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Towards a Policy fit for Purpose Between Africa and Europe

OLUMIDE ABIMBOLA AND FATEN AGGAD, EDITORS.

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CONTENTS

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INTRODUCTION

Olumide Abimbola and Faten Aggad

"We need to be a bit more concrete, a bit more analytical on whether [Africans] are getting exactly what we desire. I see a great discussion about migration and mobility, with always the notion that as African countries we have a responsibility to prevent young people and other Africans from moving out of the continent. But people move for opportunity. So what we have got to do in the partnership is [to] ensure that we, in Africa, create opportunities, that we re-industrialise so that our young people have real opportunities... If our partnership doesn't translate into that kind of economic transformation then I don't think we are going far enough."

These were the words of South Africa's Foreign Affairs Minister, Nalendi Pando given at the margins of the recently concluded AU-EU Ministerial meeting in Kigali on 26 October 2021.

At the centre of the call for the partnership to take into account African interests is the notion of a "paradigm shift" that was touted as the new principle to guide the reform of the partnership between Africa and Europe when leaders from both continents met in 2017 in Abidjan. This paradigm shift would usher a new era in the relationship, one that moves beyond development aid as the determinant of the relationship. It would recognise the full value that Africa brings to the table.

The paradigm shift would also involve a two-way dialogue rather than a top-down one led primarily by the EU. African leaders, practitioners, experts and civil society leaders have since formulated options that could help the continents realise this ambition.

We invited African thought leaders in think tanks, civil society and independent foundations, who have worked in the Africa-Europe sphere for many years to share their insights and analyses. Thought leaders were drawn from several sectors: climate change, technology, digital taxation, migration and trade. The result is this volume.

On climate change, Africa as a continent contributed the least to creating the crisis, yet it is already facing the harshest of its consequences. At the same time, Africa hosts some of the natural resources required for the energy transition needed to move away from the terrible fossil fuels that caused the problem. Europe needs those minerals to power its transition. Africa needs to make sure that it can industrialize, create jobs and address the myriad of challenges thrown up by the climate emergency. Plus Africa wants to make sure that it controls the terms under which it contributes to global decarbonization efforts, considering that it is very much under-resourced to do so, and if it will grow, it may have to do so without the resources to decarbonize.

In approaching the issue, Saliem Fakir challenges the dichotomy between adaptation (for the global south) and mitigation (for the global north). Current lived experiences in both the global north and south challenge those limited views. Africa indeed should not be relegated to the ghetto of adaptation aid. Europe should also not suffer from the failure of imagination that makes it to be so shocked by the lack of preparedness for the floods of 2021. If there is anything the crisis offers, it is the chance to think of solutions that move away from an extractive model of exchange and that treats addressing the climate crisis as part of a larger move towards a structural transformation of Africa's economies, and, one might add, the lifestyles and consumption patterns in Europe.

More pressingly, Saliem asks that we all think of how to deal with the climate crisis with a whole economy approach. Europe already has a roadmap that is imagining things along those lines, the EU Green Deal. Perhaps there is a chance for a continent with high historical emissions to work with the one with the least historical emissions on this?

Ottilia Maunganidze turns towards the issue of migration. This is a subject that provokes very strong reactions in certain quarters in Europe. Yet here are the facts: 80 percent of African migration takes place on the continent. One might be forgiven for thinking that 80 percent of Africans are heading towards Europe, if one considers how much resources the EU spends convincing African governments to police borders where the trend had been towards relaxing border controls. The effect of this has in some cases been to adversely affect age-old intra-Africa migration.

At the same time, Europe needs skilled and unskilled migrants. Speaking recently in an interview (August, 2021) the head of the German employment agency said that Germany needs 400,000 immigrants a year to address the gaps in the labor market, an amount more than twice the current levels of net migration.

Ottilia writes of four key areas that could serve as cornerstones for how both continents can address migration. These are legal pathways, centering economic development, cooperation on international protection (of refugees) and better collaboration on returns, readmission and reintegration. On reintegration in particular, this is an area in which the EU has not exactly adhered to principles of basic dignity and safety. By Ottiilia's estimation, these four issues form the cardinal points that can guide the movement towards a partnership on migration that can work.

On technology: while Neema Iyer reviews what constitutes Europe's relationship with Africa on digital issues, Ruth Wamuyu digs into a specific area, examining efforts by both Africa and Europe to tax multinational tech companies, among others.

Even though it lacks tech giants – or perhaps because it lacks them – the EU has taken on the role of global digital regulator. With this role, it seeks to shape what tech companies can do, as it sets the standard for how other countries regulate the tech sector. Take GDPR for example, the EU's data protection rules. It has inspired similar regulations in Brazil, Australia, and the US American state of California. Beyond this, any company that wants to access the 15 trillion GDP-rich bloc – one-sixth of the global economy – must abide by the rules the EU makes.

Despite being Africa's largest trading and investment partner, the EU lags significantly behind China and the United States in investments in Africa's digital sector. From Neema's analysis, promoting regulations appears to be the main way the EU interacts with Africa on this. She cautions against this, however, as regulations that are suited to Europe are not necessarily suited to Africa – just as the light-touch regulatory practices of the US are not necessarily ideal for African countries. Instead, she suggests a significant increase in real foreign direct investments in Africa's digital sector and creating linkages with Europe's single market. After all, although the EU is the single largest source of investment to Africa, that investment represents only 2.7 percent of the total investments of EU residents. There is definitely significant room for improvement.

One area that the EU has been having issues dealing with from a policy position is how to tax multinational companies, the most profitable of which include the biggest tech companies, which are not European. Under an initiative hosted by the OECD, countries have been working together on how to find a clear way of taxing these companies. Ruth provides a detailed account of the process, explaining the concerns of African policymakers around the solution that is being proposed. She also shows how this is an opportunity for the EU and Africa to work together on an issue that concerns both of them, but that one might ordinarily not include in the EU-Africa partnership. The EU might even bag some goodwill in the process.

In the final paper in the collection, Cheikh TIdiane Dieye turns a critical lens at the fundamentals of the relationship between both continents – trade. It all started with trade relations that were carryovers from colonial times, during which Europe imposed trade policies on Africa. What we have today is a patchwork of trade relations based on Economic Partnership Agreements (EPAS) which Cheikh describes as a liberalization agenda out of reach of Africa's least developed countries (LDCS). Even though EPAs were originally sold as instruments that could enhance Africa's integration, they have become things that are creating problems for Africa's regional integration efforts. This extends to potentially creating problems for Africa's most ambitious integration project till date, the African Continental Free Trade Area (AfCFTA).

The AfCFTA is an instrument that pulls all of Africa together, not making any distinction between north Africa and Africa south of the Sahara. When discussing trade relations between the EU and Africa, it is often forgotten that the EU treats north Africa quite separately. Cheikh also analyses these relations. He concludes by calling for the EU to abandon the paternalistic way it behaves towards Africa and instead position itself as a true commercial partner.

Giving a place to African thinking on Africa-Europe relations is essential to the maturity of the partnership. Equally important is providing visibility to ideas and analyses, even if such analyses are critical. We would like to thank all authors for putting aside time to contribute to this long-overdue collection.

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Chapter 1

Challenging Climate Diplomacy on Adaptation– a New Approach to the Africa-Europe Partnership Climate Discussions

Saliem Fakir

The *Einstellung effect* has been known to psychologists since the 1940's. It identifies the human tendency of solving problems in the most familiar way possible, even though better or more appropriate solutions may exist. Europe and Africa have an opportunity to reconsider a shared opportunity or divergent path in the arena of climate diplomacy. Being in the same place on issues relating to adaptation and resilience would be a good start. Climate concerns involve broader implications today than the physical environment itself. They increasingly revolve around new forms of geoeconomics and geopolitics which are driven by obligations to meet net-zero targets.

Adaptation to climate change is premised on adjusting to current or expected climate change, especially in the most vulnerable economic sectors and infrastructure investments, rather than pursuing just an approach that is trying to tackle the problem only through mitigation efforts. In many cases, this is too late for both Africa and Europe as climate vulnerability is already evident given the rise in the frequency of occurrences of extreme weather patterns.

Africa's green-house gas emissions are disproportionately low, yet it is paying the cost of the fossil fuel dependency of the world's advanced economies. The challenge here is to recognise that adaptation and resilience are important for building sustainable economies in Africa. But, first we must address this as part of a whole economic solution rather than the ghettoization of adaptation that is to be solved remotely through development aid assistance. This approach also does nothing to prevent or reduce the emission of green-house gasses.

With Africa preparing to host COP27 at the end of 2022, the conference of global parties dedicated to tackling climate issues presents an opportunity to reconsider outdated and ineffective strategies. The proceedings of European partnership negotiations could be utilised to turn the narrative of adaptation on its head, by re-orienting the discussions away from aid towards genuine economic partnership between two interdependent continents that share history, trade and culture.

Climate diplomacy in Africa needs a more economically nuanced approach than a narrow discourse between negotiators around climate finance and adaptation. The USD 100 billion climate finance target is already unrealistic. Africa would not be dependent on climate or financial development assistance if it was in a position to develop a more sustainable and resilient economy. Making this a reality should be the focus of diplomatic exchange between Africa and Europe.

Discourse around adaptation regularly manifests in Eurocentric responses to the issues of migration, conflict and security in Africa. Such discourses often lack critical imagination on the part of African diplomats themselves, who regularly infuse adaptation with other generalised stereotypes of the continent, unwittingly reinforcing a distorted view of Africa as being a vast, poverty ridden landscape forever dependent upon foreign assistance. Such generalisations inform the tone and manner of negotiations, restricting their scope and limiting their potential solutions.

A shift in narrative is required to tell a different story. The technical discourse around Africa must be displaced in favour of a compelling agenda that pursues economic reform, clean electricity and regional integration. These issues have never been more urgent than they currently are.

Such a shift in narrative can be seen in the recent decision of Pacific Island states to refer to themselves as 'large ocean states' in the context of climate diplomacy. In rejecting the definition of themselves by outsiders as 'small island states', Pacific Islanders have drawn attention to the historical mechanisms by which they came to be misrepresented: Long before Captain Cook 'discovered' New Zealand and Australia, the islanders inhabited a mass of blue water that they alone had the skills to navigate and successfully survive in. For the Pacific Islanders the oceans constituted their real home and territorial space with islands as land outposts on the extremities that marked the end points of these sea-faring peoples.

Europe is also subject to the limitations presented by the false binary between mitigation and adaptation. 2021 gave scientists a glimpse of what 3 degrees Celsius above the norm will look like in day-to-day life. Floods, wildfires and other extreme weather patterns in Europe and North America are bringing adaptation closer to home and exposing the vulnerabilities of advanced economies in the process. They also reveal a lack of preparedness on the part of such economies to respond to the shifting conditions presented by the climate crisis. As noted in a recent *Der Spiegel* article, the floods that devastated Germany this year have extinguished the northern latitude's political position, emerging from the fall of the Berlin wall in 1989, of expecting to live eternally in boundless prosperity and tranquillity.

We are now witnessing nature's blowback against the decades long culture of the industrial north capitalising on cheap coal and fossil energies. A situation in which the north prioritises itself solely with emissions reductions while leaving adaptation to the south, is no longer viable. No such neat division exists as far as mother earth is concerned. The work of Prussian explorer Alexander Humboldt, particularly his seminal piece Cosmos, illustrates the interconnected nature of life and material earth. The circularity of material flows emerging from the relationship between biological life and the earth's resources delegitimise any divisions between mitigation and adaptation.

Climate diplomacy, which now forms a core element of the Africa-Europe partnership negotiations, requires an approach that honours this interdependency. This demands that the current language around adaptation, peace and security be reframed. None of the issues presented by climate change can be solved through Europe's current strategy of 'protective autonomy', whereby they attempt to securitise their own borders and throw aid towards 'problem geographies' elsewhere. Such an approach aligns with other existing EU policies in Africa, such as in the Sahel, where the negative impact on regional economic growth and free movement of people has already been documented.

The difference between Africa and Europe is simple: Europe has a resilient economy, vast social security nets and is not dependent on foreign aid to adapt to climate change. It does have a whole economy approach and increasingly so with the European Green Deal.

Africa needs a solution that facilitates structural economic change, strengthens citizen accountability measures and moves beyond policies that perpetuate extractive models of exchange. There is no doubt that the way the adaptation challenge is treated in Africa – from both the vantage of the European and African perspectives – has to be reoriented if we are to overcome the prevailing Einstellung effects as it plays itself out in multilateral processes.

Chapter 2

Towards a Migration Policy fit for Purpose Between Africa and Europe

Ottilia Anna Maunganidze

For Africa and Europe, a sustainable partnership is necessary. The geographic and historical proximity of the two continents demand a collaborative relationship between them, particularly where questions of migration arise. This issue has become increasingly urgent for both continents since 2015 when there was an upsurge of migrants and asylum seekers in Europe – primarily from the Middle East, with some from Africa, albeit for different reasons.

From the European perspective, unregulated migration out of Africa is of great concern. The European Union (EU) largely approaches migration and mobility from a security perspective, as manifested by two of its four critical areas of focus: fighting irregular migration through enhancing border controls and improving return and readmission.

An African perspective sees this differently, with migration out of Africa drawing attention to the key stressors forcing people to migrate from the continent. These push factors can be identified around the continent's burgeoning population, poverty, limited economic and employment opportunities, food insecurity and conflict that stem from a history of underdevelopment, including through the impact of colonialism. Economic opportunities and stability therefore constitute the major pull factors for migrants towards Europe and other destinations. It is worth noting that 80% of African migration occurs within Africa itself and is therefore primarily viewed by Africa as an 'internal' issue, which stands in contrast to the EU, for whom the issue is largely 'external'.

In light of these different perspectives, how can Africa and Europe ever see eye to eye on migration? Reflection on the areas in which they already successfully collaborate combined with a critical approach to current, potentially harmful policies can help to forge a more sustainable partnership.

As a developing continent, Africa views migration largely as an issue of demographics and development. The African Union's (AU) policy documents, including the African Common Position on Migration and Development, Agenda 2063, the Migration Policy Framework for Africa and the Joint Labour Migration Programme, all highlight the connection between migration and development. Given that trade is inextricably linked with development, regional integration and freedom of movement, it is no coincidence that the Agreement on Establishing the African Continental Free Trade Area (AfCFTA) and the Protocol to the Treaty Establishing the African Economic Community Relating to the Free Movement of Persons, Right to Residence and Right to Establishment were both adopted simultaneously in 2018 after parallel negotiations.

Europe, on the other hand, understands this migration and development nexus from a more securitised position, as seen in the proposed New Pact on Migration and Asylum. The New Pact aims to better allocate responsibilities to EU states on migrant arrivals and to streamline the asylum process. While the New Pact places emphasis on its technical aspects, in doing so it avoids dealing with the broader questions presented by the issue of migration itself, such as regular migration and permanent relocation. Such an approach aligns with other existing EU policies in Africa, such as in the Sahel, where the negative impact on regional economic growth and free movement of people has already been documented.

The need for migration cooperation between the two continents is clear. The European Commission (EC) included migration and mobility among its five key areas for consideration as part of the new partnership between Africa and Europe. Migration cooperation is also discussed within the framework of the partnership between the EU and the Organisation of African, Caribbean and Pacific (ACP) States. The topic will undoubtedly be a prominent feature of the forthcoming summit between them.

The relationship between Africa and the EU on mobility and migration is largely framed within the scope of the 2007 Joint Africa-Europe Strategy, where "Migration, Mobility and Employment" were included as one of seven areas for a strategic partnership. Now, in terms of the Abidjan Declaration, "Migration and Mobility" is one of four broad priorities for the partnership. The focus in the strategy is on the ways in which migration flows may be more successfully managed as well as considering how opportunities may be created in Africa for its sustainable development. Other AU-EU policies linked to migration and mobility include the Tripoli Declaration on Migration and Development, the Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children and the Ouagadougou Declaration and Plan of Action for Promotion of Employment and Poverty Alleviation. Four key areas emerge from these policies that could guide a more successful partnership in the future.

Firstly, legal pathways connected to labour migration are preferable and would limit irregular migration facilitated through smuggling and trafficking thereby advancing safer, orderly and regular migration consistent with the Global Compact on Migration. Expanding cooperation on legal migration both within Africa and from Africa to Europe is key, particularly in light of the fact that the current costs and restrictions stemming from this pose a barrier to many migrants.

In 2015, together with the International Labour Organization (ILO), the International Organization for Migration (IOM) and the UN Economic Commission for Africa (ECA), the AU Commission adopted a Joint Programme on Labour Migration Governance for Development and Integration (otherwise known as the Joint Labour Migration Programme - JLMP). This programme furthers the provisions of Article 71(e) of the Abuja Treaty, which aims to establish and strengthen labour exchanges that facilitate the employment of available skilled workers across member states. Expanding on this beyond the continent may be a useful way forward.

The idea of advancing 'legal pathways' for labour migrants between Europe and Africa has been part of a joint strategy, agreed in Lisbon since 2007. However, despite the strong interest from African countries for legal pathways for migration, initiatives directly funded through the European Commission remain limited. In 2018, with support from some AU and EU member states, the Global Skill Partnership initiative was launched on the margins of the Global Compact on Migration's intergovernmental conference in Morocco. The initiative calls for a destination country to support the technical and financial training of potential migrants with targeted skills in the country of origin prior to migration. This has largely been rolled out at a bilateral basis, as seen in the partnership between the information and communication technology sectors of Morocco and Belgium.

For its part, in 2018, the European Commission initiated a legal migration pilot project between four AU countries (Egypt, Morocco, Nigeria and Tunisia) and five EU countries (Belgium, France, Germany, Lithuania and Spain). This aimed at expanding legal employment possibilities for African migrants through cooperation with private employers in the EU. Similar initiatives are proposed in the New Pact as "talent partnerships". Progress up until now, however, remains limited and more solid efforts are required going forward.

The second key area calls for the two continents to centre economic development in their discussions. This incorporates exploring innovative ways of leveraging remittances, enhancing the role of the diaspora and resisting a brain drain from the African continent. Remittances are particularly central to the migration–development nexus since they constitute an increasingly crucial and dependable source of income for African countries. Nigeria, Ghana, Kenya, Senegal and Zimbabwe received more in remittances than Official Development Assistance (ODA) and Foreign Direct Investment (FDI) in 2018.

Strengthening the African Institute of Remittances could be one collaborative initiative between the EU and the AU, whereby they could jointly support remittances structures and incentivise money transfers. Africans abroad could also contribute to their countries of origin through the transfer of skills, technologies, finances and knowledge.

The third key area calls on the EU and AU to enhance their partnership on international protection. African states host the largest numbers of refugees and providing technical and financial support to them is critical. The comprehensive refugee response framework in the Global Compact for Refugees should be considered to support refugee host communities in Africa. This would require a long-term plan to facilitate an inclusive approach.

The fourth and final key area for consideration is the ways in which the EU and the AU can better collaborate on returns, readmission and reintegration. This would require a significant shift in practice on the part of the EU to ensure that returns are voluntary, safe and dignified in line with international human rights and humanitarian norms. Research shows that the EU's current approach to this issue hinders progressive migration governance and free trade efforts whilst eclipsing many positive aspects of the relationship between Africa and Europe. Serious embracement of this key area is what the AU and most of its member states insist on, as demonstrated by the slow uptake of African countries 'readmission agreements' with the EU. To date, only Cabo Verde has signed a formal agreement with the EU. Informal agreements have been reached with Côte d'Ivoire, Ethiopia, Guinea and The Gambia, constituting just 4 of the continent's 55 countries.

Pursuing a collaborative and constructive approach to the four issues outlined above is key for the AU and EU to be able to form a new partnership. Issues around migration and mobility must be recognised as priorities for both Africa and Europe. Recognising the broader implications presented by growing inequality can be useful in forming a cohesive strategy. These involve reducing precarious employment, eliminating unemployment, mainstreaming remittances, improving returns and readmissions, adopting effective protection mechanisms and encouraging coherence on migration governance approaches. Collaboration and consultation are the most important determining factors of a successful relationship between Africa and Europe's approach to migration and mobility.

Chapter 3

Europe's Digital Strategy in Africa: What's Really on Offer?

Neema Iyer

The Burgeoning African Digital Economy

It is projected that the digital economy would contribute USD 180 billion to the economy of Africa by 2025. This will undoubtedly improve the quality of life for Africans across the continent through increased economic growth, career opportunities and improvement of tech-facilitated service delivery. Digital platforms have increased access to education, agriculture, and health care, among other things. As a result, it demonstrates that there are numerous advantages to investing in Africa's digital sector.

The past few decades have witnessed a surge in investment and infrastructural development in the African digital economy. Proof of this is that 359 African technology start-ups secured funding in 2020 alone as opposed to the 55 that secured funding in 2015. Between 2015 and 2021, African fintech start-ups secured nearly 900 million dollars in funding. Private sector involvement in establishing Africa's digital economy has increased in recent years and has been instrumental in driving growth in Fintech and other sectors in Nigeria, Kenya, and South Africa.

The AfCFTA and Africa's Bid to Become a Single Digital Economy

One of the primary goals of the African Continental Free Trade Agreement, which was founded in 2018 with trading beginning in early 2021, is to encourage trade among African countries while ensuring economic growth and development. The Agreement has the potential to create the world's largest free trade area through commitments by state parties on trade harmonization and liberalization. In principle, this means that African countries should aim to eliminate trade obstacles and create a single economy similar to the European Union.

In the Agreement, member states commit to cooperate in the area of quality infrastructure as it concerns science and technology and to promote research in the technology sector so as to accelerate social and economic development. In addition, the agreement covers investments, intellectual property rights, and competition policies. In theory, the implementation of the AfCFTA will significantly improve the digital economy within Africa by bolstering the ability to negotiate as a bloc during trade talks, attracting investment for start-ups with a large market and most interestingly, the adoption of a single currency to facilitate ease of payment within African countries.

What's standing in the way of this digital dream?

Africa's digital economy continues to lag behind and falls short of global standards. For example, across the continent, African countries still have internet speeds below the global minimum standard.

The Digital Transformation Strategy for Africa states that inadequate digital capacity, lack of an entrepreneurial ecosystem, weak ICT industry and service sector, and insufficient financial investment are among the many challenges of the digital strategy in Africa. In addition to these existing barriers and despite the surge in fintech start-ups in Africa, Africa does not have an efficient payment system. In fact, the foreign payments issues that confront Africa have not only become a concern for countries themselves but regional and international institutions.

Furthermore, in this report, the African Union acknowledged that one of the weaknesses of the African Union is the lack of cooperation among continental actors and a weak framework for monitoring and implementation of the digital transformation strategy. African countries have to ensure that the AfCFTA is adequately implemented, by involving the input of different stakeholders and adjusting the top-down approach of the AUC, otherwise trade restrictions that existed prior to the Agreement will continue to exist. Evidently, even when it comes to policies concerning the digital economy, a coordinated approach is lacking, evidenced by only 8 out of 54 countries ratifying the Malabo Convention on Cybersecurity and Personal Data Protection.

Individual African countries are passing policies on cybersecurity, data protection, digitalization strategies and national development plans. However, both individually and as a bloc, it appears that African leaders are doing *far too much policymaking and far too little policy implementation*.

European Union Policy towards Africa's Digital Economy

The European Union (EU) is one of the most important partners of Africa. Europe is one of the largest investors in Africa with a stock of €239 billion in Foreign Direct Investment as of 2018. In 2019, the European Investment Bank invested up to EUR 500 million in support of African start-up companies in the digital sector among other sectors.

However, regardless of the significant investment of the EU in Africa, there has been minimal investment in the rapidly growing digital economy on the continent, especially when compared with initiatives by China, the United States, and the United Kingdom. The three countries capture 70% of all cross-border e-commerce trade with Africa, while most of the EU's effort in the digital economy has been directed towards exporting regulations and soft skills. Given this slow start in adopting a meaningful and coherent digital strategy, the EU appears eager to establish their digital dominance globally and may well find an unlikely ally in Africa.

In 2015, the heads of European Union member states and the African Union member states held a summit. In the declaration that resulted from the summit, they made commitments to invest in youths for the purpose of economic growth and development and both sides agreed to exchange ICT policies and regulatory frameworks and further committed to investing in digital infrastructures. However, there are growing concerns that investment flows are largely directed towards European entities rather than African entrepreneurs. For example, under the EU External Investment Plan, the European Commission signed guarantee agreements with six European institutions, namely the European Bank for Reconstruction and Development (EBRD), the European Investment Bank (EIB), the German KfW Group, the Spanish Agencia Española de Cooperación Internacional para el Desarrollo (AECID), the Dutch Development Bank (FMO). It also facilitates cooperation between Cassa Depositi e Prestiti (CDP), the Italian Development Bank, and the African Development Bank (AfDB).

The EU is active in supporting the AU in developing policies related to emerging technologies such as digital identification, data governance and cybersecurity through initiatives such as the Policy and Regulation Initiative for Digital Africa (PRIDA). In 2018, the European Commission and the African Commission launched an AU-EU Digital Economy Task Force which worked on digital entrepreneurship, connectivity among others. The task force was tasked with making recommendations on 4 major areas which are:

1. Access to affordable broadband connectivity and digital infrastructure
2. Digital skills
3. Digital entrepreneurship and
4. e-Services (e-Government, Smart Cities, e-Commerce and eHealth).

Presented in the New Africa-Europe Digital Economy Partnership report, the AU-EU Digital Economy Task Force recommends "promoting a favourable regulatory environment for competitive and harmonised regional markets in the field of connectivity", "adapting the local regulatory framework to the Digital Economy at all levels throughout the value chain" and "integrating the provision of eServices, developed by both the public and private sector, with adequate legal acts and regulation at all levels". Though this effort is presented as a joint initiative, there is little mention of it in AU proceedings.

Can we Regulate Our Way to Prosperity?

The EU's commitment to the digitalization of the African continent is commendable. Yet there are several points emerging from the EU-AU strategy concerning the export of regulation that must be taken into consideration.

Firstly, the AU, unlike the EU, often works through "soft laws" which tend to not have any legally binding force for member states. As such it is important to consider different perspectives, needs, challenges and inputs from the ground rather than developing purely top-down continental policies to ensure agreement, ratification and implementation.

Secondly, an analysis of how countries regulate novel technologies shows starkly different approaches to the innovation ecosystem. For example, the United States tends to underregulate and currently wields both technological and cultural hegemony globally. Whereas, the EU is often quick to regulate, stifling innovation and creativity in the process. This isn't to say that we should let big tech run wild and unfettered, but about finding a happy medium.

An example of how overregulation stunted innovation can be seen in the success of mobile money in Kenya and East Africa more broadly versus its failure in Nigeria, despite high telecommunication penetration. In Kenya, 72% of the population has a mobile money account, compared to 29% with a bank account with 73% considered financially included. In Nigeria, and West Africa, central banks legislated more heavily against the telecom-led mobile money industry, resulting in an unfavourable regulatory environment. Consequently, only 3% of the population of Nigeria has a mobile money account and only 30% are considered to be financially included. *While effective regulation may create an improved regulatory environment for investors in Africa, overregulation could prove detrimental to innovation and hinder its potential benefits.*

The third point to be taken into consideration is the ways in which authoritarian governments across Africa often use regulatory tools as a means to implement regressive policies. These include the imposition of social media and digital taxes on citizens, hate speech bills, the censorship of digital platforms and fintech, imposing crushing taxes on small businesses and impeding cross-border payments and banking. These strategies stand to derail the ambitious and citizen oriented visions of digital transformation strategies.

Finally, Africa is not Europe. Drafting and spreading regulations formed in a European context throughout the African continent is detrimental, and such a culture of directly transferring working policies from one context to another impedes Africans from conceptualising their own digital future.

Where do we go from here?

The EUR 239 billion in Foreign Direct Investment (FDI) to Africa, quoted earlier in this article, represents only 2.7% of the total investments of EUR 8,750 billion made by residents of the EU by the end of 2018. This is in spite of the EU being Africa's largest trade in goods partner, forming 28% of both exports and imports in 2020. This discrepancy can be addressed by further encouraging private sector investment and facilitating private sector linkage to the EU single market. Such input would accelerate the demand for and development of digital skills, generate a stronger private-public infrastructure, increase trade, increase networking and improve the quality of life across the continent.

Africa is one of the world's fastest-growing economies. Nonetheless, it lacks digital infrastructure and access. It would be better positioned as a hub of innovation with investment from the European Union, enabling it to bolster its own digital single market for goods and services. Signing the African Continental Free Trade Area (AfCFTA) could provide a significant boost if governments take steps to ensure private sector investments are encouraged and linkage with Europe is facilitated. For this to happen, it is important to carefully craft indigenous legislation that works for the betterment of all African citizens by taking into account a broad range of perspectives from civil society, the private sector and citizens themselves. Lastly, listening to and understanding the local contexts and committing to true partnership will be key to a sustainable digital strategy between the EU and African states.

Chapter 4

Taxing the Digital Economy: Bridging the Gap between the European Union and Africa

Ruth Wamuyu

The Covid-19 pandemic has shone a spotlight on the digital economy due to the increased reliance on digital platforms to conduct business online. Countries are also looking to increase revenue collection to recover from government spending throughout the pandemic. Discussions around a global solution to taxing the digital economy have intensified. On 8th October 2021, the Organisation for Economic Co-operation and Development (OECD) provided a detailed implementation plan of a two pillar solutionthat has been agreed to by 136 countries. The new proposals attempt to simplify the two-pillar solution, agreed upon in July 2020, that presented potential rules for addressing nexus and profit allocation challenges (Pillar One) [1] and for global minimum tax rules (Pillar Two).

The proposals were backed by the United States (U.S.) and have been agreed upon by 136 countries of the OECD inclusive framework (IF), including all EU IF member states and 23 of the 25 African IF member states. The new pillar one proposes the reallocation of taxing rights among states and captures the largest and most profitable Multinational Enterprises (MNEs). Taxing rights are redistributed to market countries where MNEs derive revenue above EUR 1 million (for larger economies) and EUR 250,000 (for smaller economies). [2] The agreement reallocates 25% of residual profits [3] to market jurisdictions with nexus using a revenue-based allocation key. Pillar two proposes the introduction of a minimum tax of 15% for MNEs that have more than EUR 750 million in global revenue. Pillar one will be compulsory for all participating countries, whereas pillar two represents a 'common approach' in which the rules are not compulsory. Any state that chooses to adopt them is required to implement the rules in a manner consistent with the intentions of pillar two. Those that do not implement pillar two must accept the application of these rules by the countries that choose to adopt them.

The implementation plan published by the OECD sets out an ambitious timeline for implementation of the rules within the next two years. The agreement comes after several years of intense negotiations between countries and jurisdictions that represent more than 90% of global GDP.

The European Commission (EC) and 22 EU member states participate in the OECD and have all expressed support of the two-pillar solution. The EC considers the agreement as a key step towards implementation of global tax reform. Unsurprisingly, plans to introduce an EU-wide digital tax for large tech companies and to replace levies introduced by some of its members were placed on hold as the EC waits for the implementation of the multilateral solution to determine whether further reform will be needed. The proposed digital levy is indicative of the Commission's concerns over the taxation of digital MNEs who do not maintain any physical presence in member states. Intended to have come into effect in 2022, the levy would be in line with the EU's tax and trade obligations that guarantee the free movement of goods, capital, services and people within the single Market. In the meantime, the EC is pushing for matters that specifically concern its member states, such as the single market compatibility of the proposals and the reduction of administrative complexity. [4]

The challenges presented to African countries by the digital economy have been

1 The inclusive framework currently includes 139 countries and jurisdictions, including 14 observer organisations. As of 31 August 2021, 134 of the inclusive framework countries had signed onto the new proposals.
2 Ibid. Small economies considered to have GDP lower than 40 billion euros.
3 Ibid. The residual profit is defined as profits above 10% return on sales.

4 N4, 'Global Agreement on Corporate Taxation: Frequently Asked Questions'

exacerbated by legislative and administrative constraints faced by the continent.

Most African countries in the IF, as well as the African Tax Administration Forum (ATAF), have expressed their support of the OECD unified approach proposals, with the exception of Kenya and Nigeria. Nigeria has stated that current conditions do not provide a fair deal for the equitable reallocation of profits to all market jurisdictions, listing the limited scope of amount A, proposals for binding arbitration and the potential withdrawal of all unilateral taxation measures for companies without a physical presence in Nigeria as concerns. In its statement, the ATAF commended that U.S. backed proposals called for a simplification of pillar one, yet it proposes that redistribution should be based on total profits and not be limited to residual profit. In a statement issued on 19 September 2021, G24 countries, including Nigeria and Kenya, expressed disappointment in the exclusion of their proposals to consider deemed return in the calculation of Amount A but emphasized that for the current proposals to be effective the reallocation of the non-routine profit earned by multinationals should be 30%. The G24 and ATAF hold the position that countries with limited capacities and low levels of MAP disputes should have access to an elective, non-binding dispute resolution mechanism. The ATAF statement also advocates for a higher minimum tax and the application of the Undertaxed Payment, which has met resistance from developed countries. While the G24 countries also advocate for a higher minimum effective tax and a high minimum rate on gross revenue under the Subject to Tax Rule (STTR), the countries call for this to be applied to payments for services and capital. Furthermore, the G24 favours a gradual withdrawal of unilateral measures and assurance of sufficient revenue under pillar I and II.

Another concern raised by policy experts is the impact of minimum tax on the incentive regimes of developing countries. If introduced, countries may be required to repeal these regimes in order to bring their effective tax rates closer to the agreed minimum tax. Incentives are easy to repeal if contained in tax laws and investment treaties, yet a number of developing countries are committed to agreements in which tax incentives are locked in through fiscal stabilization clauses that freeze fiscal terms to the time of signing. This means that changes in tax law will not apply to existing investments. These incentives reduce the effective tax rate and, based on the minimum tax proposals, the home state would have the right to tax the revenue derived from those states. It would therefore be necessary for countries to agree on amendments to treaties that contain stabilization clauses.

Although the African Union's (AU) involvement in tax policy is limited, ministers have emphasized the importance of a unified African approach by calling for its member states to actively participate in IF debates. Like the ATAF, the AU maintains the view that amount A should not exclude small economies, that amount B should be broad enough to provide meaningful tax, that no mandatory binding dispute resolution mechanism should exist and that a source-based rule should form the primary principle of pillar 2.

Bridging the gap

Both the EU and Africa have an agreed objective of taxing digital MNEs operating without physical presence in their respective jurisdictions. The ATAF has called for the distribution of total profits rather than the distribution of residual profit. This is similar to the Business in Europe: Framework for Income Taxation (BEFIT) proposal of the EU. The BEFIT will adopt a single set of rules to determine the specific tax liability of each member state in order to generate a single EU corporate tax return. While the BEFIT is similar to the proposals of the ATAF, the distribution of total profits will likely be easier for the EU as a single market than the diverse economic profiles and administrative capacities of the 136 countries. This demands a level of global cooperation at odds with current economic realities.

The OECD has stated that the multilateral convention to be introduced for the implementation of Amount A will include an elective binding dispute resolution mechanism for developing countries that are eligible to defer BEPS action 14 peer review and have little to no mutual agreement procedure (MAP) disputes. This comes as a relief for G24 countries and ATAF as many developing countries regard the arbitration processes as lacking in transparency, hindering the potential to learn from experience or to monitor the effectiveness of such processes in the first place. As a result, they will be pitted against developed countries with more arbitration experience unless the process is genuinely tailored to meet the needs of all participating parties. Alternatively, the EU could push for arbitration to be structured in a way that ensures the rights of developing countries, including the regionalization of arbitration centres and increased transparency.

African countries will need support from the EU and other developed countries to unwind tax incentives that are bound by stabilization clauses within trade and investment treaties and contracts. This would ensure that developing countries do not lose out revenue in two ways: tax revenue foregone through incentives and tax to developed countries through the income inclusion rule. They would be able to modify their agreements to bring stabilized tax incentives into conformity with minimum tax rules.

Additionally, implementation of the undertaxed payment rule and the subject to tax rule is likely going to lead to increased administrative burden on tax authorities in Africa. These countries will therefore need technical assistance in order for them to fully benefit from the two-pillar solution.

While multilateral proposals may not address all of the priorities of African countries, they do provide a good starting point for further discussions. Even so, it is important to appreciate that only 23 of the 55 countries in Africa are members of the IF and therefore more than half of these countries have not expressed their agreement for the two-pillar solutions. Regardless, Africa will need support from the EU and other developed countries in having its concerns addressed and represented in a sustainable solution for all.

Chapter 5

Assessing Trade Relations Between Africa and Europe

Cheikh Tidiane Dieye

Trade relations between Europe and Africa have been well-documented. A lot of work has already been carried out to highlight the ways in which the scope, challenges and prospects of European-African commercial links have evolved over time. In many ways, we cannot read or analyse the trade relations between Europe and Africa without first placing them in the context of relations between Europe and the ACP countries. From 2000, following the first Europe-Africa Summit held in Cairo, the trade relationship between Europe and Africa entered a new phase. It should be noted however, that for the most part, this continues to be facilitated through the rules and instruments of EU-ACP cooperation, of which Africa is just one of the components.

Trade relations between the two continents have evolved through history under the influence of strategies and policies that were initially imposed on Africa by Europe, then developed for Africa by Europe, and now in collaboration with Africa. These relations take their form and content from mechanisms originally established during colonisation and were largely maintained until independence.

Two major periods can be identified: one running from 1975 to 2000 and the other from 2000 till date. The former was characterised by the signing of the Lomé Convention and the introduction of non-reciprocal trade preferences. The latter, which began in 2000 with the conclusion of the Cotonou Partnership Agreement, provides the framework for the new trade cooperation that is to be built around the Economic Partnership Agreement (EPA).

The analysis below addresses the issues and challenges emerging from these two moments and provides a framework from which to understand the evolution of trade relations between sub-Saharan Africa and Europe.

Trade preferences: mixed economic results against a background of historical misunderstandings

The stated objectives of non-reciprocal trade preferences were to strengthen the productive capacities of ACP countries, to contribute to the expansion and diversification of exports, to increase and maintain sustained economic growth and to stabilise export earnings through the control of price fluctuations and external shocks. After several decades of implementation, the results are mixed. Despite these preferences, the share of ACP countries in EU imports fell from 7% to 3% between 1975 and 2000.

As is the case for all ACP countries, African exports to Europe consist almost exclusively of raw and largely unprocessed materials, including mineral resources and agricultural commodities. Conversely, in the same period, they imported most of their food and capital goods needs from Europe.

Another feature of this period consistent with present day realities is the primacy of their economic links with Europe to the detriment of trade between African countries themselves. Each of these countries traded more with Europe than any country within its own regional integration community. Although this trend has been changing in recent years, it still constitutes the rule in most cases.

The failure of non-reciprocal trade preferences amidst the rapid and profound changes to the system of global trade governance, including the rules of the World Trade Organisation (WTO), called for radical changes in ACP-EU relations. Two months after the Africa-Europe summit, the Cotonou Agreement was concluded on 23 June 2000. It forms the backbone of the current partnership between the European Union and the 79 ACP states.

The Economic Partnership Agreements: a liberalisation ambition out of reach for African LDCs

In its component relating to economic issues, the Cotonou Agreement announces that Europe would be negotiating a series of Economic Partnership Agreements (EPAs) with African regions. It also sets out modalities for their implementation alongside procedures to guide negotiations. In 2002, these were launched at an all-ACP level before being adopted at a regional level the following year. The contexts in which they have been conducted have been complex and difficult, and EPAs have emerged as the most significant point of divergence and contradiction between Africa and Europe in recent years.

The significant technical divergences that emerged at the outset of the negotiations, in both form and substance, continued to override the political will to achieve ambitious or rapid EPAs. Europe's demands were deemed too ambitious, disproportionate and unfair in relation to the economic capacities of African states, most of which belong to the category of least developed countries (LDCs).

By demanding an 80% opening of the ACP regions' market over a period of 15 years, the effort towards liberalisation imposed by the EU on these countries proved to be unrealistic. This is in light of their relative insufficiencies in productive capacities and a lack of economic diversity. By accepting the EU's demands for such ambitious liberalisation, the LDCs, which constitute the majority of African states, would forego trade benefits granted by the WTO in the framework obtained at a multilateral level. Despite its initial presentation as an instrument that could enhance integration, the EPA ultimately functioned to disintegrate regions. This can be seen in the emergence of several different trade regimes between members of the same region and Europe.

Overlap between the EPA and the AfCFTA: an additional challenge

Another potential challenge of the EPA is its overlap with the African Continental Free Trade Area (AfCFTA). The AfCFTA is designed to establish an intra-African regime of preference and to present African countries with the possibility of granting one another trade benefits without the involvement of third countries. However, this can only be optimally deployed if trade benefits between African countries are secured. Opening the markets of several African countries and regions to the EU at the same time could result in trade diversion. The EU, which enjoys substantially similar trade benefits under the EPAs as those obtained by African countries through the AfCFTA, would then be a direct competitor in the African market.

In addition to this constraint, the inclusion of the most-favored-nation (MFN) clause in the EPA could pose a threat to the AfCFTA. This clause obliges African signatories to extend more favourable trade benefits to Europe than to any other major trading partner. This provision is clearly intended for emerging countries that compete with Europe in the African market. It does not, however, explicitly exclude other African countries, meaning that signatory countries could also be required to extend any benefits granted to them under the AfCFTA to Europe as well. Failure to do so incurs the risk of being sanctioned by the dispute settlement mechanism contained within the EPA. The activation of this clause in the EPA could undermine the efforts of African countries to diversify their partners. For some EPA countries, the enforcement of this depends on the will of the EU since nothing in the text of the agreement they have signed prohibits it.

What place is there for North Africa in the Africa-Europe and Europe-OACP partnership?

North Africa is the EU's most important partner on the African continent. It provides almost half of the trade between Africa and Europe. Its trade with Europe is growing steadily. Imports increased from EUR 60 billion to EUR 78 billion between 2008 and 2018. Exports to Europe reached EUR 73 billion in the same period. These trade relations are backed by the Euro-Mediterranean Agreement and several other specific agreements between the EU, Morocco, Algeria, Tunisia and Egypt.

Despite being an integral part of the African continent, North Africa is not included in the OACP group or covered by the Africa Protocol of the EU-OACP Agreement. This protocol covers 49 out of the 55 African states. On the other hand, by being members of the AU and by participating in discussions within the framework of Africa-Europe cooperation, North African countries have their own cooperation framework with Europe through several Euro-Mediterranean countries. The standards implicated in this overlap of agreements is not without consequences for the coherence of both African and European commitments.

This impacts the management of the partnership's financial instruments. For while Africa is allocated an envelope of EUR 32 billion under the new European financial instrument, The Neighbourhood, Development and International Cooperation Instrument (NDICI), North Africa is separated from the rest of the African continent. Instead, it is integrated into the European neighbourhood policy, forcing it to share its allocated envelope of EUR 22 billion with other Eastern European countries.

As a result of these arrangements, African countries will need to maintain efforts to reconcile existing legal frameworks and to deepen dialogue with the EU in order to avoid duplication, or worse, contradictory commitments or decisions.

Making a new start...

The loosening of economic ties between Africa and Europe can be seen in the steady decline in Europe's share of Africa's foreign trade, beginning in the 1980's and diminishing further throughout the 2000's. From a position of quasi-monopoly in the aftermath of independence, Europe has seen its share gradually disappear to China, other emerging countries and also to Africa itself. Although it is still emerging, real intra-African trade is experiencing an evolution.

However, Europe is still the continent's lead trading partner. In 2018 its share represented 32% of Africa's trade in goods with an estimated value of EUR 235.5 billion. This placed it ahead of China, which accounted for 16% of Africa's trade, and the United States of America, which accounted for 6% share of Africa's trade.

Taking the outcome of the non-reciprocal trade preferences and the deadlock of the EPAs into consideration, many actors in Africa and Europe have called for a re-foundation of the economic and trade partnership between them based on new principles and bases. Trapped by history, colonial concerns strongly determined the establishment of structures, rules and trade institutions. These must undergo revision in order for trade to function in the present day and to reflect the broader economic, social and geostrategic transformations that are underway in the world.

Africa and Europe have a common future to build. Achieving this ambition first requires a change in behaviour. For Europe, this means abandoning the paternalism that underlies its relations with Africa and moving away from a spirit of conquest towards one of sharing. Africa must also move away from limiting logics or views of itself as being only a supporting hand or receiver of aid. Instead, it should move towards utilising its assets and potential by positioning itself as a true commercial partner. A change of methods is needed to move away from the utilitarian, short-term and free-trade expectations that led the EU to impose unjust EPAs in the first place, towards strategies that are rooted in co-production, sustainable partnerships and the co-construction of Euro-African value chains. This option would make it possible to move on from the limitations of existing trade preferences towards more productive ones that are better adapted to current economic realities.

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