.<sup>59</sup>

Another important latent element in the negotiation and in the perception of the EU negotiators is the negotiating predictability of the ACP ambassadors. On one hand, the ACP ambassadors have a weak mandate, which mean that they must refer every development in the negotiation to their government, slowing down the process. On the other hand, EU officials are capable of predicting the behaviour of their counterparts. Of course, it has a strong impact on the path-dependency that characterises the negotiation. Even if not explicit or intentional, it also places the EU negotiators in a very strong position, which could be an additional explanation for the maintaining of the ACP structure. These processes are clearly evidenced in the case of contentious environmental points in the current negotiation.

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<sup>58</sup> Evidently, a number of other non-environmental arguments played out in the Council. However they all equally retain this ‘path-dependency’ factor.

<sup>59</sup> Keijzer and Bartels, *op. cit.*, p. 9.

## **Contentious environmental points in the negotiation**

The Task Force currently is in the middle of the negotiating process: the second round of negotiation concluded on 4 April 2019.<sup>60</sup> The first round ended the 14 December 2018.<sup>61</sup> At the time, only the agenda of the negotiation had been agreed upon. A reason for that is that the EU mandate was effectively imposed on the ACP negotiating team of ambassadors. After preliminary talks, the former had to head back to their respective countries to ask for more instructions in light of the new architecture proposed by the EU team. This helps one understand the very different cohesion and negotiation power of both teams, hence their different margins of action in the political process.<sup>62</sup>

In the meantime, the regional protocols are being drafted by the EU. The capacity of the Commission to secure internally a draft through inter-DG consultations that already predicts the negotiating party positions is highly important in the day-to-day conduct of the negotiation.

While articles 8, 96 and 97 of the Cotonou that lay down the basis of the political dialogue procedure are the most debated<sup>63</sup> some environmental points found in the Foundation part of post-Cotonou are disputed. Specific examples can be taken from the technical draft mentioned above. They will be discussed in light of the outcome of the AU-ACP senior meeting that took place on the 15 March around the Title IV of the Foundation on environment and climate.<sup>64</sup>

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<sup>60</sup> European Commission, *Press release: European, African, Caribbean and Pacific countries conclude second round of talks on a new ambitious partnership*, Brussels, 4 April 2019.

<sup>61</sup> European Commission, *Press release: EU and ACP countries conclude first round of negotiations to modernise their relations*, Brussels, 14 December 2018.

<sup>62</sup> Tom Delreux, "EU actorness, cohesiveness and effectiveness in environmental affairs", *Journal of European Public Policy*, vol. 21, issue 7, 2014, p.1020.

<sup>63</sup> Interview with an officer on Africa from the French Permanent Representation, phone interview, 29 March 2019.

<sup>64</sup> Meeting CNG level, *op. cit.*

The ACP ambassadors pushed for the inclusion of two long lists of specific engagements that will have to be implemented by the parties (in the “climate” and “ocean governance” articles). In opposition, the Task Force deploys a very strict reading of the Foundation. For them, all these points will have to be deleted or placed in the protocol.<sup>65</sup> As mentioned earlier, the mandate designed the geographic protocols as the practical and technical part of the agreement, and the Foundation as a common value part. Therefore, the Foundation uses broad and general wording overall. Following the meeting of 15 March 2019 between EU and ACP senior officials, the listing of operational clauses, have been relocated in the regional protocols. However, the move is not reassuring as the protocols are more or less a copy-paste of each other.

The difficulties in negotiating the exact content of the environmental part of the Foundation could be related to the incoherence that was found back in the drafting phase of the mandate. The ACP is trying to secure a common Foundation that will retain some specific and precise elements because it wants to defend a common ACP approach that the protocols are challenging. On the other hand, the Task Force negotiates with a partner it knows to be only reactive and progressively irrelevant. This contradiction and the mixed signals it gives is the reason for the ‘partners’ and ‘horizontal incoherence’ identified in the conduct of the negotiation, in the mandate and in the draft.

### **The conflict between the ACP and the African Union: consequences on the greening ambition of post-Cotonou**

Now moving on to the African side, this section focuses on the conflict between the African Union and the ACP secretariat over the most legitimate organisation to lead the

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<sup>65</sup> Interview with a policy officer from DG DEVCO, *op. cit.*

negotiation of the two. A major difficulty here is that both actually include the same African states in their respective structure.

The conflict gained momentum prior to the negotiation. Both the African Union and the ACP are facing criticism of lacking a mandate. In turn, this has important consequences on the architecture of the agreement: the EU had difficulties to work a way to include these two actors, which has repercussions on the coherence of the EU mandate. The EU's path-dependent stance when approaching the negotiation reflects a real difficulty in identifying – and acknowledging – the right interlocutor to talk to from the African side.<sup>66</sup> Further, it impeded on the difficulty of post-Cotonou to be far-reaching and bear environmental ambitions.

The discord between the African Union and the ACP manifested openly through several events. First, the African Union published a “Common African Position” after the 18<sup>th</sup> Session of its executive Council in Kigali on the 19 of March 2018.<sup>67</sup> The document states: “we commit to implement a new cooperation framework with the EU **outside the ACP context**” [emphasis added].<sup>68</sup> The AU then proposed the Comity of Permanent Representatives as the negotiating leaders for Africa, casting out the ACP group.<sup>69</sup> Notwithstanding, the ACP group ignored this and adopted its mandate on 30 May 2018. In it, the ACP group implicitly opposes the AU and clearly states its ambition of being “the leading transcontinental organisation (...) through South-South and North-South cooperation.”<sup>70</sup> The ACP group's position (in practice the secretariat) is not willing to renew the EU-African partnership but to increase its influence and importance.<sup>71</sup>

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<sup>66</sup> Laporte, *op. cit.*

<sup>67</sup> African Union, *Négociations pour un nouvel accord de coopération avec l'Union Européenne l'accord post-2020. Position Commune Africaine*, Kigali, 18<sup>th</sup> session of the Executive Council, 19 March 2018.

<sup>68</sup> *Ibid.*, paragraph 15.

<sup>69</sup> *Ibid.*, paragraph 15(e) ii.

<sup>70</sup> See ACP Negotiating Mandate, *op. cit.*, point 16 and Geert Laporte, *op. cit.*

<sup>71</sup> Voituriez, *op. cit.*, p. 3.

Formally, however, the African Union was not given the negotiating mandate by the African countries. They picked the ACP and its council of ambassadors who are basically national ambassadors. Yet, the AU sent the Professor Carlos Lopez as their High Representative to support the ACP's African ambassadors in the negotiation of the post-Cotonou.<sup>72</sup> The AU still calls for a separate African negotiation process, even if it no longer explicitly opposes the ACP lead.<sup>73</sup>

On the other hand, the ACP structure is disconnected from its African basis and largely ignored by African governments.<sup>74</sup> This clearly impedes on the credibility and legitimacy of the ACP secretariat.<sup>75</sup> Since its creation in 1975, the ACP group has widened in terms of Member States but it has not deepened its ties or legitimacy.<sup>76</sup> On the African Union side, the AU had tremendous difficulties in receiving a clear mandate from its Member States.<sup>77</sup> Observers generally conclude that distrust from African governments of AU's desire to gain more power by having a more prominent role through the negotiation.<sup>78</sup>

In the end, the ACP will formally remain the negotiator in charge even for the geographic protocol, in particular in the case of Caribbean and Pacific countries. However, the AU will probably be included in the negotiation of the African protocol. The AU accepted from the start of the negotiation – after the dispute mentioned above – to provide technical support to the ACP. Yet, they were not asked to participate in the Foundation but only in the redaction of the African pillar.

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<sup>72</sup> Alfonso Medinilla and Jean Bossuyt, "Africa-EU relations and post-Cotonou: African collective action or further fragmentation of partnerships?", *ECDPM*, Briefing Note no. 110, p. 3.

<sup>73</sup> *Ibid.*

<sup>74</sup> Keijzer and Negre, *op. cit.*, p. 279.

<sup>75</sup> Interview with an officer on Africa and an officer on the ACP from the French Permanent Representation, *op. cit.*

<sup>76</sup> Carbone, *op. cit.*, p. 750.

<sup>77</sup> Alexei Jones, Lidet Tadesse and Philomena Apiko, "Continental drifts in a multipolar world", *ECDPM*, Challenges For Africa-Europe Relations, January 2019, p. 2.

<sup>78</sup> *Ibid.*, p. 3.

The mandate was not given to the AU by African countries for similar reasons. The ACP is a much more convenient institution to endorse for the precise reason that it does not have a strong agency. Most of the African States are a bit fearful, in turn, to give away too much power to the AU in the promotion of their national interests.<sup>79</sup>

As explained above, the post-Cotonou negotiation is embedded in a long relationship of asymmetry. The recognition of the ACP structure as the negotiating partner for Africa is a continuation of that heritage. In terms of environmental integration, this has the main consequence of fostering a relative status quo approach. The ACP ambassadors have weak mandates that do not allow them to push for environmental ambitions, and the ACP secretariat is ill-suited to advance progress in that field.

Therefore, the AU's potential inclusion in the design of the African protocol is interesting regarding the outcome and the potential scope and reach of the text's environmental ambitions. Although the organisation will probably only have an observatory role, it might bring in some debate.

## **EXTERNALISED DIMENSIONS OF THE COTONOU AGREEMENT: CONSEQUENCES ON ENVIRONMENTAL INTEGRATION POST-COTONOU**

### **Introduction to the pillars' externalisation**

The EU has long regionalised most of its cooperation with Africa on trade, security or migration, but the most relevant levels are the continental, regional or bilateral one, not the ACP.<sup>80</sup> This section discusses the extent to which the pillars of the original Cotonou have been 'externalised' and the consequences it poses on the greening possibilities in the current negotiation. By 'externalised', pillars of the original Cotonou, for which detailed procedures

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<sup>79</sup> Medinilla and Bossuyt, *op. cit.*, p. 4.

<sup>80</sup> Medinilla and Bossuyt, *op. cit.*, p. 2.

were laid down in the annexes, were progressively taken away from it and are now designed through other frameworks. The process will be successively exemplified in the case of the political cooperation, the trade and the aid pillars.

*The JAES: a progressive replacement of the Cotonou framework for a more targeted climate and environmental action?*

In its 2016 impact assessment, the Commission acknowledges the incapacity of the current Cotonou agreement to follow institutional agreements signed with the ACP since 2000.

The current [Cotonou Agreement] settings, based on a single agreement without regional diversification, would also **ingenerate further inconsistencies with respect to the different regional priorities and objectives as defined in Africa, Caribbean and the Pacific**. On the one hand, in fact, the 2007 Joint Africa-EU Strategy (JAES) has given significant prominence to political aspects (notably peace and security, migration) and sustainable development <sup>81</sup> [emphasis added]

The reason for change is found in the ongoing trend in EU-African relations that relates to changing world politics and governance.<sup>82</sup> For instance, the growing influence of China in Africa is perceived by the EU as a threat and forces a change in strategy by the Western countries, manifested in the perceived need to engage more bilaterally with African states. Arguably, the engagement in the JAES in 2007, and the overlap it creates with the Cotonou framework, partially stems from this urgency.

Even though it is still under negotiation, the Commission envisages the Joint Africa-EU Strategy as the basis for the African protocol. The JAES was adopted during the Lisbon Summit in 2007 and aims at reinforcing the political dialogue in several key areas (migration,

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<sup>81</sup> European Commission, *Joint staff working document. Impact assessment, op. cit.*, p. 26

<sup>82</sup> Interview with a policy officer on Africa from ECDPM, *op. cit.*

security, climate and environment) between the EU and the AU through regular action plans. Some argue it *de facto* replaces the Cotonou as an all-encompassing agreement. Following its adoption in 2007, it became the new overarching political framework for the EU-African relations,<sup>83</sup> and the objectives of Cotonou and the JAES show similar goals.<sup>84</sup>

For others, the Cotonou and the JEAS are frameworks running in parallel, the difference being that Cotonou is a binding agreement.<sup>85</sup> Still, the JAES as the basis for the African protocol could mean a potentially enhanced environmental commitment in the EU-Africa relationship. Indeed, the JAES includes the Partnership on Climate Change and the Environment,<sup>86</sup> directly raising the profile of environmental integration. It is meant in particular as a way to enhance collaboration in the international cooperation fora like the UNFCCC. Prior to the Paris Agreement, it led to a joint declarations in 2008 with the idea of the “Common But Differentiated Responsibility”.<sup>87</sup> One of the real commitments emerging from the environmental aspect is the European Commission to help the funding of the African Initiative on Renewable Energy (AREI).<sup>88</sup>

But the instruments themselves have been remarkable for their low-level of implementation. A report on the JAES for the EP assesses the result of the environment and climate change as relatively poor.<sup>89</sup> A general criticism addressed to the JAES is its

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<sup>83</sup> Camilla Adelle and Simon Lightfoot, “Africa: searching for shared issues and overcoming asymmetries” in Camilla Adelle, Katja Biedenkopf and Diarmuid Torney (eds.), *European Union External Environmental Policy. Rules, Regulation and Governance Beyond Borders*, London, Palgrave Macmillan, 2018, p. 254.

<sup>84</sup> Léonard Matala-Tala, “La participation et l’implication des différents acteurs ACP-UE”, *Civitas Europa*, vol. 36, no. 1, 2016, p. 47.

<sup>85</sup> Jack Mangala, “Africa-EU strategic partnership: historical background, institutional architecture, and theoretical frameworks” in: Jack Mangala, *Africa and the European Union : A Strategic Partnership*, New York, Palgrave Macmillan, 2013, p. 18.

<sup>86</sup> Daniela Sicurelli, “Africa-EU partnership on climate change and the environment”, In: Mangala, Jack., *Africa and the European Union : A Strategic Partnership*, New York, Palgrave Macmillan, 2013, p. 151.

<sup>87</sup> Adelle and Lightfoot, *op. cit.*, p. 256.

<sup>88</sup> European Council, *op. cit.*, p. 4.

<sup>89</sup> European Parliament Directorate-General for External Policies of the Union, *The Joint Africa-EU Strategy*, *op. cit.*, p.30.

“securitisation” tendency, becoming a platform for security and migration discussion far more than an environmental one.<sup>90</sup>

In environmental domains, beyond political declarations, it is unclear and doubtful how the framework developed by the JAES has been helpful in striking multilateral deals. In the COP, South Africa and the African Group of Negotiators played a bigger role outside the JAES framework.<sup>91</sup>

In addition to the JAES, two other strategies and programs are envisaged as complements to the African protocol.<sup>92</sup> The first is the Agenda 2063 of the African Union, the equivalent to the EU’s Agenda 2030, characterised by broad and incentive targets.<sup>93</sup> The second is the the Africa–Europe Alliance for Sustainable Investment and Jobs that was adopted in 2018. The Alliance is mostly a partnership that aims at creating jobs for development and reducing migration, it does not integrate environment nor climate.<sup>94</sup> The two additions therefore will have a doubtful advantage for the advance of environmental mainstreaming in post-Cotonou. The necessity to integrate the JAES in the Post Cotonou in order to avoid incoherence is an acknowledgement that the “political agreement”<sup>95</sup> that is Cotonou has progressively been replaced and externalised.

### **The progressive autonomy of the Economic Partnership Agreements via environmental integration**

Another important element that has been partially externalised is the trade pillar of Cotonou, specifically the Economic Partnership Agreements (EPAs) consisting of trade

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<sup>90</sup> Adelle and Lightfoot, *op. cit.*, p. 266.

<sup>91</sup> *Ibid.*, p. 258.

<sup>92</sup> Interview with a policy advisor from the post-Cotonou Task Force, *op. cit.*

<sup>93</sup> African Union, *Agenda 2063. The Africa we want*, African Union Commission, popular edition, 2015.

<sup>94</sup> Interview with a policy officer from DG ENV, *op. cit.*

<sup>95</sup> Intervention of Bernard San Emeterio Cordero, Head of Sector MFF at DG DEVCO, College of Europe, 9 April 2019.

agreements with different regions of the ACP.<sup>96</sup> The EPAs mark the very criticised shift from non-reciprocal to reciprocal trade with the ACPs.

The EPAs are at very different stages of advancement. There are currently seven EPAs, of which five are provisionally applied.<sup>97</sup> Moreover, among the five, only two are final agreements, the CARIFORUM EPA (with Caribbean states) since 2008 and the Southern African Development Community (SADC) EPA since 2016. Three of them are only bilateral agreements, provisionally applied.

In theory, the EPAs are stand-alone agreements and would not require Cotonou to exist.<sup>98</sup> However, five of them actually need the Cotonou framework for environmental clauses (the cases of the CARIFORUM and the SADC EPA will be discussed below).

In the interim and provisional EPAs, a system of cross-references is established between the EPAs and Cotonou to ensure that they can comply with human rights, labour, and environmental standards until they become full agreements. In the most blocked cases, the West African EPA and the East African Community (EAC) EPA, sustainable development (which covers environment) is part of a '*rendez-vous*' clause. It means that the trade agreement will have to rely on Cotonou until they are signed by all parties, receive the European Parliament consent and then are ratified by all parties. The bilateral stepping-stone EPAs (Ivory Coast, Cameroon, Ghana) all contain an article 80 (article 106 in the Cameroon EPA) "Relationship with other agreements" stating the prevalence of Cotonou over the EPA in case of inconsistency. Article 49 of Cotonou on Trade and Environment, providing the basis of environmental and climate integration in trade practices, is therefore included. They

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<sup>96</sup> Other trade arrangement are applied a number of ACP countries, namely the Everything but Arms (32 African countries currently) and the Generalised System of Preferences (GSP).

<sup>97</sup> Zamfir, *op. cit.*, pp. 3-4.

<sup>98</sup> Keijzer and Bartels, *op. cit.*, p. 13.

must be restated in the post-Cotonou for environmental provisions in the EPAs to be maintained.

As it stands, the EPAs are going to be integrated in the post-Cotonou in the same manner they were included in Cotonou. Post-Cotonou will provide an update by including references to the most recent development in climate and environmental integration such as the Paris Agreement.<sup>99</sup>

However, the development of the EU paradigm regarding trade policy makes it unlikely that the reference to Cotonou will always be required for environmental standards as the EU shifted paradigm after the publication of the Commission's communication "Global Europe: Competing in the World" in 2006.<sup>100</sup> This marked the beginning of Trade and Sustainable Development (TSD) chapters in EU trade agreements. These chapters focus on labour and environmental provisions and strongly insist on the commitment to Multilateral Environmental Agreements (MEAs).

In the case of the EPAs, the approach is noticeable. The two EPAs that are final and implemented (CARIFORUM and SADC EPAs) contain a TSD. The CARIFORUM EPA, because it was signed in 2008, contains an "early TSD".<sup>101</sup> On the other hand, chapter II of the SADC, signed in 2016, is named "Trade and Sustainable Development".<sup>102</sup> Cross-references to Cotonou are still found in the agreement, but they do not replace a comprehensive list of modalities for cooperation in environmental domains. The degree of

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<sup>99</sup> Interview with a senior expert from DG TRADE, *op. cit.*

<sup>100</sup> Evgeny Postnikov, "Environmental instruments in Trade Agreements: Pushing the Limits of the Dialogue Approach", in: Camilla Adelle, Katja Biedenkopf and Diarmuid Torney (eds.), *European Union External Environmental Policy. Rules, Regulation and Governance Beyond Borders*, London, Palgrave Macmillan, 2018, p. 63.

<sup>101</sup> Interview with a senior expert from DG TRADE, *op. cit.*

<sup>102</sup> Official Journal of the European Union, "ECONOMIC PARTNERSHIP AGREEMENT between the European Union and its Member States, of the one part, and the SADC EPA States, of the other part", L. 250.3, Brussels, 16 September 2016, Chap. II.

autonomy of the SADC towards the Cotonou is for that reason higher, to the extent that it does not need the post-Cotonou framework for environmental provisions.

But the SADC EPA or the CARIFORUM will not be left as the only EPAs to include a TSD. The East and Southern Africa EPA is the older African EPA, in force since 2012. According to its ‘*rendez-vous*’ clause in article 53, it will undergo a revision or “deepening” by DG TRADE.<sup>103</sup> Most of the other interim agreements are also, notwithstanding their interim status, effectively the basis of cooperation.<sup>104</sup> At some point, therefore, they will undergo the same revision due to their respective ‘*rendez-vous*’ clause and have a TSD integrated, as it is the model approach of DG TRADE towards PTAs.

All these elements confirm two things. First, that post-Cotonou will still be important for environmental provisions in EPAs. But second, its relevance is declining. Throughout the envisaged revisions of the EPAs, post-Cotonou will not be needed anymore as a framework.

### **Externalising the EDF: the NDICI and greening perspectives**

Historically, the ‘special’ relationship that distinguished the countries of the ACP group from other developing countries was anchored in development aid, provided by a tailor-made instrument: the European Development Fund (EDF).<sup>105</sup> The EDF still exists under the 2014-2020 MFF, and is one of the major geographic funding instrument.<sup>106</sup> An important characteristic of the EDF is that it is a development fund outside the EU budget, directly financed by contributions from the Member States. Its legal basis and running

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<sup>103</sup> Interview with a senior expert from DG TRADE, *op. cit.*

<sup>104</sup> *Ibid.*

<sup>105</sup> Flint, *op. cit.*, p. 80.

<sup>106</sup> “Funding instruments”, *DG DEVCO website*, retrieved 25 March 2019, [https://ec.europa.eu/europeaid/funding/funding-instruments-programming/funding-instruments\\_en](https://ec.europa.eu/europeaid/funding/funding-instruments-programming/funding-instruments_en)

budget are defined directly in the Cotonou agreement. The Annex I, the “financial protocol”, of Cotonou 2000, 2005 and 2010 respectively set its amount.

Throughout the years however, the special status of the fund was challenged by the new thematic funds that reflected the EU and ACP cooperation in the growing topic of climate change. The creation of the Global Public Goods and Challenges (GPGC) in 2014 is a reflection of these dynamics, and the Global Climate Change Alliance (GCCA) created in 2007 (currently funded under the GPGC 2014-2020) <sup>107</sup> is another manifestation of a progressively externalised action that excludes de facto the EDF and Cotonou as the most relevant frameworks for environmental action. Nonetheless, the EDF remained pertinent under the current 2014-2020 budget as it included a mandatory obligation of having at least 20% of climate-compatible spending for all areas of the EU budget that became a “general benchmark in EU development cooperation”<sup>108</sup> and “the main source of leverage for climate and environmental policy integration”<sup>109</sup> in development aid.

But the recent proposal for the new EU budget is effectively making the EDF, and therefore the last pillar of Cotonou, fall. The 14 June 2018 the European Commission proposed a fundamental reform of the external aid mechanisms through a regulation for a new external aid instrument, the Neighbourhood, Development and International Cooperation Instrument (NDICI).<sup>110</sup> As it stands at the moment, the NDICI merges all the external aid instruments in a massive envelope of €9.2 billion. Of this, €2 billion will be devoted to sub-Saharan Africa.<sup>111</sup> If adopted, the EDF will be suppressed, erasing the link between the EDF funds and the Cotonou framework.

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<sup>107</sup> Adelle and Lightfoot, *op. cit.*, p. 260.

<sup>108</sup> De Roeck, Orbie and Delputte, *op. cit.*, p. 10.

<sup>109</sup> Adelle et al., *op. cit.*, p. 93.

<sup>110</sup> European Commission, *Proposal for a regulation of the European Parliament and of the Council establishing the Neighbourhood, Development and International Cooperation Instrument*, 2018/0243 (COD), Brussels, 14 June 2018. (NDICI proposal)

<sup>111</sup> European Commission, *EU Budget for the Future*, Brussels, 14 June 2018, p. 2.

Another fundamental element is the potential greening of the NDICI, currently debated between the Commission, the Parliament and some Members States including France and Germany. Under the new proposal, the Commission wants to raise the climate compatible spending to 25% in order to “contribute to mainstream climate action in the Union policies”.<sup>112</sup> The Commission proposal is now undergoing the first reading of the Ordinary Legislative Procedure. It was first examined in the European Parliament by two committees, AFET and DEVE. The vote in committee took place the 4 March 2019 and was followed by the vote of the text in plenary the 27 March 2019. The EP amended recital 28 and proposed in turn a much higher number:

Actions under this Regulation are expected to contribute **45%** of its overall financial envelope to ***climate objectives, environmental management and protection, biodiversity and combatting desertification, of which 30% of the overall financial envelope should be dedicated to climate change mitigation and adaptation.***<sup>113</sup>

The Council, in its partial mandate of 13 June 2019, set a lower contribution of 25% overall.<sup>114</sup> The first trilogue will take place on 23 October 2019. While the main greening factor of the Africa-EU partnership was the greening of the aid that was governed in the post-Cotonou framework, it might now be voted under the Ordinary Legislative Procedure (OLP).

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<sup>112</sup> NDICI proposal, *op. cit.*, recital 28.

<sup>113</sup> European Parliament, *Legislative resolution on the proposal for a regulation of the European Parliament and of the Council establishing the Neighbourhood, Development and International Cooperation Instrument*, P8\_TA-PROV(2019)0298, Strasbourg, 27 March 2019.

<sup>114</sup> Council of the European Union, *Proposal for a regulation of the European Parliament and of the Council establishing the Neighbourhood, Development and International Cooperation Instrument-Partial mandate for negotiations with the European Parliament*, 10305/19, 13 June 2019.

## CONCLUSION

As this paper demonstrates, institutional and policy evolutions make post-Cotonou progressively an obsolete framework and impede on its capacity to ‘green’ the EU-Africa relationship.

The ongoing negotiating process builds on a clearly EU-ACP asymmetrical relationship, coupled with a ‘vertical incoherence’ of actors on the African side. The ‘*à la carte*’ nature of the compromise over African representatives reflects the institutional stickiness of the Cotonou framework and a path dependent relationship between the EU and the ACP structure. Renewal will be difficult under such terms. The last points of controversy that remains on environmental issues are likely to be traded for issues that are considered more important by the EU such as political conditionality, leading to a horizontal incoherence in the text.

A ‘normative power’ discourse of the EU welcomes a far-reaching on environmental ambitions, as reflected in the Foundation. However, the ‘*à la carte*’ architecture of the negotiation also reflects on the text itself, bringing in structural inconsistency. Indeed, the geographic protocols are supposed to become the implementation basis of post-Cotonou. However, a large copy-paste of environmental title from one region to another raises fear that such ambitions will be downgraded.

The Protocols will likely come up empty on the environmental additions to the relationship because not much can be negotiated anymore. The original pillars of Cotonou (political dialogue, trade and development cooperation) have been progressively ‘externalised’ in other agreements and strategies. These will be the real basis of the post-Cotonou EU-African ‘greener’ relationship. On political dialogue, the JAES created a EU-AU platform that largely overlapped with Cotonou. It might become *a priori* the basis for

the African protocol. Such a move raises environmental concerns, with a focus on security and migration issues progressively replacing environmental issues in the JAES.

Trade, through the self-standing Economic Partnership Agreements, was clearly externalised. In that case however, post-Cotonou could still be relevant because no environmental provisions are found in these text. They are covered by references to the original Cotonou and its successor the post-Cotonou agreement. However, pursuant to their ‘*rendez-vous*’ clause and ongoing developments, this might soon be an outdated situation. The revision of each EPA will be accompanied by the integration of Trade and Sustainable Development chapters (TSDs) in the agreements. Once it is done, the EPAs will truly become self-standing agreements and will not require post-Cotonou at all.

Regarding development cooperation, while Cotonou was the legal basis for the EDF, the NDICI is voted under the Ordinary Legislative Procedure and offers aid to African countries without any requirement regarding post-Cotonou. Aid played an important role in ‘greening’ the EU-African partnership under Cotonou and will still be the case after 2020, but without any need for the post-Cotonou whatsoever. Counterintuitively, a major ‘greening’ factor of the EU-African relationship might emerge from the ongoing intra-EU negotiations over the environmental-compatible percentage of expenditures under the NDICI.

As this paper explained, more than the inherent quality and scope of the text when it comes to greening provisions, it relates to the evolutions of the partnership, with Africa in particular. Externalisation effects might in fact bring environmental mainstreaming in the EU-Africa cooperation more effectively than the post-Cotonou text. Post-Cotonou will most likely become a “political agreement” – a declaration of good intentions – unable to push forward ambitions with regards to environment or climate.

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**ANNEX(ES)**

## **ANNEX I: relevant extracts of the Cotonou Agreement (consolidated version)**

(Amendments following the 2005 and 2010 revisions are in bold letters).

### PREAMBLE

(...)

CONSIDERING that the Millennium Development Goals emanating from the Millennium Declaration adopted by the United Nations General Assembly in 2000, in particular the eradication of extreme poverty and hunger, as well as the development targets and principles agreed in the United Nations Conferences, provide a clear vision and must underpin ACP–EC cooperation within this Agreement; **acknowledging that the EU and the ACP States need to make a concerted effort to accelerate progress towards attaining the Millennium Development Goals;**

(...)

**AWARE of the serious global environmental challenge posed by climate change, and deeply concerned that the most vulnerable populations live in developing countries, in particular in Least Developed Countries and Small Island ACP States, where climate-related phenomena such as sea level rise, coastal erosion, flooding, droughts and desertification are threatening their livelihoods and sustainable development;**

### Article 1

#### Objectives of the partnership

(...) The principles of sustainable management of natural resources and the environment, **including climate change**, shall be applied and integrated at every level of the partnership.

## TITLE II

### THE POLITICAL DIMENSION

#### Article 8

##### Political dialogue

3. The dialogue shall cover all the aims and objectives laid down in this Agreement as well as all questions of common, general or regional interest, **including issues pertaining to regional and continental integration**. Through dialogue, the Parties shall contribute to peace, security and stability and promote a stable and democratic political environment. It shall encompass cooperation strategies, **including the aid effectiveness agenda**, as well as global and sectoral policies, including environment, **climate change**, gender, migration and questions related to the cultural heritage. **It shall also address global and sectoral policies of both Parties that might affect the achievement of the objectives of development cooperation.**

## PART 3

### COOPERATION STRATEGIES

#### TITLE I

#### DEVELOPMENT STRATEGIES

##### Article 20

##### The Approach

2. Systematic account shall be taken in mainstreaming into all areas of cooperation the following thematic or cross-cutting themes: **human rights**, gender issues, **democracy, good governance, environmental sustainability, climate change, communicable and non-communicable diseases** and institutional development and capacity building. These areas shall also be eligible for Community support.

## SECTION 4

### THEMATIC AND CROSS-CUTTING ISSUES

#### *ARTICLE 32*

##### Environment and natural resources

1. Cooperation on environmental protection and sustainable utilisation and management of natural resources shall aim at:

- (a) mainstreaming environmental sustainability into all aspects of development cooperation and support programmes and projects implemented by the various actors;
- (b) building and/or strengthening the scientific and technical human and institutional capacity for environmental management for all environmental stakeholders;

(c) supporting specific measures and schemes aimed at addressing critical sustainable management issues and also relating to current and future regional and international commitments concerning mineral and natural resources such as:

(i) tropical forests, water resources, coastal, marine and fisheries resources, wildlife, soils, biodiversity;

(ii) protection of fragile ecosystems (e.g. coral reef);

(iii) renewable energy sources notably solar energy and energy efficiency;

(iv) sustainable rural and urban development;

(v) desertification, drought and deforestation;

(vi) developing innovative solutions to urban environmental problems; and

(vii) promotion of sustainable tourism.

(d) Taking into account issues relating to the transport and disposal of hazardous waste.

2. Cooperation shall also take account of:

(a) the vulnerability of small island ACP countries, especially to the threat posed by climate change;

(b) the worsening drought and desertification problems especially of least developed and land locked countries; and

(c) Institutional development and capacity building

## ARTICLE 32A

### Climate change

**The Parties acknowledge that climate change is a serious global environmental challenge and a threat to the achievement of the Millennium Development Goals requiring adequate, predictable and timely financial support. For these reasons, and in accordance with the provisions of Article 32, and particularly of point (a) of paragraph 2 thereof, cooperation shall:**

**(a) recognise the vulnerability of ACP States and in particular of small islands and low-lying ACP States to climate-related phenomena such as coastal erosion, cyclones, flooding and environmentally induced displacements, and in particular of least developed and landlocked ACP States to increasing floods, drought, deforestation and desertification;**

- (b) strengthen and support policies and programmes to mitigate and adapt to the consequences of, and threat posed by, climate change including through institutional development and capacity building;**
- (c) enhance the capacity of ACP States in the development of, and the participation in, the global carbon market; and**
- (d) focus on the following activities:**
  - (i) integrating climate change into development strategies and poverty reduction efforts;**
  - (ii) raising the political profile of climate change in development cooperation, including through appropriate policy dialogue;**
  - (iii) assisting ACP states to adapt to climate change in relevant sectors such as agriculture, water management and infrastructure, including through transfer and adoption of relevant and environmentally sound technologies;**
  - (iv) promoting disaster risk reduction, reflecting that an increasing proportion of disasters are related to climate change;**
  - (v) providing financial and technical support for mitigation action of ACP states in line with their poverty reduction and sustainable development objectives, including reducing emissions from deforestation and forest degradation and reducing emissions in the agricultural sector;**
  - (vi) improving weather and climate information and forecasting and early warning systems; and**
  - (vii) promoting renewable energy sources, and low-carbon technologies that enhance sustainable development.**

## TITLE II

### ECONOMIC AND TRADE COOPERATION

#### CHAPTER 5

##### TRADE RELATED AREAS

###### ARTICLE 49

###### Trade and Environment

1. The Parties reaffirm their commitment to promoting the development of international trade in such a way as to ensure sustainable and sound management of the environment, in accordance with the international conventions and undertakings in this area and with due regard to their respective level of development. They agree that the special needs and requirements of ACP States should be taken into account in the design and implementation of environmental measures, **including in relation to the provisions of Article 32a.**

2. Bearing in mind the Rio Principles and with a view to reinforcing the mutual supportiveness of trade and environment, the Parties agree to enhance their cooperation in this field. Cooperation shall in particular aim at the establishment of coherent national, regional and international policies, reinforcement of quality controls of goods and services related to the environment, the improvement of environment friendly production methods in relevant sectors.

**3. The Parties agree that environmental measures should not be used for protectionist purposes.**

## **ANNEX II: extract of the EU mandate**

### **Title IV Environmental sustainability, climate change and sustainable management of natural resources**

The Agreement will acknowledge that environmental degradation and climate change pose a serious threat to the attainment of sustainable development, placing at high risk the life and the quality of life of current and future generations. In that respect, the Parties will recall that environment protection and the fight against climate change are closely linked with the other strategic priorities of the Agreement, notably peace and security, as well as sustainable and inclusive economic development.

The Parties will commit to working together to accelerate progress towards the attainment of the Sustainable Development Goals that are related to environment and climate change, and towards the implementation of the Paris Agreement on climate change.

The Parties will commit to strengthening cooperation and building effective alliances in international settings on relevant issues, in particular climate change, sustainable and renewable energy and energy efficiency efforts, ocean governance and water management, biodiversity and the promotion of nature-based solutions. They will also agree to mainstream environmental sustainability, climate change objectives and the pursuit of green growth into all policies, plans and investments, as well as to strengthen engagement with local authorities, civil society and the private sector, and to addressing any type of vulnerability, leaving no-one behind.

The Parties will acknowledge that ambitious action on both mitigation and adaptation, including disaster risk reduction, is essential to manage and reduce the negative effects of climate change. To this effect, they will agree to put in place ambitious, quantifiable, and fair mitigation commitments, taking account of different national circumstances and evolving economic realities and capabilities.

They will agree to integrate adaptation plans into national processes and to share experiences in order to achieve climate-resilient sustainable development. They will also commit to promoting investment and decent job creation into resource efficient and low-emission green economy.

The Parties will support and promote initiatives to significantly increase the capacity of LDCs and SIDS to generate early-warning and risk information.

The Parties will support, and mainstream in all policies, the conservation and sustainable management and use of natural resources, including land and water, the promotion of circular economy approaches and sustainable consumption and production practices, and the

conservation and sustainable management of biodiversity and ecosystems, including forestry and the fight against illegal trafficking of wildlife and timber. To achieve healthy and productive oceans, they will promote the protection and restoration of marine ecosystems and the conservation and sustainable management of ocean resources and sustainable fisheries, and will address the issue of ocean acidification. The Agreement will also include provisions to ensure the responsible governance of tenure of land, fisheries and forests.

The Parties, in intensifying cooperation, will take into account:

- the vulnerability of small island developing states and coastal populations, especially the threat posed by climate change;
- the exposure of countries to worsening droughts, floods, water scarcity, land and forest degradation, deforestation and desertification problems;
- the links between disaster risk reduction and adaptation to climate change strategies and activities, as well as their close relation with resilience, climate change mitigation, ecosystem services and food security, and the nexus with displacement, migration and security.

The Parties will cooperate in risk finance and transfer including contingency budgets, credits and risk transfer solutions, such as insurance solutions.

**Annex III: Compared tables of content: the Cotonou agreement, the ACP mandate and the EU mandate**

<b>Cotonou 2010</b>	<b>ACP Mandate (in French)</b>	<b>EU Mandate</b>
<p>PREAMBLE</p> <p>PART 1 — GENERAL PROVISIONS</p> <p>    Title I — Objectives, Principles And Actors</p> <p>    Title II — The Political Dimension</p> <p>PART 2 — INSTITUTIONAL PROVISIONS</p> <p>PART 3 — COOPERATION STRATEGIES</p> <p>    Title I — Development Strategies</p> <p>    Title II — Economic And Trade Cooperation</p> <p>PART 4 — DEVELOPMENT FINANCE COOPERATION</p> <p>    Title I — General Provisions</p> <p>    Title II — Financial Cooperation</p> <p>    Title III — Technical Cooperation</p> <p>    Title IV — Procedures And Management Systems</p> <p>PART 5 — GENERAL PROVISIONS FOR THE LEAST DEVELOPED, LANDLOCKED AND ISLAND ACP STATES (LDLICS)</p> <p>PART 6 — FINAL PROVISIONS</p> <p>ANNEXES TO THE AGREEMENT</p> <p>    Annex I — Financial Protocol</p> <p>    Annex IA — Multi-Annual Financial Framework Of Cooperation Under This Agreement</p> <p>    Annex IB — Multi-Annual Financial Framework For The Period 2008 To 2013</p>	<p>PARTIE I CONTEXTE</p> <p>PARTIE II PRINCIPES DIRECTEURS POUR LES NÉGOCIATIONS</p> <p>PARTIE III OBJECTIFS D'UN ACCORD POST-COTONOU</p> <p>PARTIE IV THÈMES TRANSVERSAUX</p> <p>    A. Renforcement des capacités</p> <p>    B. Vulnérabilité et renforcement de la résilience</p> <p>    C. Océans et mers</p> <p>    D. Changement climatique</p> <p>    E. Égalité entre les hommes et les femmes</p> <p>    F. Santé</p> <p>    G. Jeunesse et dividende démographique</p> <p>    H. Culture et développement</p> <p>    I. Paix, sécurité et démocratie</p> <p>PARTIE V PILIERS THÉMATIQUES STRATÉGIQUES</p> <p>PILIER 1 : COMMERCE, INVESTISSEMENT, INDUSTRIALISATION ET SERVICES</p> <p>    1. Contexte</p> <p>    2. Objectifs Spécifiques</p> <p>    3. Domaines De Coopération</p> <p>        A. Commerce des biens et services</p> <p>        B. Investissement</p> <p>        C. Industrialisation</p> <p>PILIER 2: COOPÉRATION AU DÉVELOPPEMENT, TECHNOLOGIE, SCIENCE, INNOVATION ET</p>	<p>1. NATURE AND SCOPE OF THE AGREEMENT</p> <p>2. FOUNDATION</p> <p>    PART 1 COMMON PROVISIONS</p> <p>        Title I Objectives</p> <p>        Title II Principles</p> <p>        Title III Political dialogue</p> <p>        Title IV Policy coherence for development</p> <p>    PART 2 STRATEGIC PRIORITIES</p> <p>        Title I Human rights, fundamental freedoms, democracy, rule of law and good governance</p> <p>        Title II Human development and dignity</p> <p>        Title III Inclusive sustainable economic development</p> <p>        Title IV Environmental sustainability, climate change and sustainable management of natural Resources</p> <p>        Title V Peace, security and justice</p> <p>        Title VI Migration and mobility</p> <p>    PART 3 INTERNATIONAL COOPERATION</p> <p>3. EU-AFRICA PARTNERSHIP</p> <p>    Part 1 BASIS FOR COOPERATION</p> <p>    Part 2 STRATEGIC PRIORITIES</p> <p>        Title I Peace and security</p> <p>        Title II Human rights, fundamental freedoms, democracy, rule of law, and good governance</p> <p>        Title III Human development and dignity</p> <p>        Title IV Inclusive sustainable economic development</p> <p>        Title V Mobility and migration</p>

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