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Enhancing Investment in West Africa

The Role of Investment Instruments in Economic Partnership Agreement Negotiations

T Ademola Oyejide,
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Abbreviations and Acronyms

ACP	African, Caribbean and Pacific
ADB	African Development Bank
AEF	African Enterprise Fund
AMSCO	African Management Services Company
APDF	African Project Development Facility
APIX	National Agency for the Promotion of Investment and Major Works (Senegal)
BAS	Business advisory services
BIT	Bilateral investment treaty
CDE	Centre for the Development of Enterprise
CDI	Centre for the Development of Industry
CEPICI	Centre for the Promotion of Investment in Côte d'Ivoire
CPA	Cotonou Partnership Agreement
EBAS	EU-ACP Business Assistance Scheme
EBAS	European Business Advisory Services
EC	European Community
ECOWAS	Economic Community of West African States
EIB	European Investment Bank
EPA	Economic Partnership Agreement
ESS	Enterprise support services
EU	European Union
FDI	Foreign direct investment
FIAS	Foreign Investment Advisory Service
FTA	Free trade agreement
GATS	General Agreement on Trade in Services
GDP	Gross domestic product
ICSID	International Centre for the Settlement of Investment Disputes
IF	Investment Facility
IFC	International Finance Corporation
ISF	Institutional Strengthening Facility
KSSF	Key Sector Support Facility
LDCs	Least developed countries
MAI	Multilateral Agreement on Investment
MDG	Millennium Development Goal
MFN	Most favoured nation
MIGA	Multinational Investment Guarantee Agency
NEPAD	New Partnership for African Development
OCTs	Overseas countries and territories
OECD	Organisation for Economic Co-operation and Development

RIA	Regional integration agreement
SD&CB	Skills development and capacity building
SME	Small and medium-sized enterprise
TDCA	Trade, Development and Co-operation Agreement
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
VAT	Value-added tax
WAEF	West Africa Enterprise Fund
WAEMU	West African Economic and Monetary Union

Executive Summary

Introduction

The Cotonou Partnership Agreement (CPA) endorses both the goal and strategy of development of the West African and other African, Caribbean and Pacific (ACP) countries, and provides for co-operation in the form of support for investment and the enhancement of private sector development in these countries. The Agreement only sets the stage for co-operation; its precise framework and the forms it will take will be the subject of negotiations for economic partnership agreements (EPAs) between the European Union (EU) and ACP regional sub-groups. These negotiations will determine the specific forms of co-operation in the areas of investment and private sector support, as well as how such co-operation will be incorporated into the EPAs. The ACP regional groups obviously have an interest in ensuring that the investment and private enterprise component of the negotiated EPAs will promote, protect and guarantee the flow of domestic and foreign direct investment (FDI) to ACP countries.

This study examines ways in which the investment instrument under the ACP-EU co-operation arrangement can be strengthened, with particular reference to the countries which make up the West African EPA negotiating group. There are three activity blocks. Under the first, the terms of reference require a review of the demand and supply sides of the investment equation in West Africa; a description of various aspects of the domestic investment framework within a selection of countries in the region; and a review of the role of past and present bilateral or regional arrangements and treaties and their impact on attracting investment to the region.

Under the second block, the focus of the terms of reference shifts to an examination of the role of a range of international and regional development institutions and an exploration of how their support for investment and enterprise development can be enhanced. More specifically, the terms of reference require:

- A review of the enterprise development role of multilateral institutions such as the International Finance Corporation (IFC) and the Foreign Investment Advisory Service (FIAS); the relevant regional development agency, the African Development Bank (ADB); and ACP-EU related institutions such as the European Investment Bank (EIB), the Centre for the Development of Enterprise (CDE) and PROINVEST;

- Consideration of whether these institutions compete with, or complement, the services provided by private sector financial and investment institutions in the region;

- Consideration of how these institutions and their interventions could complement one another, including consideration of an appropriate mechanism for private sector partnership between the regional and EU institutions;

- An assessment of the adequacy and effectiveness of current ACP-EU measures to promote, protect and guarantee investment;
- The incorporation of a review of an intervention by the EIB, the CDE or PROINVEST in the private sector and the lessons learned from the intervention;
- Consideration of the potential of measures such as the 'lowering the threshold' proposal and the World Bank's Mozambique small and medium-size enterprise (SME) initiative in terms of promoting, protecting and guaranteeing investment.

Under the last of the three activity blocks, the terms of reference focus on the options, elements and measures which could feature and be reflected in the investment component of the EPA negotiations. In particular, the terms of reference call for:

- The identification of elements and options to be considered in negotiations on investment in the context of EPAs;
- The identification of areas of existing investment prohibition and/or sensitivity and areas of potential concession for the region in investment negotiations; and
- Proposals regarding appropriate measures that could be undertaken for promoting, protecting and guaranteeing investment, within the terms of the Cotonou Agreement, for inclusion in an investment agreement.

ECOWAS economic performance and investment patterns

Analysis of average output growth performance shows that the overall output growth performance in the Economic Community of West African States (ECOWAS) was approximately 1 per cent in 1980–1985 and 3.2 per cent in 1985–1990. Regrettably, in 1990–1995 average output growth fell, while it rose again in 1995–2001. The analysis therefore shows that average output growth performance has been less than the 7 per cent required for poverty reduction as recommended in poverty reduction strategies such as the Millennium Development Goals (MDGs) and the New Partnership for African Development (NEPAD). Despite this, Cape Verde, Benin, Burkina Faso, Senegal and Côte d'Ivoire are identified as emerging ECOWAS growth drivers by this analysis.

Overall analysis reveals that in the 1980–2002 period, the services sector led in terms of its share in total output in most ECOWAS countries (in both least developed countries (LDCs) and developing countries). This implies that the industrial sector contributed the least in these countries, showing that all efforts at promoting industrialisation in ECOWAS countries, particularly those aimed at attracting investment into the industrial sector, have yet to produce results.

Furthermore, reform programmes (especially privatisation programmes) implemented in ECOWAS countries appear to have boosted private investment, as it continues to outperform public investment. However, after taking into account FDI, the savings-investment gap that remains to be filled is large.

The domestic investment framework

The domestic investment framework of West African countries reflects the evolution of their local and foreign investment policies. From the early 1960s, these policies showed considerable ambivalence towards foreign investment. But with the start of policy reforms from the mid-1980s, a radically new approach began to emerge which allows foreign participation in an increasing number of economic sectors. In general, West African countries have moved from a rigid foreign investment environment in the 1960s and 1970s to the promotion of foreign investment since the mid-1980s.

The domestic legal framework for investment in the typical West African country is embodied in an investment code or similar legislation which offers protection to investors by eliminating various controls, ensuring equality of treatment among foreign investors and reduced discrimination between local and foreign investors.

Typically, the investment legislation also specifies entry and establishment conditions for foreign investment, regulation of ownership and operations, and incentives, as well as dispute settlement mechanisms. The principal elements of entry and establishment conditions relate to access to certain activities and capital requirement. These are often supplemented by special sector-specific investment rules, especially relating to mining activities. Measures for regulating foreign investment range from operational permits to performance requirements, with the latter focusing on the use of local labour and other resources.

Investment legislation in West African countries offers various incentives to attract foreign investment. The legislation also specifies how disputes arising from the relationship between private investors and host governments should be resolved. Investment dispute settlement arrangements include the use of domestic courts, the provisions of bilateral investment treaties, and regional and multilateral mechanisms, especially the Multinational Investment Guarantee Agency (MIGA) and the International Centre for the Settlement of Investment Disputes (ICSID).

While West African countries have made significant moves to progressively liberalise their foreign investment regimes, they have retained the right to use selective intervention measures as a means of internalising foreign investment benefits. Investment liberalisation in the region is a continuing process and hence many of the remaining restrictions may eventually be phased out.

Bilateral and regional investment arrangements and treaties

Investment treaties are products of the historical search for modalities for dealing with the entry and treatment of foreign nationals. Since the adoption of the first bilateral investment treaty (BIT) in 1959, the number of such treaties has grown substantially, reaching 1,857 by 2000. The ECOWAS countries plus Mauritania entered into around 59 BITs with 14 EU countries between 1960 and 2000. Twenty-three of these were entered into before 1980, while the rest were signed between 1980 and 1 January 2000, 22 of them in the 1990s.

The overall response of FDI to BITs did not show any significant change over the period analysed in this section. Many countries in the West African sub-region actually experienced a decline in the flow of FDI and in other countries trends showed no significant difference following the signing of a treaty. Mali, however, witnessed explosive positive FDI performance following the signing of an investment agreement. On the regional front, investment issues have for many years been part of the international negotiating agenda, and for many the subject has proved difficult in terms of reaching consensus. Investment inflows to ECOWAS member states plus Mauritania have witnessed significant, but inconsistent, growth since the initiation of the Lomé Conventions, especially the third and fourth series, which were specific in terms of provision for agreements on investment. Investment performance was very significant under Lomé III and IV, probably due to the specific emphasis on investment. The investment issue is more interesting under the Cotonou Partnership Agreement in that it sets detailed guidelines for investment in a comprehensive manner similar to that contained in BITs. It is not impossible, therefore, that investment provisions will be more effective in terms of FDI flow to West Africa under the CPA.

International institutions and enterprise development in West Africa

Various regional and multilateral development agencies and financial institutions have embraced enterprise development and a focus on the private sector as a means of promoting economic growth and poverty reduction in West Africa. Prominent among these are the World Bank Group, the ADB and the ACP-EU institutions.

The World Bank Group seeks to promote enterprise development by bringing together technical and management expertise, financial resources and information to assist local and foreign investors. The Group's lead agencies in this endeavour are the IFC and the FIAS. The IFC uses a market-based approach to assisting private enterprises by providing equity and debt finance, as well as offering advisory services and technical assistance. The FIAS assists governments in improving the environment for foreign investment through its advice on laws, incentives, strategies and institutional arrangements for increasing foreign investment and enhancing its benefits. The ADB supports private sector development through direct investment and financing activities by complementing the activities of private financiers and other development partners, and by encouraging improvements in the policy, regulatory and other elements of the enabling environment for private sector development through policy-based lending.

The ACP-EU institutions also have a mandate to support private sector development. The Lomé Conventions gave considerable priority to industrial co-operation and to the financing and promotion of investment, and this has been carried over into the CPA. There are a wide variety of instruments of intervention and support for private sector development within the framework of ACP-EU co-operation. These range from the EIB, which invests in and finances private enterprises in ACP countries, to such institutions as the EU-ACP Business Assistance Scheme (EBAS), CDE and PROINVEST, which provide technical, managerial and other non-financing support.

Up to mid-2004, the IFC had supported a total of 234 enterprises in West Africa with a total sum of US$1.91 billion. The distribution of these enterprises is skewed in favour of the region's largest economies. The FIAS has implemented a total of 67 study and advisory projects in West Africa, focusing particularly on the administrative and related barriers that inhibit foreign investment flows and on a review of investment policy. During 2002–2004, the ADB extended lines of credit for $430 million to private sector development projects; lending to financial institutions for on-lending to private enterprises accounted for 57 per cent of the total amount.

In West Africa, EIB financing between 1999 and 2003 amounted to just over €336 million; this represents 20.7 per cent of its commitments in Africa and 16.7 per cent of those in all ACP countries. EIB financing in West Africa over this period was heavily concentrated; its distribution does not appear to reflect the relative sizes of individual West African economies or the sizes of their SMEs.

To the extent that these multilateral, regional and ACP-EU institutions are supporting the same clientele, an inherent degree of competition between them is probably unavoidable; this may not be bad if it induces efficiency in supply and permits choice in demand. In spite of this inherent tendency to compete, however, there is a strong commitment among the institutions to collaborate and thus complement one another. Within the array of ACP-EU institutions, there appears to be little collaboration between the EIB on the one hand and CDE and PROINVEST on the other. In addition, it is difficult to establish the absence of any overlapping or duplication in the services provided by CDE and PROINVEST. The fragmented nature of support provided by ACP-EU institutions constitutes a significant weakness in their assistance to private sector development.

There is some concern that EIB funds may displace other local and foreign private investment under certain conditions. Analysis of EIB-funded projects in West Africa suggest that such 'crowding-out' may occur with respect to large private enterprise projects supported by EIB funds in West African countries which have sufficiently strong equity markets to offer adequate alternative financing. By comparison, EIB funds which support 'commercially operated' large public sector infrastructural projects are unlikely to displace feasible local private alternative financing; they may in fact assist in 'crowding-in' local private investment. Similarly, EIB funding of West African SMEs through global loans to local banks and stakes in local capital venture companies is associated with 'crowding-in' effects, as the local financial institutions are induced to increase their term financing of SMEs.

In general, West African SMEs require significant technical assistance combined with appropriate financing as two interwoven and complementary prerequisites for sustained growth and enhanced developmental impact. But the lack of an integrated approach to the delivery of financial and technical assistance to the private sector by the ACP-EU institutions sharply reduces the complementarity gains between the two assistance components. The Mozambique SME initiative developed by the IFC provides a useful lesson for the ACP-EU institutions in this regard.

Investment negotiations in the economic partnership agreements

Several factors were considered in predicting the nature and form of the envisaged investment component of the West Africa-EU EPA. These included existing domestic investment regulations, bilateral investment treaties, regional investment treaties, multilateral investment agreements, the size of West African countries and the experience of West African countries in over three decades of trade co-operation with the EU.

While current unilateral investment liberalisation has removed restrictive measures and eliminated discriminatory laws maintained against foreign investors, the bilateral investment treaties signed by West African countries have generally obliged them to encourage and create favourable environments for EU nationals or companies to invest capital depending on existing laws; to ensure fair and equitable treatment and full protection and security of EU investment; and to discourage expropriation. In a similar fashion, the CPA and Lomé III and IV require parties to take account of non-discrimination between investors of the parties and third countries, though issues relating to the most favoured nation (MFN) principle, expropriation, transfer of capital and international dispute arbitration were left to further research.

By analysing certain regional agreements of the EU and juxtaposing this analysis with the size of West African countries and the differing objectives of the latter as net importers and the former as net exporters of capital, the character of the investment component of the West Africa-EU EPA is predicted according to two scenarios. In the first, it is envisaged that the investment provisions of the West Africa-EU EPA will bear a close resemblance to those of the EU-Mediterranean agreements. Under this scenario, the agreement would contain investment promotion provisions that stress co-ordination and co-operation, as well as investment promotion measures in terms of harmonisation and simplification of procedures, creation of joint ventures, establishment of co-investment machineries and provision of technical assistance and, perhaps, the establishment of a favourable bilateral legal framework and the development of uniform procedures for promoting investment. The investment protection provisions would not be strong and the EU would prefer to leave investment protection issues to BITs with EU member states. New restrictions to current payments and capital movement would not be allowed and existing restrictions on them would be progressively liberalised over time.

There would be no limitation to market access of current payments and capital flows, which would be allowed in a freely convertible currency, and the free movement of capital relating to FDI would be allowed. But serious balance of payments difficulties and exchange rate or monetary policy difficulties would be provided for, while repatriation or liquidation of investments or the profits derived thereof would be guaranteed. Full liberalisation of portfolio capital would be left to consultations between the parties. Under this scenario, national treatment provisions would not be included; otherwise the agreement would contain many exemptions to safeguard West African countries. In addition, the agreement would not go beyond West African countries' General Agreement on Trade in Services (GATS) commitments. Dispute settlement procedures would not have investor-to-state provisions.

In the second scenario, though the investment promotion provisions might look like those in the first scenario, the West Africa-EU EPA might still develop into an agreement similar to the EU-Mexico or the EU-Chile free trade agreements (FTAs). It would include portfolio investment provisions, since in the CPA equity participation limited to non-controlling minority holdings was a condition of investment financing. In terms of market access conditions for current payments and capital flows, the agreement would include provision for the progressive elimination of restrictions on payments, but maintain a standstill on any new restrictions; allow exceptions for serious balance of payments difficulties and serious problems with the operation of monetary and or exchange rate policies; and contain many exemptions to the market access principle. West African countries, on their part, would reserve the right to maintain or introduce investment legislation that might restrict capital movements.

This scenario would explicitly integrate the GATS principles of market access, MFN and national treatment for services generally, and for financial services in particular. Thus all measures on the specific legal form of a financial services supplier would be forbidden. The national treatment principle would also be adopted for all non-service sectors as a follow-up to Article 15 of Annex II of the CPA, which requires parties not to discriminate between investors of the parties and third countries. Further, investment protection provisions would be determined under BITs with EU member states. Finally, the agreement would not have a separate dispute settlement mechanism for investment, but for financial services an arbitral panel could be established for the specific service.

1

Introduction

Partly as a result of the poor economic growth performance of many West African countries since the late 1970s and partly as a reflection of the range of economic reforms that have been embarked upon in these countries since the mid-1980s, poverty eradication has become the overarching goal of economic development strategy across the region. The reforms generally focus on rapid and sustainable economic growth as the primary vehicle for poverty alleviation, and they also presume that the required growth will essentially be led by the private sector. Thus both the development goal and the strategy to which West African countries subscribe place considerable emphasis on investment promotion and the enhancement of private enterprise.

The Cotonou Partnership Agreement endorses both the goal and strategy of development of the West African and other ACP countries that is specified above, and hence provides for co-operation in the form of support to encourage investment and enhance private sector development in these countries. But Cotonou only sets the stage for co-operation between the EU and ACP countries; the precise framework and forms of the envisaged co-operation will constitute the subject of negotiations aimed at establishing a series of economic partnership agreements between the EU on the one hand and specific ACP regional sub-groups on the other. These negotiations will determine the precise forms of co-operation in the areas of investment and private sector support, as well as how such co-operation is to be incorporated into the EPAs. As the primary beneficiaries of the enhanced investment flows and private sector development envisaged by Cotonou, the ACP regional groups obviously have an interest in ensuring that the investment and private enterprise component of the negotiated EPAs will promote, protect and guarantee the flow of domestic and foreign direct investment to ACP countries in ways that enable them to derive the greatest developmental benefits from the investment. The strengthening of their negotiating capacity in the area of investment agreement is an important prerequisite in this respect.

The composition of the various ACP sub-groups in Africa for EPA negotiations was a subject of intense debate (Oyejide, 2004a,b). Issues relating to multiple membership of intra-African regional integration arrangements and incomplete integration processes in the sub-regions featured prominently in this debate. There were also concerns about ensuring cohesiveness in each group and about how to avoid duplication without forcing countries to make difficult choices about their membership of particular regional organisations. In the end, the West African EPA negotiating group was constructed around an existing regional integration group, ECOWAS. ECOWAS is a free trade area made up of 15 member countries: Cape Verde, The Gambia, Ghana, Guinea, Liberia, Nigeria, Sierra Leone, Benin, Burkina Faso, Côte d' Ivoire, Guinea-Bissau, Mali, Niger, Senegal and Togo; the last eight countries are also members of the West African Economic and Monetary Union (WAEMU), which is a customs union. In addition to ECOWAS, the West African EPA negotiating group also includes Mauritania, an original ECOWAS member country that withdrew from the organisation in 1999 to join the Arab Maghreb Union. This study covers the West African EPA negotiating group, which is defined as ECOWAS plus Mauritania.

Structure of the report

This report is structured around the tasks specified by the terms of reference and categorised into the three blocks described above. Thus chapters 2, 3 and 4 cover activities under block I. In particular, chapter 2 reviews investment patterns in West African countries. It demonstrates the limitations of domestic sources for financing the investment levels and rates required for poverty-reducing growth and thus establishes the importance of, and need for, foreign investment inflows. Chapter 3 describes the evolution of various aspects of the domestic investment environment in a number of West African countries and shows that virtually all of them have taken significant steps in the direction of liberalising their investment regimes, although reservations continue to exist in several countries.

Finally, chapter 4 reviews the bilateral and regional investment arrangements and treaties involving West African countries and attempts to demonstrate their impact on attracting foreign investment to specific countries in the region.

Chapter 5 fulfils the requirement of the terms of reference categorised under block II. More specifically, the chapter examines, compares and contrasts the enterprise development mandates of the various multilateral, African regional and ACP-EU development agencies, and analyses the relative adequacy and effectiveness of their private sector investment, financial and non-financial support services in West Africa. In addition, it discusses the extent to which these enterprise development support activities are competitive or complementary. Finally, based on an evaluation of their experience, the chapter offers suggestions on lessons to be learned and how these may be used to design more effective mechanisms for enhancing the impact of the support of ACP-EU related institutions for private sector development in the region.

The activities called for by the terms of reference that are categorised under block III constitute the focus of the presentation in chapter 6. The chapter reviews the elements included and excluded in the investment components of regional trade agreements, the extent of the liberalisation of investment regimes in West African countries and their levels of economic development as a basis for formulating appropriate options and strategies for the West African countries in negotiating the investment component of the West Africa-EU EPA.

2

ECOWAS Economic Performance and Investment Patterns

2.1 Introduction

This chapter examines the characteristics of ECOWAS countries in terms of the growth and structure of their economies, and the growth, structure and financing of investment. The analysis follows the basic classification of ECOWAS countries into developing and least developed countries, with Nigeria, Ghana and Côte d'Ivoire regarded as developing countries.

2.2 Aggregate and sectoral output growth performance

The average growth performance of the ECOWAS countries over time is presented in Table 2.1. Between 1980 and 1985, most LDCs in ECOWAS recorded growth in domestic output, with the exception of Liberia, Niger and Togo, where output declined. In contrast, output declined in the developing members as a group, with falling output in Nigeria and Ghana. A comparison of the average output growth performance in the two categories of countries shows that the LDCs performed better than the developing countries, but the overall output growth performance was little higher than 1 per cent. In the following period, 1985–1990, output growth improved for most LDCs and for all developing countries in the group. With output declining in only Sierra Leone, the average growth rate of the LDCs rose to 3 per cent, but this was surpassed by the average growth rate of the developing countries of 4.1 per cent, which also exceeded the overall average growth rate of 3.2 per cent for ECOWAS as a whole.

Regrettably, in the 1990–95 period, average output growth fell to 2.1 per cent in the LDCs, since some members of the group could not sustain the increased growth performance they achieved in the previous period. Similarly, except in the case of Côte d'Ivoire, the developing members experienced a fall in their output growth rate. There was therefore a fall in the average growth rate for ECOWAS as a whole. In the 1995–2001 period, all the LDCs in the group witnessed a rise in their output, culminating in average growth of 3.6 per cent, except for Guinea-Bissau and Sierra Leone, where output declined by 2.8 per cent. Similarly, the average growth rate of the developing countries in the group rose from 2.9 per cent to 3.5 per cent, but this was still less than the overall ECOWAS rate of 3.6 per cent. This analysis shows that average output growth performance has been less than the 7 per cent required for poverty reduction as recommended in most poverty reduction strategies such as the MDGs and NEPAD. Despite this, emerging ECOWAS growth drivers can be identified, namely Cape Verde, Benin, Burkina Faso, Senegal and Côte d'Ivoire.

Table 2.1 ECOWAS states: average annual growth rate of GDP

ECOWAS state	1980–1985	1985–1990	1990–1995	1995–2001
Benin	3.6	1.5	4.1	5.1
Burkina Faso	4.0	4.4	3.5	4.8
Cape Verde	6.4	4.5	4.5	6.1
Gambia, The	3.6	3.3	2.4	4.4
Guinea	0.9	4.7	3.8	4.0
Guinea-Bissau	4.5	3.1	3.6	1.4
Liberia	–1.6	–	–	–
Mali	1.2	0.8	2.2	4.2
Mauritania	0.0	3.3	2.9	4.4
Niger	–4.3	4.2	0.6	3.5
Senegal	3.2	3.5	2.0	5.4
Sierra Leone	0.4	–0.3	–5.1	–2.8
Togo	–1.0	3.4	0.5	3.1
LDC average	**1.6**	**3.0**	**2.1**	**3.6**
Nigeria	–3.0	5.0	3.4	2.9
Ghana	–0.5	5.2	1.3	3.4
Côte d'Ivoire	1.0	2.0	4.0	4.2
Developing country average	**–0.8**	**4.1**	**2.9**	**3.5**
ECOWAS average	**1.2**	**3.2**	**2.2**	**3.6**

Source: World Bank, *African Development Indicators*, Washington, DC, 2004 (CD ROM)

At sectoral level, the average growth performance of these countries over time can be analysed from Table 2.2, using a sectoral classification of agriculture, industry and services. Between 1980 and 1985, agricultural output grew in most ECOWAS LDCs, with the exception of Cape Verde and Mali, but even then the average growth rate was less than 2 per cent. In contrast, agricultural output fell in all developing countries, resulting in an average growth rate of only about 1 per cent in the ECOWAS sub-region. In the 1985–90 period all ECOWAS countries except The Gambia experienced a rise in agricultural output. However, the average growth rate of LDCs surpassed that of the developing countries. It should also be pointed out that Cape Verde and Mali in the LDC group and Nigeria in the developing countries group recorded growth rates that exceeded the averages for their respective groups. In the 1990–1995 period all ECOWAS LDCs experienced an increase in agricultural output except for Burkina Faso, Mali and Senegal. An outstanding performance was recorded in Cape Verde, which had a high growth rate of around 24 per cent. Among the developing countries, agricultural output rose only in Nigeria, but the rate of growth was far lower than that of Cape Verde. A striking feature of agricultural growth in this period was that while LDCs as a group experienced a rise of output of about 6 per cent, the developing countries on average recorded a fall of about 1.5 per cent. In the 1995–2001 period, the agricultural output growth rate in both LDCs and developing countries coincided at 4.2 per cent.

Industrial sector output rose in most LDCs except The Gambia, Niger, Sierra Leone and Togo, where it declined by 2.2, 4.9, 6.8 and 4.7 per cent respectively in 1980–85. Outstanding performance was recorded in Benin and Mali. As in the agricultural sector, all developing countries experienced a fall in industrial output with an average of 4.4 per cent in contrast to a positive average growth rate of 2.7 per cent in the LDCs, which was higher than aggregate ECOWAS industrial output growth of 1.3 per cent. The growth trend of the preceding period was reversed for LDCs and developing countries in 1985–90. In this period, all developing countries in the group witnessed an increase in industrial output with an average growth rate higher than that of the LDCs, which fell slightly below the average of about 4 per cent for ECOWAS as a whole. Industrial output rose by 7.3 per cent in the whole of the ECOWAS sub-region in 1990–1995. During this period, industrial output grew in all the LDCs, but growth was much more significant in Cape Verde and Sierra Leone. In the case of the developing countries, industrial output increased except in Nigeria, where output fell. The rate of growth of industrial output in the LDCs was higher than that in the developing countries, just as in the 1995–2001 period, when average growth for the whole ECOWAS sub-region was 3.8 per cent.

The output growth of services increased in most LDCs in 1980–1985, except in Niger, Mauritania and Togo. Services output growth fell in Nigeria, in contrast to the increase recorded by the other two developing countries. The average growth rate of services output in developing ECOWAS countries was higher than that in the LDCs. Only two LDCs, Sierra Leone and Mali, did not record a rise in services output in 1985–1990, while among the developing countries only Côte d'Ivoire registered a fall in services output. Again, average services output growth was higher in developing ECOWAS countries than in the LDCs, but the average growth rate of both was greater than in the previous period. The services sector's growth behaviour in 1995–2001 was similar to that of agriculture and industry, except that services output average growth was the least both for LDCs and for developing countries. It appeared, however, that there was some convergence in the sectoral growth of LDCs and developing countries during 1995–2001.

Table 2.2 ECOWAS states: average annual growth rate of output by sector

ECOWAS state	1980–1985			1985–1990			1990–1995			1995–2001		
	Agriculture	Industry	Services	Agriculture	Industry	Services	Agriculture	Industry	Services	Agriculture	Industry	Services
Benin	1.8	13.1	2.7	4.6	–1.9	0.4	2.8	5.9	9.4	5.4	5.0	5.0
Burkina Faso	2.6	3.9	6.9	4.6	4.8	4.0	–8.0	5.0	–3.3	4.2	6.1	4.0
Cape Verde	–2.3	7.6	7.9	22.8	17.1	8.2	23.9	27.1	23.6	8.4	6.0	6.0
Gambia, The	5.5	–2.2	3.0	–2.4	10.6	1.9	2.7	2.1	5.3	9.2	4.5	3.1
Guinea	0.3	0.1	2.1	3.1	3.1	5.3	8.7	9.2	16.1	3.6	5.4	2.6
Guinea-Bissau	6.1	8.0	0.7	3.4	–3.5	4.7	8.6	1.9	11.3	3.4	–2.6	2.1
Liberia	–	–	–	–	–	–	–	–	–	–	–	–
Mali	–4.6	11.8	4.9	8.9	1.4	0.0	–0.1	12.9	–3.3	2.0	10.3	3.3
Mauritania	0.9	4.8	–3.3	4.5	3.7	3.6	2.3	12.5	–0.1	3.6	1.0	6.5
Niger	1.6	–4.9	–9.5	5.4	–4.1	7.6	4.8	0.3	–1.7	3.8	3.1	3.8
Senegal	2.1	2.2	4.0	4.5	4.9	2.8	–4.4	1.5	–2.8	3.9	7.4	5.3
Sierra Leone	2.2	–6.8	4.3	0.9	2.2	–1.8	19.3	20.2	7.9	–0.8	–4.1	–2.5
Togo	4.8	–4.7	–2.7	4.3	6.2	1.5	0.69	4.5	–1.8	4.2	4.8	1.3
LDC average	**1.8**	**2.7**	**1.8**	**5.4**	**3.7**	**3.2**	**6.2**	**8.6**	**5.0**	**4.2**	**3.9**	**3.4**
Nigeria	–1.5	–6.1	–0.3	6.4	2.1	7.6	2.7	–0.5	6.8	4.5	1.8	2.5
Ghana	–1.3	–5.5	2.7	2.3	9.1	7.8	–2.4	3.9	3.9	4.0	4.4	4.4
Côte d'Ivoire	–1.1	–1.5	4.6	3.0	6.5	–0.2	–4.8	3.5	3.5	4.2	3.6	2.9
Developing countries average	**–1.3**	**–4.4**	**2.3**	**3.9**	**5.9**	**5.1**	**–1.5**	**2.3**	**4.7**	**4.2**	**3.3**	**3.2**
ECOWAS average	**1.1**	**1.3**	**1.9**	**4.8**	**3.9**	**3.3**	**4.7**	**7.3**	**5.0**	**4.2**	**3.8**	**3.3**

Source: World Bank, *African Development Indicators*, Washington, DC, 2004 (CD ROM)

2.3 Structure of output in ECOWAS countries

Table 2.3 presents the structure of output of ECOWAS countries over time. As at 1980, output of the services sector accounted for over 40 per cent of the total output in most ECOWAS LDCs, while the agricultural sector also contributed a significant proportion of total output in some of these countries. In the same year, the structure of output of developing countries in the group varied. While the agricultural and industrial sectors made the largest contribution to total output in Ghana and Nigeria, the services sector accounted for a significant part of total output in Côte d'Ivoire. In the overall analysis, it can be seen that the services sector accounted for over 40 per cent of the total ECOWAS output. By 1990 the services sector had become more dominant in terms of its share of total output in the LDCs in the group. However, the structure of output in the developing countries in the group remained the same, even though the ratio changed slightly.

It should be noted that by 1995 there was a further shift in the structure of output of some ECOWAS countries, as the contribution of the industrial sector to total output in ECOWAS countries ranged from 12 to 30 per cent. Thus, the services and agricultural sectors continued to play the leading role in terms of their contributions to total output in these economies. It can be seen from Table 2.3 that in 1980 the services sector accounted for an average of over 40 per cent of output in the LDCs, while the agricultural and services sectors both contributed an average of over 40 per cent of total output in developing ECOWAS countries. By 2002, again the leading sector in terms of contribution to total output was the services sector (except in three countries where the agricultural sector led). Similarly, the services sector contributed more to the total output in nearly all developing countries in the group. Overall analysis therefore reveals that in 1980–2002 the services sector was leading in terms of its share in total ECOWAS output. This implies that the industrial sector contributed the least in these countries. The data show that all the efforts at promoting industrialisation in ECOWAS countries, particularly initiatives aimed at attracting investment into the industrial sector, have yet to produce results.

Table 2.3 ECOWAS states: structure of output – sectoral contribution to GDP

ECOWAS state	1980			1990			1995			2002		
	Agriculture	Industry	Services	Agriculture	Industry	Services	Agriculture	Industry	Services	Agriculture	Industry	Services
Benin	35.0	12.0	52.0	36.0	13.0	51.0	34.0	12.0	53.0	36.0	14.0	50.0
Burkina Faso	33.0	22.0	45.0	28.0	20.0	52.0	34.0	27.0	39.0	32.0	18.0	50.0
Cape Verde	–	–	–	–	–	–	–	–	–	–	–	–
Gambia, The	30.0	16.0	53.0	29.0	13.0	58.0	28.0	15.0	58.0	26.0	14.0	60.0
Guinea	–	–	–	24.0	33.0	43.0	24.0	31.0	45.0	24.0	37.0	39.0
Guinea-Bissau	44.0	20.0	36.0	61.0	19.0	21.0	46.0	24.0	30.0	62.0	13.0	25.0
Liberia	–	–	–	–	–	–	–	–	–	–	–	–
Mali	61.0	10.0	29.0	46.0	16.0	39.0	46.0	17.0	37.0	34.0	30.0	36.0
Mauritania	30.0	26.0	44.0	30.0	29.0	42.0	27.0	30.0	43.0	21.0	29.0	50.0
Niger	43.0	23.0	35.0	35.0	16.0	49.0	39.0	18.0	44.0	40.0	17.0	43.0
Senegal	19.0	25.0	57.0	20.0	19.0	61.0	20.0	18.0	62.0	15.0	22.0	63.0
Sierra Leone	33.0	21.0	47.0	32.0	13.0	55.0	42.0	27.0	31.0	53.0	32.0	16.0
Togo	27.0	25.0	48.0	34.0	23.0	44.0	35.0	23.0	42.0	40.0	22.0	38.0
LDC average	**36.0**	**20.0**	**45.0**	**34.0**	**19.0**	**47.0**	**34.0**	**22.0**	**44.0**	**35.0**	**22.0**	**43.0**
Nigeria	27.0	40.0	32.0	33.0	41.0	26.0	43.0	27.0	31.0	37.0	29.0	34.0
Ghana	58.0	12.0	30.0	45.0	17.0	38.0	46.0	16.0	38.0	34.0	24.0	42.0
Côte d'Ivoire	27.0	20.0	53.0	32.0	23.0	44.0	31.0	20.0	50.0	26.0	20.0	53.0
Developing countries average	**37.0**	**24.0**	**38.0**	**37.0**	**27.0**	**36.0**	**40.0**	**21.0**	**40.0**	**32.0**	**24.0**	**43.0**
ECOWAS average	**36.0**	**21.0**	**43.0**	**35.0**	**21.0**	**45.0**	**35.0**	**22.0**	**43.0**	**34.0**	**23.0**	**43.0**

Source: World Bank, *African Development Indicators*, Washington, DC, 2004 (CD ROM)

2.4 Rate and structure of investment

The average annual rate of domestic investment in ECOWAS countries is presented in Table 2.4. During 1980–1985, the domestic investment rate ranged between 12 and 46.3 per cent among ECOWAS LDCs, and between 5 and approximately 20 per cent among developing countries. Thus the rate of domestic investment was higher among the LDCs than among the developing countries, with the former higher than the average of about 20 per cent for ECOWAS as a whole. There was a mixed performance in the domestic investment rate during 1985–1990. This is because while the domestic investment rate increased in some countries, it fell in others. This led to a decline from the previous period to between 9 and 36 per cent among the LDCs, while the rate was over 10 per cent in all developing countries. The decline in the domestic investment rate in some ECOWAS countries during this period was not unconnected with economic reforms that emphasised reduction in government investment. The subsequent periods, 1990–1995 and 1995–2001, witnessed a further decline in the average rate of domestic investment in ECOWAS LDCs, while that of the developing countries increased slightly. Thus the average rate of domestic investment in the developing countries exceeded that of the LDCs during these years. However, the rate of investment has averaged around 17 per cent since 1985–1990.

Table 2.4 ECOWAS states: average annual rate of investment (gross domestic investment as a ratio of GDP)

ECOWAS state	1980–1985	1985–1990	1990–1995	1995–2001
Benin	16.6	12.6	14.7	18.2
Burkina Faso	20.0	21.7	21.8	27.3
Cape Verde	46.3	32.3	34.7	23.7
Gambia, The	20.6	17.1	20.8	18.6
Guinea	12.8	16.1	17.0	19.2
Guinea-Bissau	28.0	35.6	30.7	19.8
Liberia	14.8	9.2	–	–
Mali	16.9	20.1	23.3	22.0
Mauritania	32.1	26.6	19.7	21.4
Niger	17.3	13.7	8.2	9.9
Senegal	12.0	11.8	14.3	18.0
Sierra Leone	14.3	9.2	8.2	5.3
Togo	26.4	17.1	16.0	18.2
ECOWAS LDC average	**21.4**	**18.7**	**17.6**	**17.0**
Nigeria	13.7	15.1	19.8	20.7
Ghana	5.6	10.8	18.5	23.8
Côte d'Ivoire	20.2	11.8	9.8	14.6
ECOWAS Developing countries average	**13.2**	**12.6**	**16.0**	**19.7**
ECOWAS average	**19.9**	**17.5**	**17.3**	**17.5**

Source: World Bank, *African Development Indicators*, Washington, DC, 2004 (CD ROM)

Table 2.5 shows the structure of domestic investment in ECOWAS countries. In the period 1985–1990, the rate of domestic public investment ranged between 3 and about 30 per cent in LDCs, while it was 4–7 per cent in the developing countries. Similarly, the rate of domestic private investment was as high as 19 and as low as 2.4 per cent among the LDCs. It should be noted that the average rate of domestic public investment in the LDCs in the group was higher than that of domestic private investment, while in the developing countries, the latter exceeded the former. In ECOWAS as a whole, the average rate of domestic public investment was higher than the other type of investment.

During 1990–1995, average rates of both public and private investment converged in the two groups of countries; policy reform might have accounted for a reduction in the rate of public investment, while the rate of private investment increased in the LDCs. However, the average rate of both types of domestic investment rose in the developing countries. In 1995–2001, LDCs recorded a further fall in the average rate of public investment, while average private investment rate rose slightly. However, in the case of the developing countries, the average rate of public investment attained in the previous period was maintained, while the average rate of private investment rose. The reform programmes (especially privatisation programmes) implemented in ECOWAS countries appear to have boosted private investment, as it continued to outweigh public investment.

Table 2.5 ECOWAS states: structure of domestic investment (gross domestic investment as a ratio of GDP) – average annual rate

ECOWAS state	1985–1990		1990–1995		1995–2001	
	Public	Private	Public	Private	Public	Private
Benin	8.2	4.5	8.4	6.9	7.8	10.0
Burkina Faso	7.6	13.0	9.5	13.1	13.5	13.2
Cape Verde	19.3	7.7	28.4	11.6	16.0	7.8
Gambia, The	7.6	9.5	8.1	12.3	7.2	11.4
Guinea	7.4	8.7	6.3	10.4	6.2	12.9
Guinea-Bissau	29.6	10.0	22.1	8.7	12.9	5.9
Liberia	–	–	–	–	–	–
Mali	10.2	9.9	10.5	13.0	9.5	12.4
Mauritania	7.6	19.0	3.9	16.0	6.1	15.2
Niger	8.5	2.4	4.3	2.0	5.8	4.1
Senegal	4.0	8.4	4.7	10.0	6.2	11.8
Sierra Leone	2.9	5.7	4.1	3.1	3.5	1.4
Togo	10.2	7.6	2.9	10.2	3.4	12.9
ECOWAS LDC average	**10.3**	**8.9**	**9.4**	**9.8**	**8.2**	**9.9**
Nigeria	–	6.1	8.2	11.8	8.9	11.9
Côte d'Ivoire	4.4	7.1	3.9	6.1	4.1	9.1
Ghana	7.0	3.7	12.2	7.9	11.5	12.2
ECOWAS developing countries average	**5.7**	**8.4**	**8.1**	**8.6**	**8.1**	**11.1**
ECOWAS average	**9.6**	**8.2**	**9.2**	**9.5**	**8.2**	**10.1**

Source: World Bank, *African Development Indicators*, Washington, DC, 2004 (CD ROM)

2.5 Financing investment

Domestic investment may be financed either entirely by domestic savings or by a combination of domestic savings and inflow of funds from foreign countries. Table 2.6 shows the average savings rate in ECOWAS countries between 1980 and 2001. In 1980–1985, dis-savings occurred in six ECOWAS LDCs. Among the LDCs where savings occurred, the rate of savings ranged between 2 and 21 per cent, with an average rate of approximately 4 per cent. In contrast, the savings rate among ECOWAS developing countries ranged between 5 and 22 per cent, with an average savings rate of 13.4 per cent, higher than that of the entire ECOWAS group, which was less than 6 per cent. By 1985–1990, the number of LDCs which dis-saved and the rate of dis-savings fell. However, the savings rate was relatively low in most the ECOWAS LDCs, averaging a little above 6 per cent, while for developing countries it increased marginally, resulting in an ECOWAS average of around 8 per cent. There was a continuous fall in the average savings rate of LDCs in the subsequent periods, with a persistent rise in developing countries. Generally, the average savings rate in the ECOWAS group as a whole declined in the subsequent period.

The savings-investment gap (resource balance), which shows the extent to which domestic investment is being financed by domestic savings, is presented in Table 2.7. In

Table 2.6 ECOWAS states: average annual rate of domestic savings (savings as a ratio of GDP)

ECOWAS state	1980–1985	1985–1990	1990–1995	1995–2001
Benin	–4.8	–2.3	3.0	5.8
Burkina Faso	–1.0	2.4	7.2	10.0
Cape Verde	–7.0	–2.9	–1.1	–11.3
Gambia, The	5.1	7.6	5.6	2.3
Guinea	16.3	16.4	13.8	15.7
Guinea-Bissau	–5.5	–0.1	3.2	–4.2
Liberia	16.2	16.4	–	–
Mali	–4.0	0.1	6.5	9.0
Mauritania	2.9	10.3	8.3	9.7
Niger	7.9	7.9	2.3	2.8
Senegal	–1.4	3.8	8.5	11.9
Sierra Leone	5.4	14.1	4.1	–5.4
Togo	21.0	7.6	8.7	5.8
ECOWAS LDC average	**3.9**	**6.2**	**5.4**	**4.0**
Nigeria	13.9	17.7	23.6	25.4
Ghana	5.0	5.5	7.4	8.6
Côte d'Ivoire	21.4	18.4	13.8	20.8
ECOWAS developing countries average	**13.4**	**13.9**	**14.9**	**18.2**
ECOWAS average	**5.7**	**7.7**	**7.2**	**6.7**

Source: World Bank, *African Development Indicators*, Washington, DC, 2004 (CD ROM)

1980–1985, only two of the LDCs in ECOWAS (Guinea and Liberia) generated sufficient domestic savings to finance their domestic investment. This implies that other LDCs in the group sought foreign investment to supplement their internally generated savings to finance their domestic investment. This is because their savings-investment gap was negative. Of the developing countries, only Ghana could not mobilise adequate internal savings to finance its domestic investment. The resource gap in the whole of ECOWAS was as high as 14 per cent. The number of LDCs which had adequate savings to finance their domestic investment rose during the period 1985–1990, as Sierra Leone came on board. Among the LDCs, the savings-investment gap reduced drastically, but was still as high as 35.6 per cent. It is observed that some countries started generating idle savings (which should have been invested) of up to 4–7.5 per cent, suggesting that the macroeconomic environment in ECOWAS countries is inadequate for promoting investment.

Table 2.7 ECOWAS states: average annual rate of savings-investment gap (resource balance as a ratio of GDP)

ECOWAS state	1980–1985	1985–1990	1990–1995	1995–2001
Benin	–21.5	–14.8	–11.7	–12.4
Burkina Faso	–21.0	–19.3	–14.5	–17.3
Cape Verde	–53.3	–35.2	–35.8	–35.0
Gambia, The	–15.6	–9.5	–15.2	–16.3
Guinea	3.5	0.2	–3.2	–3.4
Guinea-Bissau	–33.5	–35.6	–27.5	–24.0
Liberia	1.4	7.2	–	–
Mali	–20.9	–20.0	–16.8	–13.0
Mauritania	–29.2	–16.2	–11.4	–11.7
Niger	–9.4	–5.8	–5.9	–7.1
Senegal	–13.4	–8.0	–5.8	–6.1
Sierra Leone	–8.9	4.9	–4.1	–10.7
Togo	–5.5	–9.6	–7.2	–12.5
ECOWAS LDC average	**–17.5**	**–12.5**	**–1.2.3**	**–13.1**
Nigeria	0.2	2.6	3.8	4.7
Côte d'Ivoire	1.2	6.6	–11.1	–15.2
Ghana	–0.6	–5.3	4.1	6.2
ECOWAS developing countries average	**0.3**	**1.3**	**–1.1**	**–1.4**
ECOWAS average	**–14.1**	**–9.9**	**–10.2**	**–10.9**

Source: World Bank, *African Development Indicators*, Washington, DC, 2004 (CD ROM)

However, the situation changed during the 1990–1995 period, as all ECOWAS LDCs could not mobilise sufficient domestic saving to finance their domestic investment, while only one developing country in the group fell into this category. This undesirable trend continued in 1995–2001, as none of the LDCs could generate adequate savings to finance domestic investment. This implies that the majority of ECOWAS countries depended on external sources of funds to finance their domestic investment.

Table 2.8 shows that the average rate of foreign direct investment in ECOWAS LDCs was about 1 per cent in 1980–85 and 1985–90, while it rose to about 1.6 and 2.5 per cent in 1990–1995 and 1995–2001, respectively. In the developing countries, the average rate of FDI was less than 1 per cent in 1980–85 and about 1.2 per cent in 1985–90. It rose to about 2.4 and 2.8 per cent in the subsequent periods. It can thus be observed that the average rate of FDI in the ECOWAS countries has been insignificant over time. It is therefore not surprising that FDI has not been sufficient to bridge the gap between domestic savings and investment rates, particularly among the LDCs (Table 2.9). After considering FDI, the gap that still remains to be filled, over time, is high. Therefore, there is a need to design policies to attract more FDI inflow into the ECOWAS sub-region.

Table 2.8 ECOWAS states: average annual rate of gross foreign direct investment (gross FDI as a ratio of GDP)

ECOWAS state	1980–1985	1985–1990	1990–1995	1995–2001
Benin	0.10	1.79	3.51	2.75
Burkina Faso	0.15	0.12	–	–
Cape Verde	–	0.31	1.42	3.37
Gambia, The	0.17	1.27	2.13	–
Guinea	0.0	0.47	0.44	0.69
Guinea-Bissau	–	–	–	–
Liberia	2.14	1.12	–	–
Mali	0.29	0.32	1.29	–
Mauritania	1.64	0.55	0.68	–
Niger	0.98	1.13	2.44	–
Senegal	1.66	0.89	1.20	2.32
Sierra Leone	1.50	5.11	1.42	–
Togo	3.50	1.06	1.71	3.24
ECOWAS LDC average	**1.10**	**1.18**	**1.62**	**2.47**
Nigeria	1.06	2.82	4.31	3.75
Côte d'Ivoire	0.54	0.54	1.29	3.20
Ghana	0.24	0.15	1.49	1.38
ECOWAS developing countries average	**0.61**	**1.17**	**2.36**	**2.78**
ECOWAS average	**1.0**	**1.18**	**1.80**	**2.59**

Source: World Bank, *African Development Indicators*, Washington, DC, 2004 (CD ROM)

Table 2.9 ECOWAS states: average annual rate of savings-investment gap net of gross FDI (resource balance net of gross FDI as a ratio of GDP)

ECOWAS state	1980–1985			1985–1990			1990–1995			1995–2001		
	S-I gap	FDI-GDP	S-I gap-Net FDI	S-I gap	FDI-GDP	S-I gap-Net FDI	S-I gap	FDI-GDP	S-I gap-Net FDI	S-I gap	FDI-GDP	S-I gap-Net FDI
Benin	–21.4	0.1	–21.3	–14.9	1.79	–13.11	–11.7	3.51	–8.2	–12.4	2.75	–9.7
Burkina Faso	–21	0.15	–20.85	–19.3	0.12	–19.18	–14.5	–		–17.3	–	
Cape Verde	–53.3	–		–35.2	0.31	–34.89	–35.8	1.42	–34.4	–35.0	3.37	–31.6
Gambia, The	–15.5	0.17	–15.33	–9.5	1.27	–8.23	–15.2	2.13	–13.1	–16.3	–	
Guinea	3.5	0	3.5	0.3	0.47	0.77	–3.2	0.44	–2.7	–3.4	0.69	–2.7
Guinea-Bissau	–33.5	–		–35.7	–		–27.5	–		–24.0	–	
Liberia	1.4	2.14	3.54	7.2	1.12	8.32	0	–		0	–	
Mali	–20.9	0.29	–20.61	–20	0.32	–19.68	–16.8	1.29	–15.5	–13.0	–	
Mauritania	–29.2	1.64	–27.56	–16.3	0.55	–15.75	–11.4	0.68	–10.7	–11.7	–	
Niger	–9.4	0.98	–8.42	–5.8	1.13	–4.67	–5.9	2.44	–3.4	–7.1	–	
Senegal	–13.4	1.66	–11.74	–8	0.89	–7.11	–5.8	1.2	–4.6	–6.1	2.32	–3.8
Sierra Leone	–8.9	1.5	–7.4	4.9	5.11	10.01	–4.1	1.42	–2.7	–10.7	–	
Togo	–5.4	3.5	–1.9	–9.5	1.06	–8.44	–7.2	1.71	–5.5	–12.5	3.24	–9.2
Nigeria	0.2	1.06	1.26	2.6	2.82	5.42	3.8	4.31	8.1	4.7	3.75	8.5
Ghana	–0.6	0.24	–0.36	–5.3	0.15	–5.15	–11.1	1.49	–9.6	–15.2	1.38	–13.8
Côte d'Ivoire	1.2	0.54	1.74	6.6	0.54	7.14	4.1	1.29	5.3	6.2	3.2	9.4
ECOWAS LDC average	**–17.5**	**1.1**	**–11.6**	**–12.4**	**1.2**	**–9.3**	**–12.2**	**1.6**	**–10.1**	**–13.0**	**2.5**	**–11.4**
ECOWAS developing countries average	**0.3**	**0.6**	**0.9**	**1.3**	**1.2**	**2.5**	**–1.1**	**2.4**	**1.3**	**–1.4**	**2.8**	**1.4**
ECOWAS average	**–14.1**	**1.0**	**–8.9**	**–9.9**	**1.2**	**–7.0**	**–10.2**	**1.8**	**–7.5**	**–10.9**	**2.6**	**–6.6**

Source: Computed from the data above

3

The Domestic Investment Framework

The domestic investment framework of each country in West Africa has been shaped, in large measure, by the evolution of its policies towards investment, both local and foreign. From the early 1960s, policy-makers in many West African countries showed considerable ambivalence towards foreign investment, as well as bias against the private sector generally. As a result, they placed general restrictions on the types of economic activities in which the private sector could participate and, more specifically, on the range of activities in which foreign investors could engage, as well as on the share of particular enterprises that they could own. This policy stance obviously created space for increasing the role of the state in the economy.

The particular policy measures deployed to achieve this objective were typically implemented through 'indigenisation' laws and the nationalisation of private enterprises. In initially socialist-oriented West African countries, such as Ghana and Guinea, some private enterprises were nationalised. But even in some of the countries that were not necessarily or explicitly socialist in their socio-political orientation, legal restrictions were imposed on foreign investment. A significant example is Nigeria, where successive indigenisation decrees (in 1972 and 1977) compulsorily restricted the foreign share in enterprises to 40 and 60 per cent in certain sectors.

With the start of economic policy reforms from the mid-1980s, a radically new approach to foreign investment has emerged in virtually all West African countries and they now allow foreign participation in an increasing number of economic sectors. While this does not appear to have totally ended the fear of foreign investment and domination, it does signal that more and more of these countries are beginning to see the necessity for foreign investment and are taking steps to attract it, although with continuing sensitivity about foreign penetration in certain economic sectors that some countries regard as 'strategic'. In general, therefore, West African countries have moved from a stance of control over foreign investment in the 1960s and 1970s to its promotion since the mid-1980s.

3.1 The domestic legal framework for investment

The domestic legal framework for both local and foreign investment in the typical West African country is set out in an investment code or similar legislation. Thus national legislation is of paramount importance in establishing the legal framework for investment. In much of West Africa, this national legislation tends to be, in its current form, primarily protection oriented, in the sense that it seeks essentially to promote investment by offering special features aimed at safeguarding the interests of investors. This is a reflection of its evolution over time, shaped by a process of liberalisation that embraces at least two component parts: the removal of various restrictive government measures and the application of certain positive standards of treatment aimed at eliminating discrimination against foreign investors.

In terms of objectives, therefore, Guinea's investment code has the primary purpose of encouraging national and foreign economic operators to invest in Guinea. The purpose of Benin's investment code is to encourage private investment. In the case of Togo, the investment code provides a more elaborate statement of its purpose. Specifically, the main objectives are to encourage export-oriented investment, increase the employment of Togolese workers, promote the establishment of small and medium-scale enterprises, encourage decentralisation of economic activities and make optimum use of the country's natural resources.

With respect to the elimination of restrictions and application of more investment-friendly standards of treatment, virtually all West African countries have investment codes or similar national legislation that feature substantial degrees of liberalisation. For instance, Niger's investment code guarantees freedom to transfer capital for non-resident natural or legal persons; equal treatment of all investors, subject to the provisions of treaties and agreements concluded by Niger and other states; and no expropriation or nationalisation of the investment, except in the case of public interest covered by domestic law, when fair and equitable compensation will be paid. The Senegalese investment code also offers guarantees with respect to freedom to transfer capital and equal treatment for foreign investors. In Guinea, investment legislation provides the same rights and obligations to both private and public enterprises, whether they are national or foreign. In addition, it offers freedom to transfer capital, incomes and salaries for foreign natural or legal persons. Benin's investment code prescribes equal rights and obligations for Beninese and foreign state and private enterprises; guarantees freedom of movement for expatriate economic agents; and guarantees freedom to repatriate capital, while also prohibiting any form of nationalisation.

In the case of Ghana, both legislation on investment and the constitution provide for guarantees against expropriation and nationalisation. State acquisition of private property can be done only on the basis of payment of fair and adequate compensation. Under Ghana's investment law, foreign investors are also guaranteed unconditional transferability, in freely convertible currency, of dividends or net profits, payments to service a foreign loan, fees and charges for registered technology transfer, and remittance of proceeds on sale or liquidation of the enterprise. In Côte d'Ivoire, similar legislation affords nationals and foreigners identical treatment for investment purposes and guarantees the repatriation of earnings on invested capital, including dividends and the proceeds in the event of liquidation of the investment. The investment code of Togo offers equal rights and obligations to national and foreign enterprises, as well as freedom of capital transfer and of income and salaries for foreign natural and juridical persons. Nigeria's current investment legislation follows the same pattern in terms of standards of treatment. It guarantees foreign investment against nationalisation or expropriation by the government and guarantees the unconditional transfer in convertible currency of dividends (net of 10 per cent withholding tax) and net profits attributable to the investment, payments in respect of loan servicing, and the remittance of proceeds or other obligations following liquidation of the investment. The Mauritanian investment code provides guarantees against sovereign risk, although this actually amounts to compensation in the event of expropriation, nationalisation or requisition. In other respects, Mauritania offers the same standards of treatment as other West African countries, such as equal treatment of foreign and national investors, and free transfer of the capital and income of foreign investors.

This discussion suggests that investment legislation in West Africa generally incorporates the most common standards of treatment associated with liberal investment regimes. In particular, the MFN standard, which ensures equality of treatment as between investors from different countries, has received general acceptance and application. The principle of national treatment, providing that there shall be no discrimination as between foreign and domestic investors, appears also to be accepted and integrated into the investment legislation of many West African countries. There are, however, a number of exceptions (see below) which suggest that some West African countries wish to continue their support for local firms against foreign competitors that are deemed to be more powerful.

The investment legislation of West African countries contains provisions relating to such issues as entry and establishment conditions, regulation of ownership and operations, incentives offered to investors and dispute settlement mechanisms. Each of these issues is examined below.

3.2 Entry and establishment conditions

Investment legislation normally specifies the admission and establishment conditions which govern the process of making an investment. The principal elements of these conditions relate to access to certain activities, capital requirements and legal forms of entry, as well as the screening rules, investment authorisation and registration arrangements. In particular, control over the admission of investments may be used to determine the sectors or economic activities that are closed to foreign investment. It may also be used to allow particular investments subject to conditions relating to, for instance, the structure of ownership and the form of legal incorporation. The exercise of such control powers typically implies that prospective investors must apply to the appropriate host country authorities for permission to invest.

In this context, Niger's investment code applies to investments in the production and processing of primary agricultural, livestock or fisheries products; production for export; air transport; the building of hotels or social housing; and the production of handicrafts, cultural and artistic products. The Senegalese investment code covers a similar range of economic activities, including agriculture, fishing, livestock breeding and related processing activities; storage and packaging of products of plant, animal or fish origin; manufacturing, tourism and other hotel-related activities; cultural activities by small or medium-sized enterprises; services provided by SMEs in the areas of health and education; assembly and maintenance of industrial machinery and equipment; and the installation and management of railways. In the case of Guinea, the benefits associated with the investment code are reserved for investments in small and medium scale enterprises that export local natural resources and raw materials, and enterprises established in economically less developed zones of the country. Nigeria's investment legislation permits foreign investment in any sector except those on the 'negative list'; while in Mauritania, foreign investment is allowed in all sectors of the economy, although investment in some activities is regulated by other sector specific laws. Such activities include banking and insurance, mining and hydrocarbons.

In fact, many West African countries supplement their general investment legislation with special sector-specific investment laws, especially with respect to mining activities. Like many of these countries, Niger, for instance, regards petroleum resources and mining as the property of the state and regulates their exploitation by issuing operating permits to approved companies in accordance with the provisions of the petroleum code and the mining code. The sectoral investment laws specify their own restrictions. Guinea's mining code reserves semi-industrial and small-scale mining of precious substances and the marketing of diamonds and other gems for Guinean natural and legal persons. In Togo, by comparison, the mining code permits mining licences to be issued to both Togolese and foreign nationals, provided that they have appropriate technical and financial capacity to exploit mineral substances. In Nigeria, the Petroleum Act specifies that licences may be granted only to Nigerian citizens, although this does not exclude joint venture arrangements between the government and foreign petroleum enterprises for the exploitation of crude oil and for natural gas.

3.3 Regulation of ownership and operations

Investment legislation in West Africa covers measures relating to the ownership and control of enterprises in which foreign investment is permitted. It also covers measures relating to the regulation of the operational activities of such enterprises. These regulatory measures are particularly pervasive in the petroleum and mining sectors.

Restrictive measures relating to ownership and control of enterprises in which foreign investment is allowed may include limits on foreign ownership of the capital of an enterprise, minimum capital requirements, regulations about the legal form of ownership (e.g. compulsory joint ventures) and restrictions on management, including, for example, the nationality of directors and the number of expatriates in top management positions. Some West African countries have investment legislation which imposes no limit on foreign ownership of those enterprises in which foreign investment is allowed. Prominent examples of these include Senegal and Côte d'Ivoire. But many other West African countries apply investment laws which impose such ownership and control restrictions. Guinean investment legislation specifies a minimum capital requirement of 10 million

Guinean francs, and requires further that, if the capital of such an enterprise is less than GF50 million, it must be controlled by a national of Guinea. Similarly, Ghana's investment law prescribes minimum capital for foreign investors; it also specifies limits on foreign ownership of 40 per cent in insurance companies and 75 per cent in publicly listed companies listed on the stock exchange. In the case of Togo, the investment code prescribes a minimum capital of 25 million CFA francs (exclusive of tax) and also requires that the foreign investors must finance at least 25 per cent of the investment from their own resources. An example of legal form restriction comes from Nigerian investment legislation relating to the petroleum industry, where joint venture with the government is mandatory. The same set of laws requires ownership by Nigerians of a majority of the shares in a company seeking a broadcasting licence.

Measures relating to the regulation of the operations of enterprises in which foreign investment is permitted range from operational permits to performance requirements. To begin with, permission for entry of foreign investment must be requested and approved in all West African countries. However, in most countries application and approval processes were progressively simplified during the 1990s. To simplify procedures and reduce the time needed to process investment applications and secure necessary approvals, the National Investment Commission in Mauritania was replaced by a 'single window' under the Directorate of Private Investment Promotion in the Ministry of Economic Affairs and Development. In both Togo and Guinea, mining licences and permits are issued by the Ministry of Mines. In Côte d'Ivoire the Centre for the Promotion of Investment in Côte d'Ivoire (CEPICI)) was established in 1995 as a 'single window' to serve as a multi-service channel for the completion of the administrative formalities required for the establishment of an enterprise. In Niger, approval of enterprises under the investment code is granted by means of a joint decree of the Ministers for Industry and Finance and, in certain cases, a decree adopted by the Council of Ministers after hearing the opinion of the investment commission; this procedure is time-consuming. Senegal has tried to reduce the time required for such approvals by the creation in July 2000 of the National Agency for the Promotion of Investment and Major Works (APIX) which serves as a 'single window' for implementing the administrative formalities associated with the establishment and registration of investment enterprises.

Performance requirements associated with the regulation of the operations of foreign investment enterprises in West Africa focus largely on meeting the core objectives of investment policy. These objectives revolve around the use of local labour and other resources. For example, the investment code of Guinea requires that an approved enterprise must give priority to Guineans in employment and to the use of local raw materials, appliances and equipment in its operations. Similarly, holders of mining and quarry permits are required to give preference to Guinean enterprises for all construction procurement and service provision contracts; give priority to the employment of Guinean labour; and encourage technology transfer. In Côte d'Ivoire, approved enterprises are required to employ Ivorian managers, foremen and other workers and provide them with appropriate training. They are also required to meet national or international quality standards applicable to their goods and services. In the case of Togo, an approved enterprise must pay at least 60 per cent of its total wage bill to Togolese citizens; holders of mining licences are required to give preference to Togolese enterprises for the supply of services and priority to the employment to Togolese labour.

3.4 Investment incentives

In West Africa, the offer of investment incentives is generally viewed as an important foreign investment promotion strategy. Hence, all investment legislation in the sub-region contains offers of various incentives in association with foreign investment inflows. These incentives cover the full range of fiscal, financial and other incentives, although recent policy reforms have made some of them either redundant or no longer available. With respect to fiscal incentives, the major element typically includes tax exemption or reduction, customs duty exemption, accelerated depreciation allowances and reduction in social security contributions. Financial incentives cover direct subsidies in respect of part of capital, production or marketing costs, subsidised loans or loan guarantees, guaranteed export credits and government insurance at preferential rates. Other incentives include protection from import competition, granting of monopoly rights, subsidised infrastructural services and special treatment with respect to foreign exchange.

Examples of various elements of these incentives can be found in the investment legislation of West African countries. One of the most elaborate sets of such incentives is presented in Togo's investment code, where the range of available benefits is related to both the phase of development by eligible enterprises and the different national objectives that are to be pursued. Thus in terms of the development phase, setting-up assistance includes complete exemption from customs duty and value-added tax (VAT) on imported equipments, while operating aid includes complete exemption from profit tax for three years for all eligible enterprises, five years for SMEs, and seven years for enterprises processing local raw materials. In addition, exporting enterprises attract benefits in the form of complete exemption from corporate tax on turnover exported, as well as import duty waiver or duty-drawback with respect to imported inputs. Enterprises which create jobs receive tax allowance in respect of 50 per cent of the total wage bill of permanent Togolese employees; while the applicable pay-roll tax is applied at the rate of 2 per cent for five years (for enterprises located in zone 1), for seven years (zone 2) and two years (zone 3). In Niger, eligible enterprises receive tax and customs duty incentives during the investment phase and for five years during the operating phase. The Senegalese investment code offers similar benefits, i.e. exemption from duties and taxes on imported machinery and materials not produced in Senegal, exemption from VAT and exemption from employers' contribution to social benefits payable on the wages of Senegalese employees. These benefits are replicated in Guinea, where the period of exemption varies over time, from investment to production phase. In Benin, full exemption is granted on corporate taxes while waivers of import duties and VAT on imported materials are granted for five, seven or nine years, depending on the zone in which the enterprise is located. In the case of Côte d'Ivoire, a similar set of incentives applies to eligible enterprises, but the benefits increase with the amount invested.

The use of fiscal, financial and other incentives by West African countries as an investment promotion strategy remains strong, even though research evidence suggests that 'the fiscal investment incentives popular in developing countries have not been effective in making up for fundamental weaknesses in the investment climates' (Morisset and Pirnia, 2002).

3.5 Dispute settlement arrangements

National investment legislation specifies the relationship between private investors and various agencies of the host government. Both the interpretation and application of this legislation with regard to various aspects of the relationship may give rise to disputes which need to be resolved if the relationship is to be sustained and remain mutually beneficial. There are three broad classes of disputes: between sovereign states (i.e the host country versus the country of the private investor); between a sovereign state and the private investor; and between the private investor and another private party. Private party disputes are typically handled by the host country judicial system or through mutually acceptable commercial arbitration. Similarly, interstate disputes can be resolved via pre-agreed interstate arbitration arrangements. In the same way, disputes between the host country and a foreign private investor are usually resolved through mechanisms provided for in the host country's national investment legislation and/or mutually acceptable multilateral dispute settlement mechanisms.

Niger offers investment protection and dispute settlement mechanisms through its membership of the International Centre for Settlement of Investment Disputes (since 1966) and the Multilateral Investment Guarantee Agency (since 2002). Niger's investment code specifically offers the right to settle disputes resulting from the interpretation or application of the code through these international dispute settlement mechanisms. Senegal's investment code offers the same right. In this case, disputes are to be settled by competent Senegalese courts, except in the case of foreigners, who can access conciliation and arbitration procedures arising from mutual agreement between the two parties, or settle disputes under an investment protection agreement or treaties between Senegal and the state of which the natural or legal person involved is a citizen.

Both Benin and Guinea are members of MIGA, which provides them with an investment dispute settlement mechanism. In the case of Ghana, there are several vehicles through which investment disputes can be resolved. The Ghana Arbitration Centre was established in 1996 to facilitate arbitration and bolster investor confidence. The Ghana Investment Act also provides that disputes may be resolved through the rules of arbitration of the United Nations Commission on International Trade Law (UNCITRAL) or, where relevant, within the framework of bilateral investment agreements. Finally, Ghana is a member of MIGA, which provides similar services. Nigeria is also a party to several multilateral investment protection treaties, including the Convention on the

Recognition and Enforcement of Foreign Arbitral Awards (since 1958), the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (since 1965) and MIGA (since 1985). Mauritania's investment code gives an aggrieved foreign investor recourse to either national or international arbitration for the settlement of any disputes arising from the interpretation or application of the code. International arbitration or conciliation is permitted under any of the following mechanisms: bilateral investment agreements or treaties, the ICSID or an ad hoc tribunal constituted in conformity with the arbitration rules of UNCITRAL. In addition, Mauritania became a member of MIGA in 1996.

As argued above, the national investment legislation in each West African country constitutes the primary means through which the legal framework for investment is established. But all West African countries have also found it worthwhile to sustain and enhance the credibility of their national investment legislation by entering into both bilateral and multilateral investment protection agreements. Thus in addition to the multilateral mechanisms noted above, all West African countries have obligated themselves under the Lomé Convention (Articles 260, 261 and 262), which embodies principles for protecting European investment in the ACP countries. Furthermore, Article 78(3) of the Cotonou Partnership Agreement specifies that 'the Parties also agree to introduce, within the economic partnership agreement … general principles on protection and promotion of investments, which will endorse the best results agreed in the competent international fora or bilaterally'.

These multilateral and regional investment protection arrangements are complemented by a series of bilateral investment protection treaties which each West African country has signed with its key investment partner countries. For example, Senegal has in force bilateral investment agreements and treaties with Switzerland (1964), Germany (1966), Sweden (1968), the Netherlands (1981), Romania (1984), the UK (1984), Republic of Korea (1985) and the USA (1990). In the case of Ghana, investment promotion and protection agreements have been signed with most OECD countries as well as South Africa, Côte d'Ivoire and Egypt. Similar arrangements exist between Nigeria and France, Switzerland, the UK, the Netherlands, North Korea, China and Turkey. In the case of Mauritania, such arrangements exist with all the north African countries, other African countries such as Burkina Faso, Cameroon, The Gambia, Ghana, Guinea and Mauritius and several European countries.

Finally, the two dominant regional integration arrangements in West Africa, ECOWAS and WAEMU, have investment promotion and protection protocols under which every West African country is obligated to permit freedom of entry, establishment and operation for all enterprises from member countries and their investments. More specifically, these regional treaties commit their members to promoting and protecting intraregional investment by extending fair and equitable treatment to private investors, creating a predictable, transparent and secure investment climate and removing administrative, fiscal and legal restrictions to such investment.

3.6 Internalising foreign investment benefits

The countries of West Africa have moved quite strongly in the direction of progressively liberalising their foreign direct investment regimes. This has been accomplished essentially by offering more equitable treatment and protection to foreign investors. In the context of this progressive liberalisation, however, West African countries also appear to be aware that the build-up of domestic industrial, managerial, technological and entrepreneurial capabilities is critical both for successfully managing foreign investment and for deriving full benefits from its presence in their economies. Hence, they have generally chosen to retain the right to continue to make judicious use of certain selective interventions as a means of supporting domestic enterprises, technology creation and capacity building. This may explain the retention by some West African countries of some investment entry barriers (for example limited access to particular sectors and/or minimum investment requirement), restrictions on ownership and control and performance requirements targeted at ensuring that domestic enterprises and manpower assimilate advanced technologies and acquire technical and managerial skills from their interaction with foreign investors.

The continued use of selective investment restrictions may, however, have a more benign explanation. As the analysis above makes clear, liberalisation of investment policies in many West African countries began only in the late 1980s and early 1990s. This process normally takes time. It should not be surprising, therefore, that although the process remains in progress in many of these countries, some restrictions are still in place. These could eventually be eliminated as the process reaches its completion.

4

Bilateral and Regional Investment Arrangements and Treaties

Bilateral and regional investment agreements are important instruments for driving free and appreciable flows of foreign investment among countries and regions. Investment treaties contain a plethora of regulatory structures that are meant to define the terms of relationships between host countries and the investors concerned in conformity with specific international standard norms. An investment agreement states the obligations of each side involved in the agreement.

The minimum standard often expressed and expected in international investment laws states that a host country should ensure 'fair and equitable treatment', together with other relevant standards, as part of the protection due to foreign investment by host countries. This is supposed to be an 'absolute', 'non-contingent' standard of treatment in respect of cross-border flows of capital. However, unequal developments between developed and developing countries necessitate 'relative' standards, expressed in a number of existing bilateral and regional investment arrangements. The minimum standard is a norm of customary international law which governs the treatment of aliens by providing for a minimum set of principles which must be respected by the host when dealing with foreign nationals and their properties, regardless of domestic legislation and practices.

Substantive norms for the treatment of foreign investment contained in the World Bank guidelines on the treatment of foreign direct investment suggest that an overall legal framework which embodies the essential legal principles for promoting foreign direct investment is intended to be used as a complement to applicable treaties and other international instruments and as a possible source on which national legislation governing private foreign investment may draw. It thus recognises the right of each state to make regulations governing the admission of investments, and only encourages states to facilitate the admission of investments by nationals of other states. The guidelines also expect states to adopt an approach of open admission, possibly subject to a restricted list of investments which are either prohibited or require screening and licensing. By way of exceptions to the preferred open policy, a state may refuse to admit foreign investment on grounds of national security or in respect of sectors reserved by the law of a state to its nationals on account of the state's economic development objectives or strict exigencies of its national interest.

Matters relating to the entry and treatment of foreign investment and relationships with the host country are approached via treaties and agreements, the framework of which may be bilateral, regional or multilateral. Each of these options is addressed below.

4.1 Bilateral investment treaties involving West Africa and the EU countries

Bilateral investment treaties, the historical product of treaties of friendship, commerce and navigation (FCN), which form part of the wide range of provisions on bilateral economic, cultural and political co-operation, constitute to date the most important instrument for protecting foreign investment (UNCTAD, 2000). ECOWAS countries plus Mauritania entered into around 59 BITs with 14 EU countries between 1962 and 2000, 23 of which were agreed before 1980 (Table 4.1). Germany, the UK and Switzerland are the main EU partners with which ECOWAS countries have agreed BITs over the last three decades. All except four ECOWAS countries have a BIT with Switzerland or Germany.

Generally, BITs are characterised by a basic similarity in structure and substantive coverage. Core elements of various articles contained in existing BITs address basic provisions for stimulating trade and investment. Such provisions focus on the treatment of investment, including issues relating to entry, establishment, national and MFN treatment, investment facilitation, access to core sectors and markets, protection, promotion, taxation, free movement of investment-related payments and capital, including specific exceptions, and dispute settlement. The numerous bilateral treaties signed by the EU countries with members of ECOWAS contain various provisions and prescriptions that are related to the above core elements (Table 4.2).

The bilateral investment treaties that West African and EU countries have entered into cover the main areas of definition of investment, scope of application, investment promotion and investment protection, as well as dispute settlement procedures. The treaties between West African countries and the UK and Netherlands are broadly similar in many respects. They define investment (which covers investments made before and after the agreement) widely, to include movable and immovable property, mortgage rights, liens or pledges, shares and debentures, claims to money or to any performance under contract having financial value, intellectual property rights, technical processes, know-how and goodwill, and business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

Investment promotion and protection are also covered in the treaties. All the treaties oblige the contracting parties to encourage and create a favourable environment for their nationals or companies to invest capital in each other's territories depending on existing laws in their countries. The articles on promotion and protection further require parties at all times to provide fair and equitable treatment, including non-discriminatory full protection and security, for each other's investments. These agreements also make provisions for two of the important principles, MFN and national treatment. In effect, parties are to ensure that investment or returns of nationals or companies are not treated in a 'less favourable' manner than investment of a third country. Where special incentives to stimulate the creation of local industries are to be granted, these should not affect the investments of the other party to the agreement. In other words, exemption to national

Table 4.1 BITs involving West African and EU countries, 1962–2000

	West African countries pre-1980		West African countries 1980–2000	
EU partner	**West African partner**	**Effective date**	**West African partner**	**Effective date**
Austria			Cape Verde	1993
Belgium/Luxembourg			Mauritania	1983
			Liberia	1985
			Côte d'Ivoire	1999
Bulgaria			Ghana	1989
Denmark			Ghana	1995
France	Senegal	1974	Liberia	1982
			Nigeria	1991
			Ghana	1999
Germany	Senegal	1966	Ghana	1998
	Liberia	1967	Benin	1985
	Côte d'Ivoire	1968	Burkina Faso	1996
	Guinea	1965	Cape Verde	1993
	Niger	1966	Mauritania	1986
	Togo	1964	Mali	1980
	Sierra Leone	1966		
Italy	Côte d'Ivoire	1969	Ghana	1998
	Guinea	1964	Cape Verde	1997
Netherlands	Côte d'Ivoire	1966	Senegal	1981
			Ghana	1991
			Cape Verde	1992
			Nigeria	1994
Portugal			Cape Verde	1991
			Guinea-Bissau	1996
Romania			Ghana	1989
			Mauritania	1989
			Senegal	1984
Sweden	Senegal	1966		
	Côte d'Ivoire	1968		
Switzerland	Senegal	1964	Ghana	1993
	Liberia	1967	Cape Verde	1992
	Côte d'Ivoire	1962	The Gambia	1994
	Guinea	1963		
	Niger	1962		
	Togo	1966		
	Mauritania	1978		

Table 4.1 (continued)

	West African countries pre-1980		West African countries 1980–2000	
EU partner	**West African partner**	**Effective date**	**West African partner**	**Effective date**
Switzerland (continued)	Benin Burkina Faso Mali	1973 1969 1978		
Turkey			Nigeria	1996
UK			Senegal Ghana Côte d'Ivoire Nigeria Benin Sierra Leone	1984 1991 1997 1990 1987 1981

Source: Extracted from *Bilateral Investment Treaties*, UNCTAD

Table 4.2 Relevant provisions for investment in BITs involving EU and ECOWAS countries

Provisions	**UK-ECOWAS countries**	**Netherlands-ECOWAS countries**	**Germany-ECOWAS countries**	**Turkey-Nigeria countries**	**Denmark-Ghana**
Definitions	Article 1	Article 1	Article 8	Article 1	Article 1
Entry and access to sectors and markets	Articles 2, 12	Article 2		Article 2	
Standard treatment	Article 3	Article 1, 4	Article 2, 7	Article 2	Article 4
Protection	Articles 2, 4, 5	Articles 3, 6, 7, 8	Article 3, 5	Article 2, 3, 5	Article 3, 6, 7, 9
Promotion	Articles 2,3	Article 2	Article 1	Article 2,	Article 2
Facilitation	Articles 2, 3		Article 1, 5	Article 2	
Free movement and transfer of capital	Articles 6, 10	Article 5	Article 6	Article 4	Article 8
Pre-and post-admission treatments	Article 13	Article 15	Article 11, 13	Article 8	Article 14, 15
Taxation	Article 7	Article 4		Article 2	
Dispute settlement	Articles 8, 9	Articles 9, 12	Article 10	Article 6, 7	Article 10, 11
Exceptions to repatriation of capital and other relevant exceptions	Articles 6, 7			Article 4	Article 5

Sources: Various bilateral investment treaties treatment should not cause harm to the investment of the investors of the parties to the agreement. Another exception to national and MFN treatment is that the meaning of both types of treatment does not extend to preferences or privileges resulting from any existing or future customs union or similar international agreement or arrangement. The agreements with the Netherlands are more specific, enumerating areas of exceptions, including avoidance of double taxation, customs union, economic union or similar institutions.

The provisions on expropriation (though prohibited) and losses arising from unforeseen events such as wars require parties to pay 'compensations, restitution, indemnification or other settlements', employing national treatment and MFN principles. The treaties contain provisions for the settlement of disputes arising from the interpretation of the treaties which must first be settled by recourse to diplomacy, after which, if resolution at this level fails, the dispute should be referred to an arbitral or conciliation tribunal of the ICSID. The treaties also discourage the use of diplomatic channels to resolve disputes once they have been referred to the ICSID, apart from in exceptional cases.

The bilateral treaties between several West African countries (Mali, Mauritania, Benin, Cape Verde, Burkina Faso and Ghana) and Germany contain basic provisions relating to pre-admission and post-admission of investment. The treaties require the parties to promote and permit capital investment in each other's territories in accordance with domestic legislation and to accord 'just and equitable' treatment to such investments. These provisions are similar to the market access, MFN and national treatment principles. Also contained in the agreements are full protection and security clauses, as well as expropriation and subrogation clauses. An additional entry in the agreements, which concerns payments under guarantee pertaining to an investment to nationals or companies of the parties to the agreements, obliges the parties to recognise such payment.

Also addressed in some of the BITs are the possibility of territorial extension, which suggests that the provisions of the agreements may at the time of signature or any time thereafter be extended to territories for whose international relations a particular government, e.g. the UK, is responsible or as may be agreed between contracting parties in an exchange of notes. The amendment clause specifies that any amendment or revision to the agreements will be in writing and become effective at the confirmation by both parties in an exchange of notes. The duration and termination clauses also specify that the agreement shall remain in force for an initial period (e.g. ten years), after which it shall continue in force for another very short period, say 12 months, from when either party gives a written notice of termination to the other. Such a termination does not affect investments made before the termination of the agreement for 15 years following the date of termination.

4.2 Bilateral investment treaties and investment performance in West Africa

This section analyses the effect of BITs on the flow of investment into the ECOWAS countries. Country-level analyses show that the impact of BITs on the flow of FDI was ambiguous between 1980 and 2001 (Tables 4.3a, b). Mali signed a bilateral agreement on investment with Germany in 1980. However, in the following year FDI inflows were disappointing, exhibiting a negative trend. The value of FDI in Mali witnessed an explosive but unstable growth from 1983, three years after the signing of the BIT, to 2001, suggesting a considerable lag in FDI response to the BIT. In 1984, Senegal agreed a treaty with the Netherlands, and Sierra Leone signed a treaty with the UK, while Senegal signed two BITs with the UK and Romania. In terms of impact, FDI trends changed from being positive in the years when agreements came into force to being disappointing thereafter.

In the case of Liberia, two set of BITs were signed in 1982 and 1985 with France and Belgium respectively. The political crises and eventual prolonged war which broke out in the country prevent meaningful analysis of relationships between BITs and FDI performance. The agreements between Mauritania and Belgium, and Germany and Romania in 1983, 1986 and 1989 did not yield the kind of returns such sequential efforts may have targeted. The BITs agreed by Benin with Germany in 1985 and the UK in 1987 yielded a substantial positive impact observable from a few years after the agreements became operational. Ghana is perhaps the most prolific BIT partner among the ECOWAS states, with eight BITs between 1989 and 1999. The impact on the Ghanaian economy has been positive, but is not commensurate with the frequency of the initiation and signing of BITs.

The amount and pattern of FDI inflow did not change significantly following the four BITs signed by Nigeria with the UK in 1990, France in 1991, the Netherlands in 1994 and Turkey in 1996. Cape Verde, Côte d'Ivoire and The Gambia also witnessed mixed results, combining both positive and negative trends.

Table 4.3a Foreign direct investment, net inflows (current US$ million), 1980–1990

Country	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990
Benin	4.3	2.1	0	0	0	–0.1[a]	1.1	0.1[a]	0 6	2.1	62.4
Burkina Faso	0	2.4	1.9	2	1.7	–1.4	3.1	1.3	3.7	5.7	0
Cape Verde	–	0	0	0	0	0	0	2.8	0.6	0.2	0.3
Côte d'Ivoire	94.7	32.8	47.5	37.5	21.7	29.2	70.7	87.5	51.7	18.5	48.1
Gambia, The	0	2.3	0	0	0	0	0	1.5	1.2	14.8	0
Ghana	15.6	16.3	16.3	2.4	2	5.6	4.3	4.7	5	15[b]	14.8
Guinea	0.6	–1.3	–0.4	0.4	0.7	1.1	8.4	12.9	15.7	12.3	17.9
Guinea-Bissau	0	0	0	0	2.3	1.4	0.8	0.1	0.7	0.5	2
Liberia	0	0	34.8[a]	49.1	36.2	–16.2[a]	–16.5	38.5	0	0	0
Mali	2.4[a]	3.7	1.5	3.1	10.1	2.9	–8.4	–6	7.1	6.4	5.7
Mauritania	27.1	12.4	15	1.4[a]	8.5	7	4.5[a]	1.7	1.9	3.5[a]	6.7
Niger	49.1	–6.1	28.2	1.2	1.4	–9.4	17.6	14.8	6.9	0.8	40.8
Nigeria	–738.9	542.3	430.6	364.4	189.2	485.6	193.2	610.6	378.7	1,884.30	587.9[a]
Senegal	14.5	34.4[a]	28.1	–34.7	29.1[b]	–15.8	–8.4	–4	14.9	26.8	56.9
Sierra Leone	–18.7	7.5[a]	4.7	1.7	5.9	–31	–140.3	39.4	–23.1	22.4	32.4
Togo	42.7	10.2	16.1	1.4	–9.9	16.3	6.1	7.2	13	9.2	18.2

[a] 1 BIT signed
[b] 2 BITs signed
Source: *World Development Indicators*, World Bank, Washington, DC, 2004

Table 4.3b Foreign direct investment, net inflows (current US$ million), 1991–2001

Country	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Benin	120.8	77.6	1.4	13.6	7.4	28.6	26	34.7	39.3	64.3	131.2
Burkina Faso	0.6	3.1	3.2	18.4	9.8	16.9[a]	12.5	9.7	13.1	23.2	25.5
Cape Verde	1.7[a]	0.5[a]	3.6[b]	2.1	26.2	28.5	11.6[a]	8.8	53.3	21.1	0.7
Côte d'Ivoire	16.3	–230.8	87.9	78	211.5	269.2	415.3[a]	379.9	323.7[a]	234.7	245.7
Gambia, The	10.2	6.2	11.1	9.8[a]	7.8	10.8	12	23.7	49.5	43.5	35.5
Ghana	20[b]	22.5	125[a]	233	106.5[a]	120	82.6	55.7[a]	62.6[a]	110.3	89.3
Guinea	38.8	19.7	2.7	0.2	0.8	23.8	17.3	17.8	63.4	9.9	1.6
Guinea-Bissau	2.1	5.8	3.3	0.4	0	1[a]	11.5	4.4	8.6	22.9	30.1
Liberia	0	0	0	0	0	–132	15	16	10	11.5	12.5
Mali	1.2	–21.9	4.1	17.4	111.4	84.1	39.4	35.8	51.3	106.4	102.8
Mauritania	2.3	7.5	16.1	2.1	7	4.2	0.9	0.1	0.9	9.2	30
Niger	15.2	56.4	–34.4	–11.3	7.2	20	24.6	9	0.3	19.3	13.3
Nigeria	712.4[a]	896.6	1,345.40	1,959.2[a]	1,079.30	1,593.0[a]	1,539.40	1,051.30	1,004.80	930.4	1,104.40
Senegal	–7.6	21.4	–0.8	66.9	31.7	8.4	176.4	70.8	156.6	88	125.5
Sierra Leone	7.5	–5.6	–7.5	–2.9	–1.7	19	9.6	–9.8	6.2	4.9	4
Togo	6.5	0	–11.9	15.4	26.2	17.3	21	30.2	42.6	41.9	66.9

1 BIT signed
2 BITs signed
Source: *World Development Indicators*, World Bank, Washington, DC, 2004

BITs and bilateral flows of FDI

Analysis of FDI flow following the signing of BITs between Nigeria and specific EU countries can be a credible representation of the whole community, given that Nigeria is the largest recipient of FDI among the ECOWAS states. In terms of FDI performance, analysis of net FDI inflow from the UK following the BIT agreed between Nigeria and the UK displayed a disappointing trend, declining from US$63.7 million in 1990 to US$23.7 million in 2001. The only two years of significant respite were 1993 and 1998 (Table 4.4). The impact of the BITs agreed between Nigeria and France in 1991 and the Netherlands in 1994 can be analysed through proxy inflow from Western Europe as permitted by available data, showing a mix of successes and disappointments. In both cases, the trends observed may be related to the domestic political upheavals in the country in the early 1990s.

Table 4.4 Net capital flow from Europe to Nigeria, 1990–2001 (US$ million)

Years	UK	Growth rate	Western Europe	Growth rate
1990	63.7[a]		–103.4	
1991	42.8	–32.8	135.7[a]	231.2
1992	28.4	–33.5	37.9	–72.0
1993	160.8	465.1	998.2	2,530.9
1994	51.9	–67.7	–12.2[a]	–101.2
1995	38.0	–26.8	452.5	3,806.3
1996	15.0	–60.5	15.7	–96.5
1997	3.1	–79.2	19.3	22.8
1998	167.6	5,275.7	25.4	32.0
1999	14.4	–91.4	14.7	–42.1
2000	1.6	–88.9	8.3	–43.8
2001	23.7	1,375.1	6.5	–21.0

[a]One BIT signed

Source: Calculated from Central Bank of Nigeria, 2001

4.3 ACP-EU regional investment arrangements

The Lomé Conventions were one of the most comprehensive regional approaches to development co-operation between developed and developing countries. In principle, the agreements, especially the later versions, gave considerable priority to industrial co-operation. The last two agreements emphasised the financing and promotion of investment and private sector development in general. Before the process initiated by the ACP-EU in the Lomé Conventions, investment agreements were negotiated to meet specific needs, some of them simply political with no sense of purpose. Provisions for issues associated with investment in the Conventions ranged from industrial co-operation and the creation of the Centre for Industrial Development in Lomé I to support for investment in Lomé IV. Table 4.5 summarises the relevant provisions on investment and associated issues under Lomé.

Table 4.5 Provisions on investment and industrial development in the Lomé Conventions

Subject	Lomé I, 1975	Lomé II, 1979	Lomé III, 1984	Lomé IV, 1990 and 1995
Industrial co-operation	Articles 26–39			
Creation of the CDI	Articles 36			
Industrial development		Articles 65–82		
Investment promotion			Articles 60–74	
Investment protection			Articles 240–247	Articles 260–262
Financing of investment				Articles 263–266
Support for investment				Articles 267–272

Sources: Bheenick, 1997; Solignac-Lecomte, 2003

The Conventions contained various articles which set out specific guidelines and rules relevant to directing industrial co-operation and development, with the later versions targeting investment flows between the two groups involved in the agreements. Each of the Conventions were specific in term of focus, with Lomé I addressing industrial co-operation and having a very important component in the creation of the CDI for that purpose. Lomé II directed more attention to industrial development among the constituent countries of the groups involved. Lomé III covered industrial development in Articles 60–74, together with investment promotion, which was a special focus. Issues of investment protection also received special consideration in Articles 240–247 of Lomé III. Investment protection was further addressed in Articles 260–262 of Lomé IV. Greater concern for investment was expressed in Lomé IV, with Articles 258–272 dealing with various aspects of investment, including investment protection, financing of investment (Articles 263–266) and investment support (Articles 267–272).

Provisions of Lomé I–IV

The main aim of the Lomé Conventions was to promote and diversify ACP countries' exports with a view to speeding up their growth and development. The Conventions were regarded as one of the most far-reaching initiatives of regional development co-operation between the North and South. However, investment issues, though embedded in industrial co-operation components of the earlier versions, were not explicitly included until the last two Conventions, where financing and promotion of investment and private sector development were part of the specific provisions. In other words, Lomé I did not deal explicitly with investment flows. In Lomé II, the framework for investment development was set through the use of aid in the form of loans, grants and risk capital, with the EIB as the main channel through which capital funds would flow to ACP states. Lomé III was the first of the Conventions to include explicit provisions for the encouragement and promotion of private investment, the post-admission treatment of such investments in terms of fairness and equitability, and their protection and security.

Specifically, Lomé III contained investment promotion and protection clauses, set out in Articles 60–74, which commit the parties to implement measures to encourage participation of private sector investors in accordance with appropriate domestic laws and regulations which guarantee fair and equitable treatment to the investors. The Convention also required members to create and maintain a predictable and secure investment climate and to improve this while at the same time promoting effective co-operation to increase the flow of capital, management skills, technology and other forms of know-how. Both parties were to embark on measures that would facilitate a greater and more stable flow of resources from the EU private sector to the ACP countries through contributing to the removal of obstacles which impede ACP states' access to international capital markets and through encouraging the development of financial institutions to mobilise resources. Other steps required to promote investment included improving the business environment by fostering a legal, administrative and incentive framework conducive to the emergence and development of dynamic private sector enterprises, as well as strengthening the capacity of national institutions in ACP countries to provide range of services that increase participation in business activity.

Also stipulated in Lomé III were measures to promote private investments flows. These included organising discussions between interested ACP countries and potential EU investors on the legal and financial framework, investment guarantees and insurance offered by the former; on encouragement of the flow of information on investment opportunities through meetings, periodic information provision and the establishment of focal points; on provision of assistance to small and medium-sized enterprises in ACP states in the form of equity and loans; and on taking steps to reduce host country risk.

Lomé IV extended the provisions of Lomé III by including protection and financing of, as well as support for, investment. Articles 260–262 were basically focused on investment protection; the contracting parties, having recognised the need for this, affirmed the significance of concluding investment promotion and protection agreements that could also provide the basis for insurance and guarantee schemes. These agreements, however, should not prevent parties from negotiating other investment promotion and protection agreements with other countries as long as there was no discrimination between parties to Lomé IV or against each other in relation to third countries. This non-discrimination could be modified or adapted in accordance with changing circumstances, especially if such changes did not infringe the sovereignty of any of the parties to the Convention.

The investment financing part of the Convention, contained in Articles 263–266, specified the provision of financial assistance, made conditional on the investment protection provisions and insurance and investment guarantee guidelines, and targets directly productive projects, new investment and rehabilitation or utilisation of existing capacity. Some of the financing was expected to be undertaken through on-lending bodies which were responsible for selecting and appraising individual projects and administering the funds placed at the bodies' disposal under the terms of the Convention and by mutual agreement between the parties.

While investment promotion measures articulated financial assistance, including equity participation, technical assistance, advisory services, and information and co-ordination services, investment support in Lomé IV was provided through operational co-ordination, conducting studies of investment flows and the economic, legal or institutional obstacles that hampered investments, measures which facilitated private capital movements, joint financing, the access of ACP countries to international financial markets and the effectiveness of domestic financial markets. The studies also covered the activities of national and international systems of investment guarantees, and investment promotion and protection agreements between parties.

The Cotonou Partnership Agreement

The CPA contains four articles on investment. Articles 75 and 76 cover investment promotion; Article 77 concerns investment guarantees; and Article 78 relates to investment protection. The language of the agreement is sensitive and carefully crafted in facilitating language, using terms such as 'encourage', 'help', 'facilitate', 'support', 'disseminate' and 'promote'. The language of the agreement confirms that the non-reciprocal commitment on the part of the EU included in Lomé IV has been dropped.

Since the CPA was a transitional agreement between the end of the Lomé Conventions and the coming into force of the envisaged EPAs in January 2008, its provisions are not radically different from those contained in Lomé III and IV with regards to investment promotion, protection, financing and support. Its promotion measures were also similar, covering dialogue, co-operation and partnership and provision of information, as well as analysis of the progress of investment, in terms of the pre- and post-admission environment in host countries for private sector investment. Its investment finance and support provisions concern the granting of financial and technical assistance to support policy reforms, human resource development, institutional and other forms of capacity-building and measures to increase the competitiveness of the private real and financial sectors, apart from those which relate to advisory services, risk capital guarantees and loans from EIB resources. Equity participation, which is one of the conditions of investment financing, is limited to non-controlling minority holdings.

The need for investment protection is recognised in the CPA, which also affirms the significance of concluding investment protection agreements that may be a basis for insurance and guarantee schemes, as in Lomé IV. Article 15 of Annex II of the CPA requires the parties to take account of such principles as non-discrimination between investors of the parties and third countries; the right to request modification or adaptation of non-discriminatory treatment; agreement to study issues relating to legal guarantees; a most favoured investor clause; protection in cases of expropriation and nationalisation; transfer of capital and profits; and international dispute arbitration.

An interesting observation pertaining to the implementation of the CPA is the regional-bilateral mix of the approach adopted. The implementation of Article 78, containing agreements on investment protection, given in Article 15 of Annex II, will take the form of bilateral agreements. The text of the article is exactly similar in terms of content and provision to the standard bilateral treaty dealing with the same issue.

4.4 Regional investment agreements and FDI flows to West Africa

Investment inflow to the member states of the ECOWAS plus Mauritania has recorded significant but inconsistent growth since the initiation of the Lomé Conventions, especially Lomé III and IV, which were specific in terms of their provisions on investment. FDI inflow, which totalled US$298.9 million in 1984, grew by more than 300 per cent by 1990 (Table 4.6). Investment also grew very significantly from $894.1 million in 1990, when Lomé IV was signed, to $1,631.1 million when Lomé IV was revised in 1995. A clearer picture is given by average annual flows by periods of agreement. Average annual flows of FDI grew massively from $301 million in 1980–83 to $1,978 million in 1996–2000. Specifically, with the initiation and signing of Lomé III, the investment atmosphere witnessed an increase of more than 100 per cent to $739.7 million annually, and increased again to about $1,978.7 at the end of Lomé IVb. The total FDI flow to West Africa since 1980 amounted to a huge $24.5 billion, with an average West African country receiving as much as $1.5 billion over two decades, or about $76 million annually, representing about 30 per cent of the annual GDP of an average West African country.

Table 4.6 Foreign direct investment inflows to West Africa (current US$ million)

Year	FDI inflow
1980	–506.6
1981	659.0
1982	624.3
1983	429.9
Average 1980–83	301.7
Lomé III	
1984	298.9
1985	475.2
1986	136.2
1987	813.1
1988	478.0
1989	2,082.5
1990	894.1
Average 1984–90	739.7
Lomé IVa	
1991	948.0
1992	859.0
1993	1,549.2
1994	2,402.3
1995	1,631.1
Average 1991–95	1,477.92
Lomé IVb	
1996	2,112.8
1997	2,415.1
1998	1,738.1
1999	1,886.2
2000	1,741.5
Average 1996–2000	1,978.74
Cotonou Agreement	
2001	2,019.0

Source: calculated from *World Development Indicators*, World Bank, Washington, DC, 2004

5

International Institutions and Enterprise Development in West Africa

5.1 Introduction

As an integral part of the paradigm shift in development thought which has become increasingly apparent, particularly since the 1990s, many multilateral and regional development agencies and financial institutions have embraced enterprise development and a focus on the private sector as an important means of promoting economic growth and poverty reduction in the developing countries. This shift of emphasis applies not only generally, but also to the development support activities of these international institutions in West Africa. This chapter examines the enterprise development mandate of relevant international development institutions and reviews the instruments which they deploy to fulfil it. The private sector investment and related support services of these organisations in West Africa are analysed within the framework of their mandates and in terms of their relevance and effectiveness. The focus of the analysis then shifts to a review of the extent of competition and/or complementarity in the enterprise development investment and other support activities provided by the international institutions. Finally, the analysis suggests a number of options for extending the reach and enhancing the effectiveness of various ACP-EU instruments for investment promotion, protection and guarantee.

5.2 Enterprise development mandate

In reviewing the enterprise development mandate of multilateral and regional development agencies and financial institutions, it is useful to categorise them into three groups. These are the World Bank Group, the African Development Bank and the institutions associated with the ACP-EU relationship.

The World Bank Group

The World Bank Group serves, in terms of its broad mandate for enterprise development, as a catalyst in the private sector by bringing together technical and management expertise, financial resources and information to help local and foreign investors. Thus the Group's private sector support activities constitute an integrated strategy, which is directed at promoting sustainable development. The Group's lead agency in this endeavour is the International Finance Corporation, which was established in 1957 primarily to address the concern that while there was multilateral lending to and through governments, there was insufficient direct support for the private sector, particularly in the developing countries. Hence, the IFC was established to promote economic development in the low-income countries by encouraging private sector investment activities.

More specifically, the mandate of the IFC is to promote sustainable development of the private sector by using a market-based approach to assist private enterprise. This mandate is implemented in three basic ways: the provision of debt and equity finance to private sector projects; the mobilisation of large volumes of additional funding from other sources through co-finance and syndication arrangements; and by offering a broad range of advisory services and technical assistance to businesses.

Two additional institutional organs have been created by the IFC to bolster its investment activities in Africa: the African Project Development Facility (APDF) and the African Management Services Company (AMSCO). APDF was established in 1986 to help viable SMEs by providing them with independent project advice aimed at assisting in organising, diversifying and expanding their businesses. To accomplish this objective, APDF identifies beneficiary enterprises and works with their entrepreneurs from project preparation through to implementation. It offers three broad types of services in support of the development of competitive SMEs in Africa: business advisory services (BAS); enterprise support services (ESS); and skills development and capacity building (SD&CB) services. The second IFC advisory facility in Africa, AMSCO, was created in 1989. It focuses on helping to strengthen African enterprises by providing experienced managers and training local management teams. AMSCO's arrival on the scene signalled the recognition that the changes in the African private sector environment, especially following the upsurge in privatisation, call for more intensive management capacity building if the sharply rising needs are to be effectively met (IFC, 2004).

In addition to the IFC and its advisory facilities, another World Bank Group organisation has been established to address issues associated with the attraction of foreign direct investment. This is the Foreign Investment Advisory Service, whose main function is to assist governments in developing countries to improve the environment for FDI in their countries. In particular, FIAS advises governments on laws, incentives, strategies and institutional arrangements aimed at increasing the volume of foreign investment and enhancing the benefits generated in the host countries by this investment.

African Development Bank

Within the framework of its institutional mandate, private sector development is both a strategic objective as well as a key priority of the African Development Bank. As indicated in the ADB's *Vision*, private sector development is regarded as a major objective of its development activities. In fulfilment of this mandate, the ADB seeks to promote private sector development in several ways. For example, it supports specific improvements to the policy, regulatory and other elements of the enabling environment for private sector development through country dialogue and policy-based lending operations. It promotes the development of private sector institutions by assisting professional associations and chambers of commerce with a view to enhancing their capacity to respond to the local, regional and international challenges faced by the private sector. In addition, the ADB supports human capital development in the private sector through technical assistance aimed at facilitating transfer of skills, know-how and technology.

The ADB also seeks to strengthen the physical and financial infrastructure of African countries as a means of enhancing the productivity and competitiveness of their private enterprises; and it catalyses the inflow of financial resources through direct investment and financing activities, as well as by complementing the activities of private financiers and other development partners. The ADB established its private sector window in 1991 in recognition of the sector's important role in stimulating African economic growth and development and as an instrument for implementing its mandate.

In its broader private sector promotion and support activities, the ADB acknowledges that the development of SMEs is a key condition for promoting equitable and sustainable economic development in many African countries. This derives from their significant role in the economies of these countries. SMEs represent over 90 per cent of private enterprises in Africa and account for more than 50 per cent of employment and GDP in most African countries. Hence, SMEs have a crucial role to play in stimulating overall economic growth, expanding employment opportunities and contributing to poverty reduction. But while the provision of technical and financial assistance to African enterprises, and in particular to SMEs, is a central part of the ADB's mandate for private sector development, targeting SMEs is quite difficult. This is due to several factors, including the sub-optional capitalisation and capital structure of these enterprises, their poor management and limited technical skills, weak market linkages and alliances, and scarce business development services and associated networks. These characteristics and deficiencies result in an extremely high mortality rate of local African SMEs and an associated reluctance of local financial institutions to provide medium- to long-term risk capital for financing their development. In other words, implementing the ADB's mandate for private sector development requires designing appropriate financing instruments and mechanisms suitable for taking account of the special characteristics of SMEs.

ACP-EU institutions

Over time, support for the private sector and co-operation with private enterprises have evolved into an integral and increasingly important part of the development co-operation between the EU and the ACP countries. This evolution parallels the recognition of the private sector as the engine of growth and provider of employment in the ACP countries and hence as a sector which has a key role to play in poverty reduction.

The process began with the Lomé Conventions, which gave considerable priority to industrial co-operation and to the financing and promotion of investment, as well as to private sector development generally (Bheenick, 1997). In particular, Articles 26–39 of Lomé I specified various elements of industrial co-operation between the EU and ACP states. More specifically, Article 36 provided for the establishment of the Centre for the Development of Industry (CDI). Lomé II directed even more attention to this subject; its Articles 65–82 were concerned with various aspects of industrial development. The provisions of Lomé III also went further. The industrial development aspects of co-operation were covered in its Articles 60–74, while investment promotion constituted the subject matter of Articles 240–247. Finally, Lomé IV amplified the general concerns much more concretely by devoting specific sections to the three main components of investment co-operation. Its Articles 260–262 dealt with investment protection, while financing of investment was covered under Articles 263–266 and co-operation on support for investment was taken care of by Articles 267–272.

The tradition of giving a key role to the private sector in the EU-ACP development co-operation established under Lomé has been carried over into the Cotonou Partnership Agreement. Under the parts of the CPA that deal with development finance co-operation, Chapter 7 is devoted to investment and private sector development support. In particular, Article 75 recognises the importance of private investment co-operation and acknowledges the need to take steps to promote such investment. Article 76 focuses on investment finance and support and specifies that 'co-operation shall provide long-term financial resources, including risk capital, to assist in promoting growth in the private sector and help to mobilise domestic and foreign capital for this purpose'. Article 77 covers co-operation with respect to investment guarantees, while Article 78 does the same in the area of investment protection.

In broad terms, the key areas of EU intervention in support of private sector development in ACP countries in the framework of ACP-EU co-operation include the creation and maintenance of a favourable environment for private sector development, promotion of investment and its financing, and technical support to individual enterprises. A wide variety of instruments of intervention and support for private sector development are available under the ACP-EU co-operation arrangement. These include the financing instruments of the EIB, EBAS, the CDE and PROINVEST.

Centre for the Development of Enterprise

The Centre for the Development of Enterprise is a jointly staffed ACP-EU institution, created by the Cotonou Agreement and financed by the European Development Fund (EDF). Its objective is to ensure the development of ACP enterprises and professional organisations in the private sector. It has a mandate to provide rapid and effective support aimed at assisting the creation, expansion, diversification and restructuring of ACP enterprises which have good prospects for growth, profitability and significant development impact (CDE, 2001). It is important to note that the CDE started life, in 1977, as the Centre for the Development of Industry, with a mandate to provide incentives for the development of small and medium-sized industrial enterprises in the ACP countries. During 1978–1985 its support to the private sector focused initially on seeking partnerships between European and ACP companies. This focus was broadened to include direct technical, commercial and other non-financial assistance for these enterprises. When the CID was transformed into the CDE in 2000 after the signing of the Cotonou Agreement, its mandate was further refined to focus on boosting the competitive position of ACP enterprises by extending support to all private corporate sectors and not just manufacturing (as under the CDI), lending support to joint initiatives involving ACP and EU business operations, providing support for strengthening the capabilities of intermediary organisations and other ACP service providers, and increasing the level of aid channelled through qualified intermediaries (i.e it moved from 'retail' to 'wholesale' assistance). The intermediary institutions include trade and sectoral business associations and consultancy firms. In implementing its mandate, the CDE also relies on a network of correspondents and representatives (made up of regional and local banks, national co-operative agencies and other private sector support agencies) to provide its customers with services which reflect their specific needs and the constraints faced in the countries in which they operate.

European Investment Bank

The European Investment Bank, as the development bank of the EU, serves as the primary institution through which private sector investment support to ACP enterprises is offered in the framework of ACP-EU co-operation. The EIB has been a development partner of the ACP countries for many years through under the Lomé Conventions; this co-operation has been substantially expanded under the CPA (EIB, 2002). As the main mechanism for facilitating the expanded scope of co-operation, the Investment Facility (IF) of the EIB was launched in June 2003 (EIB, 2003). The IF's primary purpose is to support economic development by investing in and financing, on market-related terms, the private sector in ACP countries and to finance commercially-run public utilities, especially those responsible for key economic infrastructure. Its mission is to be willing to invest in situations where private sector investors are reluctant to do so, and thereby fill the gaps left by other market participants.

European Business Advisory Services

The European Business Advisory Services scheme is an ACP-wide co-operation arrangement that gives technical and managerial advice to SMEs on a cost-sharing basis. It supports the supply of business development services to private sector enterprises and associations. EBAS supports projects such as consulting assignments and related activities that are likely to generate short-term and sustainable results. Activities that are eligible for support include interventions aimed at reinforcing quality and acquiring international recognised quality certificates, accessing new markets, optimising production, designing and marketing new products, improving management and promoting goods and services.

PROINVEST

The aim of PROINVEST is to support investment and co-operation on a regional basis, and thereby strengthen the competitiveness of the private sector and of the economy as a whole. It is targeted at reinforcing the weak investment environment in the ACP countries by strengthening ACP institutions and organisations through its Institutional Strengthening Facility (ISF) and by undertaking vigorous investment promotion programmes in selected sectors through the Key Sector Support Facility (KSSF). The demand-driven and cost-sharing ISF focuses on developing skills of intermediary organisations to play an active role in the improvement of the investment environment. Its private-public dialogue component assists ACP intermediary organisations to formulate, develop and promote policy changes aimed at improving the investment environment; its business development services component helps ACP intermediary organisations and investment promotion agencies to improve their professional skills and extend the range of their services. Its company matching initiative works to develop the capacity of ACP intermediary organisations to organise and promote partner-matching events between the EU and ACP companies. The KSSF represents an active investment promotion process which focuses on creating inter-enterprise partnership agreements. PROINVEST's basic aim is to make it easier to promote investment and partnership agreements between North–South enterprises. In addition, the programme seeks to improve business back-up structures with know-how, a better approach to markets and funding sources for ACP enterprises in relation to their European partners.

5.3 Private sector investment and support services

In implementing their various mandates in support of private sector development discussed in section 5.2, the various multilateral, regional and ACP-EU institutions provide a range of investment, financial and non-financial support services. The mix of these services, the extent to which they are provided and the recipients of the services provided differ across the various institutions. This section focuses its analysis on similarities and differences with respect to each of these dimensions.

Multilateral and regional institutions

The key multilateral and regional institutions actively involved in providing support for private sector development in West Africa include the IFC and FIAS, on the one hand, and the ADB, on the other. IFC support for private sector development in West Africa is guided by a set of priorities that include the revival of extractive industries through increased investment, developing SMEs, deepening the region's financial markets, putting existing industrial assets to more productive use and developing the region's physical infrastructure (Crystal, 1997).

While these priorities broadly guide IFC support activities in the region, they recognise the characteristics of West African enterprises. There is a prevalence of SMEs in West Africa, which typically require smaller amounts of financing than larger firms. Second, meeting the special financial needs of these smaller firms often requires the establishment of special investment funds and financing arrangements. In order to accommodate these characteristics, the IFC has taken concrete steps to modify its traditional direct financing arrangements in at least two ways. It has placed full-time representatives in several country locations in the region with a view to developing a fuller understanding of the investment financing needs of the domestic private sector in each country, cultivating relationships with the relevant private and public sector officials and stakeholders and working continually with clients to develop viable projects that may attract support. In addition, the IFC has created special funds dedicated to supporting smaller scale investments in the region. Thus the IFC has supported private enterprises in West Africa (as well as in other parts of sub-Saharan Africa) through the African Enterprise Fund (AEF). This fund is designed to provide debt and equity financing for projects which typically cost less than US$5 million, resulting in IFC funding support of between $100,000 and $1.5 million. More than 50 per cent of the projects supported in sub-Saharan Africa since 1990 have been funded through the AEF.

Table 5.1 provides data on the distribution of the investment portfolio of the IFC in West Africa in terms of cumulative gross commitments as of 30 June 2004.

Table 5.1 International Finance Corporation investment in West Africa, 30 June 2004

Country	Number of enterprises	Cumulative commitment (US$ 000)		
		IFC	Syndications	Total
Benin	8	9,939	–	2,939
Burkina Faso	6	3,064	–	3,064
Cape Verde	5	10,009	–	10,009
Côte d'Ivoire	40	265,016	70,964	335,980
Gambia, The	8	6,943	–	6,943
Ghana	40	292,609	272,000	564,609
Guinea	9	33,684	–	33,684
Guinea-Bissau	4	7,246	–	7,246
Liberia	3	12,703	–	12,703
Mali	18	93,781	40,000	133,781
Mauritania	10	51,692	9,503	61,194
Niger	1	2,493	–	2,493
Nigeria	52	459,329	113,155	572,484
Senegal	19	100,260	12,398	112,658
Sierra Leone	4	29,186	–	29,186
Togo	7	18,600	–	18,600
Total	234	1,389,554	518,020	1,907,574

Source: IFC (2004)

Table 5.1 shows that up to June 1994 a total of 234 enterprises had been financed in West Africa with a total sum of approximately $1.91 billion. Much of this financing (72.8%) was made from IFC funds and the rest (27.2%) was derived from syndications. The distribution of enterprises supported by the IFC is generally skewed in favour of West Africa's largest economies. Thus the top three recipient countries, in terms of the number of enterprises financed, accounted for more than half (56.4%) of the total number, with Nigeria (22.2%) in first place, closely followed by Côte d' Ivoire (17.1%) and Ghana (17.1%). The distribution is further skewed in favour of the same set of countries in terms of total cumulative commitments by the IFC, as well as commitments through syndications. In relation to the total amount invested, the three top countries received 77.2 per cent, which was distributed as follows: Nigeria (30%), Ghana (29.6%) and Côte d'Ivoire (17.6%). In terms of the IFC's own funds, these three countries accounted for 73.3 per cent, with Nigeria taking 33.1 per cent, followed by Ghana (21.1%) and Côte d'Ivoire (19.1%). Only six of the 16 countries in West Africa have benefited from funding through IFC-related syndications. Over half of all syndicated funds (52.5%) were invested in Ghana. Other significant recipient countries include Nigeria (21.8%), Côte d'Ivoire (13.7%) and Mali (7.7%). Overall, it can be concluded that the distribution of IFC investment support for the development of private enterprises in West African countries broadly reflects the relative size of the countries' economies, and this in turn also largely corresponds to the volume of activities of their private sectors.

While the IFC offers investment financing support for the development of the private sector, the FIAS provides non-financial support in the form of study-based advice. Thus the FIAS offers services that are aimed at helping client governments to attract FDI. What the the IFC offers is done at the request of the client government and is based on issues identified and agreed to by both parties as being relevant to the needs of the specific country. Studies which form the basis of FIAS policy advice cover a wide range of issues. For instance, the FIAS can undertake diagnostic studies to identify the main policy impediments which constrain productive FDI in a country. It can also study administrative and other barriers that hinder investment, review the competitiveness of the system of investment incentives and examine the impact of a country's legal and regulatory environment on FDI. In addition, the FIAS can help to design investment promotion institutions and formulate their strategies. Finally, the FIAS has the expertise to help countries design implementable frameworks for measuring the impact of FDI on various aspects of their economies.

Since its establishment in 1985, the FIAS has worked with the governments of around 120 countries. Every country in West Africa has requested its services in support of their attempts to attract FDI. Table 5.2 shows that the FIAS carried out 67 study and advisory projects in West African countries between the late 1980s and 2004. Senegal stands out as the most frequent client of FIAS in the region, accounting for 11 (16.4%) of these projects. Other active users of FIAS services over this period include Ghana, with seven projects, Guinea-Bissau and Mauritania, both with six projects, and Burkina Faso, Cape Verde and Nigeria, each with five projects. At the bottom end of the spectrum in terms of the frequency of utilising FIAS services within the region over the same period are Benin, Côte d'Ivoire and Liberia, with only one project each, The Gambia and Togo, with two projects each, and Guinea, with three. In addition, the FIAS has carried out four regional projects over the period.

Among these projects, the most popular have been those analysing the administrative and related barriers inhibiting foreign investment flows and those reviewing investment policy. Each of these two types of studies accounts for 17 (25.4%) of the total. Hence, taken together, these studies account for slightly more than half of all FIAS studies in West Africa. Other topics which have attracted significant attention include diagnostic studies (13 or 19.4%), institutions (8 or 11.9%) and incentives (7 or 11.3%).

Table 5.2 Foreign Investment Advisory Service projects in West Africa, 1987–2004

Country	Total no.	Diagnostic barriers	Administrative policy	Investment	Competition strategy	Incentives	Promotion	Institutions
Benin	1	2	–	–	–	–	–	–
Burkina Faso	5	1	2	1	1	–	–	–
Cape Verde	5	–	2	–	–	1	1	2
Côte d'Ivoire	1	–	–	–	–	–	–	1
Gambia, The	2	2	–	–	–	–	–	–
Ghana	7	1	2	2	–	–	1	2
Guinea	3	2	–	1	–	–	–	–
Guinea-Bissau	6	–	2	3	–	2	–	–
Liberia	1	1	–	–	–	–	–	–
Mali	4	1	1	–	–	1	–	1
Mauritania	6	1	2	2	–	1	–	–
Nigeria	5	1	2	–	–	–	–	1
Senegal	11	–	4	1	–	3	1	2
Sierra Leone	4	1	–	3	–	–	–	–
Togo	2	–	–	1	–	–	1	–
Regional	4	2	–	3	–	–	–	–
Total	67	13	17	17	1	7	4	8

Source: IFC, *Annual Report 2004*, Washington, DC, 2004

The African Development Bank is the premier regional institution with a significant mandate for supporting private enterprises in West Africa. The ADB views the existence of efficient local financial institutions and markets as a crucial condition for private sector development; it regards assistance to local financial institutions as its key area of activity in the region. This assistance is expected to enable local banks to on-lend to their clients, which are private enterprises. In addition, the ADB provides direct financial assistance to enterprises through several long-term financing instruments. This assistance takes the forms of debt (up to US$3 million but usually not more than 40 per cent of total project cost) and equity, which is limited to 25 per cent of the share capital. Direct financial assistance to private enterprises particularly supports activities in agribusiness, tourism and industrial modernisation, which are based on strong linkages with external markets. It also supports extractive industries (mining, oil and gas) which induce regional integration and activities (especially social infrastructure) which enhance the development of local communities. During 2002–2004, the ADB extended lines of credit for a total of $430 million with respect to projects for private sector development. Lending to financial services for on-lending to private enterprises accounted for 57 per cent of the total amount.

ACP-EU institutions

Among the ACP-EU institutions that provide support for the development of the private sector, there is a division of labour between the EIB, which offers investment support, and the CDE and PROINVEST, both of which provide non-financial assistance.

EIB funding goes, in principle, to support investment in all key sectors of the economy. In practice, around 25 per cent of this funding has gone to small and medium scale investments, largely indirectly through EIB's support of local financial institutions. In this process, EIB provides credit (in the form of global loans) to commercial banks or development finance institutions which then on-lend to their clients, based on their own credit judgment and according to criteria agreed with the EIB. The granting of global loans to commercial banks which, in turn, provide medium- and long-term finance to SMEs operating in various sectors of the economy is expected to generate several benefits. For instance, it assists in diversifying the local financial sector's funding sources, while also strengthening support for local private enterprises through the injection of long-term financial resources which are scarce on the local capital market. Other forms that EIB's risk capital operations can take include various types of individual loans to productive private enterprises and revenue earning infrastructure, and direct or indirect equity participation in financial intermediaries. Equity participation by the EIB in regional funds is done for the purpose of making equity and quasi-equity investment in SMEs which demonstrate strong potential for profitable growth. This provides capital and assists in strengthening the management skills of the SMEs and their capacity to carry out and efficiently implement new investment projects.

Risk capital funds of about €1.1 billion were provided under Lomé IV by the EDF to the EIB for investment in the ACP countries. Under the Cotonou Agreement, the funds to be managed by the EIB, on behalf of the EDF, for investment in the ACP countries increased sharply to €2.2 billion over the five-year period 2002–2007. In addition to the EIB's own resources of €1.7 billion, these resources constitute the capital endowment of the investment facility, managed according to market-oriented principles as a revolving fund. Under Article 3 of the internal agreements establishing the tenth EDF adopted by the EC on 17 July 2006, €286 million was allocated to overseas countries and territories (OCTs) for the period 2008–2013, of which €30 million was allocated to the EIB to finance the investment facility. Within the same period, the EIB will not provide any of its own resources for the 'pool' of funds. The use of these resources is guided by a development policy which places even greater emphasis on private sector investment, revenue-earning infrastructure in both public and private sectors, and financial sector development. Finally, the associated lending operations are designed to have maximum leverage effect in terms of attracting private financiers.

By the end of 2001, the EIB had provided over €7 billion in support of enterprise development in the ACP countries, although as much as €1.9 billion of this total was committed between 1997 and 2001 (EIB, 2002). During the ten-year period 1989–1999, the EIB signed up to around 300 risk capital operations involving approximately €1.5 billion in the ACP countries. In West Africa, EIB financing between 1999 and 2003 amounted to just over €336 million (EIB, 2003). Table 5.3 presents data on the distribution of this amount among beneficiary countries in the region.

Table 5.3 EIB financing in West Africa 1999–2003 (€ million)

Country	Total	EIB funds	EDF funds
Benin	26.1	–	26.1
Burkina Faso	32.0	–	32.0
Cape Verde	25.0	20.0	5.0
Côte d'Ivoire	–	–	–
Gambia, The	–	–	–
Ghana	23.5	–	23.5
Guinea	12.0	–	12.0
Guinea-Bissau	–	–	–
Liberia	–	–	–
Mali	5.7	–	5.7
Mauritania	60.2	30.0	30.2
Niger	5.0	–	5.0
Nigeria	5.0	–	5.0
Senegal	126.0	72.0	54.0
Sierra Leone	–	–	–
Togo	–	–	–
Regional	15.6	–	15.6
Total	336.1	122.0	214.1

Source: European Investment Bank, 2003

EIB financing in West Africa over this period represents 20.7 per cent of its commitments in Africa and 16.7 per cent of those in all ACP countries. A large proportion of the commitments in West Africa comes from EDF funds that are managed by the EIB; very little of the EIB's own funds were invested in the region. Furthermore, even this small portion was invested in only three countries (Senegal, Mauritania and Cape Verde), with Senegal accounting for 59 per cent. Except perhaps through the regional funds, six West African countries (Côte d'Ivoire, The Gambia, Guinea-Bissau, Liberia, Sierra Leone and Togo) received no EIB financing during this period. In addition, EIB financing was heavily concentrated. Nearly 70 per cent of the total financing in West Africa was accounted for by the top three country recipients, Senegal (37.5%), Mauritania (17.9%) and Burkina Faso (9.5%). The EDF funds component of total EIB financing was less concentrated in its distribution, but even here the top three countries accounted for 54.2 per cent of the total; they were Senegal (25.2%), Burkina Faso (14.9%) and Mauritania (14.1%). In both cases, the distribution does not appear to reflect the relative sizes of the individual West African economies or the size of their SMEs.

A comprehensive evaluation of risk capital operations managed by the EIB in ACP countries over the period 1989–1999 offers insights into several important aspects of the EIB's role in supporting the development of private enterprise (EIB Operations Evaluation Department, 2000). It found, for instance, that the use of EIB's risk capital has been essential in offsetting some countries' lack of credit worthiness and noted a significant change in the lending policy of beneficiary financial institutions from only providing limited overdraft facilities to offering short- and medium-term loans for private enterprises. In addition, the evaluation found the development impact of global lending to have been 'extremely important', and that the successes achieved with global loans have far 'surpassed expectations' in terms of their development impact. Hence, it concluded by pointing to the significant direct development impact of many of the EIB-supported projects and the strategic relevance of EIB support for the beneficiary economies.

As indicated earlier, the other ACP-EU institutions with a mandate for supporting private sector development in the ACP countries provide non-investment services. The CDE works together with its network to make a contribution in two areas. One of these is technical, i.e. the identification of consultants, partners, markets and projects for ACP private enterprises, as well as gathering economic, technical and commercial information useful to these enterprises. The other area involves the CDE's assistance to ACP private enterprises in tapping into financial networks to meet their demands and in funding arrangements that best reflect their project profiles. More specifically, CDE activities can be categorised into three groups. The first is intervention in terms of assistance to individual enterprises. In this case, the CDE can contribute, in general, up to a maximum of two-thirds of the total cost of an intervention, subject to a maximum of €100,000 per annum. The second is assistance for ACP intermediary organisations, where the CDE's contribution is determined on a case-by-case basis and it is expected, in any case, that the CDE will share the cost with the organisation which receives the assistance. The third area is assistance for consultants and advisory companies. In this case, the CDE's contribution is limited to two-thirds of the total cost of the intervention, subject to a maximum of €50,000 per annum. In addition, the CDE may carry out studies, in collaboration with other organisations, on joint programmes for investment promotion and other assistance to private enterprises. In this case, CDE participation does not normally exceed 50 per cent of the total cost of the intervention.

PROINVEST is funded by the EDF, which has committed a total budget of US €110 million over seven years from 2003. Its activities are aimed at reinforcing the weak investment environment of the ACP countries by strengthening their relevant institutions and organisations, and by supporting investment promotion programmes. In 2003, the first full year of the PROINVEST programme, over 80 per cent of the approved operational budget of €10.3 million was committed. The relative importance of each of the two branches of PROINVEST's operational focus may be deduced from the budget commitment allocations. The institutional strengthening component, which accounted for about 53 per cent of budget commitments, was obviously more important than the investment promotion programmes, which attracted approximately 38 per cent of the total commitment.

5.4 Competition and complementarity in enterprise development support

While various multilateral, regional and ACP-EU institutions have been shown to be active in providing various types of support to private sector development in West Africa, it is useful to examine whether these institutions are competing with or complementing one another in the provision of support and whether they are competing with or complementing similar private sector development support services offered by private sector financial and investment institutions in West Africa. Answers to these questions may suggest key elements of an appropriate mechanism of partnership between private sector institutions in the region and the multilateral, regional and ACP-EU institutions in the provision of adequate and efficient private sector development support services in West Africa.

To the extent that the multilateral, regional and ACP-EU institutions that offer support for private enterprise development in West Africa seek to assist the same category of SMEs, essentially an inherent degree of competition among them is probably unavoidable and is not necessarily a bad thing. This competition gives the recipients of assistance an opportunity to make choices based on comparative cost-benefit analysis. It should also induce the providers of support to improve their efficiency. In spite of this inherent tendency to compete, however, there is also a strong commitment among the support-providing institutions to collaborate and thus complement one another.

For instance, the IFC actively collaborates with ACP-EU institutions and with the ADB in its private sector development support activities in West Africa, particularly through co-financing. The establishment of the APDF was the result of a joint initiative by the ADB, the UNDP and its prime mover, the IFC. Similarly, in implementing the technical assistance side of its private sector development mandate, the ADB co-funds, with the IFC, specific programmes such as the AMSCO and APDF to assist local entrepreneurs in the area of project formulation and management. In the same way, the FIAS is a joint service of the World Bank and the IFC and its staff call on the experience of the entire World Bank Group (which includes MIGA and ICSID) in designing co-ordinated assistance packages for client countries. In providing such assistance, the FIAS benefits from IFC and World Bank funds, as well as from donations from more than 12 bilateral and multilateral agencies.

The key ACP-EU institutions are similarly integrated into the same network of complementary alliances. In particular, since the EIB aims at being a lever or catalyst for financing from others, it co-operates closely in co-financing with the private banking sector, the World Bank Group and the other main international and national development finance institutions, especially those of EU member states. In particular, EIB financing of major infrastructural projects with risk capital has been largely undertaken in association with co-financiers on whose policies and technical expertise it has often relied.

According to the CDE (2001), its roles are carefully designed so as to avoid overlapping and duplication of efforts with other service providers. Subject to this, the CDE combines its actions and measures with those of other key players in the international community by working closely with various public and private bilateral and multilateral financial institutions. In its own case, PROINVEST maintains complementary relationships and synergies with the CDE and works closely with other EU programmes in the ACP countries. It may be difficult, however, to establish the absence of any overlapping or duplication in the activities of the CDE and PROINVEST.

A recent evaluation of EIB work in the ACP countries raises some concerns regarding complementarity (EIB Operations Evaluation Department, 2002). It is suggested that the relationships and division of labour between the EIB and other support institutions have not always been appropriate, particularly in co-financing arrangements. For example, in some cases the EIB has had little strategic input into the preparation of co-financed projects. As a result, contentious policy issues, which are largely irrelevant to specific elements of certain projects financed by the EIB, have caused unnecessary problems for the institution. In particular, the EIB has experienced difficulties with some aspects of co-financing with the World Bank and has thus found itself financing part of an unviable project. Based on this finding, the evaluation report recommends that:

> *The EIB should co-finance with the World Bank Group (or other multilateral donors and investors) only when its contribution is expected to have a distinct development impact or it can make a strategic input … or it can exert leverage to ensure the sustainability of its components of the project.*

Apart from the possibility of overlaps and duplications in the activities of the CDE and PROINVEST highlighted above, there is some concern that the fragmented nature of the support provided by the ACP-EU institutions may constitute a significant weakness in their assistance for private sector development. In this context, Bheenick (1997) notes that 'a plethora of agencies', including the EDF, CDE, EIB and PROINVEST, is involved in the various stages of an investment decision, stretching from initial project identification to investment financing and project implementation. It is argued that the fragmented approach to investment facilitation which characterises the activities of the ACP-EU institutions constitutes a major bottleneck, and that a more integrated package of support services may enhance the use of these services and consequently increase investment in the ACP countries. In the context of such an integrated approach, 'all the various facilities available to support investment, ranging from grants for initial studies and exploratory discussions to term credit for investment' would be delivered at a single point (or 'one-stop shop') in the beneficiary country.

Partnerships already exist between private sector intermediary institutions in the region and various ACP-EU support institutions, and these could be strengthened into an appropriate mechanism that can serve as 'one-stop shops' in various ACP countries. Virtually all these support institutions extend their services to individual private enterprises through local or regional intermediary institutions. The EIB evaluation report suggests that its global loans made to local financial intermediaries which, in turn, provide medium-term sub-loans to individual private enterprises constitute a significant proportion of its risk capital operations. The report concludes that this lending vehicle has not only achieved significant success, but has also been associated with concrete development impact. Similarly, the provision of equity and quasi-equity support for regional funds by the EIB enables these funds to invest in SMEs in the ACP countries. Examples of this support modality include EIB investment of €6 million in the West Africa Enterprise Fund (WAEF) in 1999, aimed at enhancing WAEF's support through the provision of equity and quasi-equity investment in private sector companies in West Africa; participation to the tune of €8.75 million in the Aureos West Africa Fund in 2003 as a means of providing equity to private sector SMEs in West Africa; and investment of €25 million in the equity of the West African Development Bank in 2004 for the financing of small and medium-scale private sector ventures of regional interest in WAEMU countries. These examples help to establish the point that appropriate intermediary agencies exist in the region and in individual countries that can be strengthened, where necessary, to provide the integrated services of 'one-stop shops', provided the ACP-EU institutions can be reformed along the lines suggested by taking an integrated approach to the delivery of investment facilitation support services.

5.5 Does EIB funding 'crowd out' local resources?

An important policy issue which needs to be addressed is whether or not EIB funding of private sector enterprises in West Africa 'crowds out' local resources and, if so, the extent to which this may occur. This arises because there is some evidence that some amount of crowding out may have occurred in some ACP regions. An analysis of this issue requires a careful delineation of the various vehicles through which EIB funds are allocated in West Africa.

For projects involving investments of over €3 million, the EIB generally intervenes directly. Such projects are broadly of two types: projects of well-established private enterprises or those of 'commercially operated' public sector (generally infrastructure) organisations. For projects where investment is less than €3 million, the EIB operates through two types of vehicles. One consists of credit lines provided in the form of global loans to local financial institutions for on-lending to final private enterprise beneficiaries. The other consists of EIB's participation, alongside other development finance institutions and local banks, in the capital of venture capital funds which have been created to specialise in investing in the equity of new SME companies, or those under expansion or being restructured that offer good development potential.

There are several examples of both direct and indirect EIB funding activities in West Africa. Taking the direct funding mechanism first, it may be argued that this route is likely to be more susceptible to crowding out. This is because both the private and the 'commercially-operated' public sector enterprises tend to be large (to qualify for direct EIB financing) and therefore perhaps in a better position to attract alternative private local resources. To establish this point empirically, it is necessary to examine some examples of both types of large enterprises or projects. The first example is SONABEL III, whose beneficiary, the national electricity company of Burkina Faso, received EIB financing of €15.25 million in support of a project with a total cost of €77.1 million. The project consists of the 338 km electrical interconnection between Côte d'Ivoire and Burkina Faso and is the logical continuation of an activity which the EIB had previously financed. Perhaps more significantly, the project will support the privatisation process in Burkina Faso's energy sector. Thus, even though the project is large, its chances of attracting private local finance prior to the privatisation of the sector must be regarded as minimal. Hence, EIB financing is unlikely to constitute any significant crowding out of local resources. The Dakar-Ziguinchor Sea Link is another example of a large 'commercially-operated' public sector project which has received an EIB loan of €6 million to cover part of its total cost of €22.5 million. This project consists of the acquisition of a Ro-Ro ferry for passenger and goods transport between Dakar and the Casamance region and related port works. The project will connect the two halves of Senegal, and the operation and management of the ferry will be entrusted to a private company. As in the case of SONABEL III, the quasi-public features of this project would tend to diminish its ability to elicit local capital financing.

The next three examples are large private sector enterprises in West Africa which have received EIB funding support for their projects. The first is Econet Wireless Nigeria, whose project involves the construction and operation of a GSM mobile telephone network in Nigeria. The project has a total cost of €1 billion and it received EIB finance of €50 million. Given that the Nigerian telecommunications sector has been substantially deregulated and that the service to be provided is extremely profitable, it is clearly not unlikely that the project could easily have attracted adequate private financing. Hence, this may represent a case of crowding out of private local and/or foreign resources by EIB funds. The second private company is Obajana Cement Plc, a subsidiary of Dangote

Industries Ltd, which is a well-known Nigerian business conglomerate. The project consists of the construction and operation of a new cement plant on a greenfield site for the supply of Nigeria's domestic market. The total project cost is US$800 million and the EIB's contribution is about $150 million. Both the cement company and its parent company have also accessed equity funds from the Nigerian stock exchange and to that extent EIB funds are essentially supplementary. The third project is the financing of a bankable feasibility study on the exploitation of the Guelb el Aouj iron ore deposit for El Aouj SA, the Mauritanian subsidiary of Sphere Investments Ltd, an Australian company which already has mining operations in Mauritania. The EIB contributed about €5 million of the project's total cost, amounting to US$11 million. Given the level of development of the equity capital market in Mauritania, it is not clear that local private alternative finance was available. But the involvement of a foreign private company could have made the attraction of private foreign financing feasible.

These examples of EIB funding of large projects in West Africa suggest that 'commercially-operated' public sector projects may not necessarily find alternative private local and/or foreign financing and that such alternatives may be more feasible in the cases of private enterprise projects, particularly in those countries where the equity market is more developed. In such cases and environments, commitment of EIB funds may represent a displacement of alternative private financing.

This conclusion does not extend to EIB funds channelled to private SMEs indirectly through global loans to local banks and equity stake in local venture capital companies. Such funds are associated with a number of advantages. Their use not only leads to the creation of productive assets, but it also creates a demonstration effect by encouraging local financing institutions to expand their SME support portfolio. In particular, there is some evidence that the availability of EIB term financing enables local financing institutions to increase their term lending to SMEs. Generally, local banks in many West African countries have little available capital to support term lending, since local savings are lacking, and hence they prefer to operate in the very short-term end of the market. In addition, EIB funds channelled to SMEs through local venture capital companies convey multiple advantages to the SMEs – they provide long-term investment in their capital accompanied by invaluable management support. In effect, EIB funds channelled to SMEs through global loans to local banks and through equity stakes in local venture capital companies are more likely to crowd in, rather than displace, local private finance

Several examples of such EIB funding are worth discussing. For example, the EIB approved the Global Authorization for Microfinance in 2001 for micro-finance institutions, specialised funds and banks in ACP countries. This facility is associated with EIB finance worth €15 million, to be disbursed in response to requests for small amounts of up to €2 million for financing in the form of equity, quasi-equity, loans and guarantees. Its objective is to help micro-finance institutions to develop their operations and achieve commercial and financial self-sustainability and at the same time assist poor clients. A similar example, in this case for a specific country, is the Pret Global Secteur Financier Niger II facility of €8 million provided to three local banks in Niger and dedicated to supporting SMEs in that country. Finally, CAPE II is a project through which Capital Alliance Private Equity LP will receive EIB finance of US$10 million as a contribution to its private equity fund targeting $75–$100 million. This fund will in turn invest in the capital of selected high potential West African SMEs. The common feature of these examples is the dedication of EIB funds to the support of SMEs and the enhancement of the capacity of local financial institutions to leverage upon, and thus expand, that support.

5.6 Enhancing the impact of support for private sector development

A key part of the Cotonou Partnership Agreement obliges the EU to provide financial assistance to the ACP states through the EIB in the form of loans and equity financing for the business sector. EIB funds are available to enterprises in the private sector and 'commercially run' companies in the public sector, with particular emphasis on using these funds to improve the access of SMEs to medium- and long-term finance. In recognition of the difficult investment environment in many ACP countries, the Cotonou mandate to support private sector development further stipulates that the EIB should provide investment in the less creditworthy ACP countries or in any ACP country which presents a high risk profile.

Various characteristic and problems of private enterprises and, in particular, the SMEs in the ACP countries appear to have contributed to the articulation of this mandate. In spite of a range of macroeconomic reforms in many ACP countries since the mid-1980s, the investment climate for private investors remains extremely difficult. This makes it hard to attract significant private capital to invest in the SME sector. Hence, the strategy for private sector development which is implicit in the Cotonou Agreement combines measures for improving the investment climate with measures aimed at reducing the constraints to growth and the competitiveness of private enterprises in the ACP countries. The first set of measures should lead to the strengthening of the competitiveness and productivity of private enterprises; the second should assist in increasing their access to finance and in opening access to new markets by enhancing their technical capabilities.

In many West African countries, high costs and procedural delays prevent many SMEs from using bank credit. They are therefore forced to rely largely on their own funds for both operational and investment capital. For their part, local banks are wary of lending to SMEs and when they do they tend to limit their exposure to short-term overdrafts. Short-term loans are typically secured by high levels of collateral. Yet the banking systems in many West African countries suffer from high levels of non-performing private sector loans. In these circumstances, while private enterprises typically regard lack of access to affordable external financing as their main constraint to growth, experience suggests that even the most promising SMEs may require significant technical assistance combined with appropriate financing as two inter-related and complementary prerequisites for sustainable growth.

Given the above, it is useful to examine how effectively the EIB has been fulfilling its Cotonou mandate and what the prospects are for the future. An evaluation of the EIB and its Investment Facility (EIB Operations Evaluation Department, 2002) suggests that:

> *... the IF is clearly better designed for those ACP countries which have progressed further down the road of economic development, where market mechanisms have displaced state controls, where private investment in productive enterprises is strongly encouraged and supported, and where a coterie of competent project promoters and managers have emerged.*

It follows, therefore, that the allocation of IF funds is skewed in favour of these countries for at least two reasons. First, they should be able to generate more bankable projects; and second, they offer more conducive and investment-friendly macroeconomic conditions.

These considerations may explain, at least in part, two other emerging patterns of EIB financing of private enterprises in West Africa. One of these is that, in some countries in the region, global loan operations have not been mounted. The other is that non-Africans have been the predominant recipients of EIB financing, whether through direct lending or through sub-loans under global lending programmes, since African-owned enterprises are either generally ineligible for direct lending or are below the lower limit of the EIB's range for sub-loans. In addition, the capacity of West African SMEs, particularly those which are African-owned, to participate in EIB lending remains constrained because the EIB has only limited possibilities for using appropriate technical assistance for its enhancement. There are, of course, several other ACP-EU institutions which have a mandate to provide various types of non-financial assistance in support of the development of private enterprises in ACP countries. But the lack of an integrated approach for the delivery of financial and non-financial assistance to the private sector by the plethora of ACP-EU institutions sharply reduces complementarity between the two assistance components.

In order to fulfil its mandate under Cotonou, the EIB's lending programme will have to expand its coverage of countries and enterprises, and also strengthen the capacity of these enterprises to participate more effectively in the lending programme. Reform of the assistance provision of ACP-EU institutions in both of these directions is required as a means of providing investment support in less creditworthy ACP countries and in those which present high risk profiles. The Mozambique SME Initiative developed by the IFC has significant design features which capture the reform directions suggested above (IFC, 2004). Motivated by the recognition that an integrated investment and technical assistance package is the key success factor for SME financing, particularly in an African environment, the Initiative consists of two complementary components: an investment programme and a technical assistance programme. But neither will be free-floating. Rather, the technical assistance services will be dedicated exclusively to supporting the activities of the investment programme. In other words, the technical assistance programme will provide customised services to participating SMEs aimed at enhancing their capacity to benefit from direct financing through the investment programme, as well as developing successful and sustainable business practices post-investment.

In the kind of integrated approach to the support of private enterprises articulated by the Initiative, the technical assistance programme is captive to the investment programme. The adoption of this approach in the framework of EU assistance for private sector development in West African and other ACP countries requires reform, in some respect radical, in at least two areas. The first is the subordination of technical assistance services, currently provided by such ACP-EU institutions as the CDE and PROINVEST, to the financing assistance which is offered through the IF of the EIB. The second area is the transformation of the financing assistance programme of the IF from its current excessively risk-averse mode.

6

Investment Negotiations in the Economic Partnership Agreements

6.1 Introduction

This chapter examines the negotiation issues, the resolution of which will contribute to the character of the agreement on investment under the West Africa-EU EPA. Such an agreement should be influenced by a set of important considerations drawn from past experience and perhaps by the potential for increasing investment flows between the parties to the EPA. At least six factors should be considered in predicting the nature and form of the envisaged investment component of the West Africa-EU EPA. They are:

- Existing domestic investment regulations in each of the countries making up the two groups – West African countries and EU members;
- The bilateral investment treaties that countries in the groups have signed with either individual EU or non-EU countries;
- Regional investment treaties;
- Multilateral investment agreements such as the relevant parts of the GATS;
- The investment provisions of the Lomé Conventions and the Cotonou Agreement;
- The investment provisions of EU free trade agreements with other countries or regions, such as the EU-Mediterranean Agreements, the EU-South Africa Trade, Development and Co-operation Agreement (TDCA), and the EU-Mexico and EU-Chile Agreements.

Each of these agreements covers standard investment issues comprising the various necessary elements of an investment agreement, such as the definition of investment, scope of application, investment promotion, pre-admission (e.g. market access for foreign investors), post-admission (e.g. regulatory conduct towards foreign investors after entry and establishment in the host country) and investment protection, including dispute settlement issues. Each of these elements is discussed within the context of the identified agreements and protocols.

6.2 Investment agreement issues

Domestic investment regulations in West Africa

The domestic legal framework for both local and foreign investment in the typical West African country is covered in chapter 3. A summary of this analysis suggests that national legislation in West African countries currently promotes and protects investment through special measures that safeguard investors' interests. This current form reflects unilateral investment liberalisation that has removed restrictive measures and eliminated laws that discriminate against foreign investors.

Bilateral investment treaties

The bilateral investment treaties that West African and EU countries have entered into cover the main areas of definition of investment, scope of application, investment promotion and investment protection, as well as dispute settlement procedures. These elements were addressed in the review of some of the bilateral treaties involving West African countries and the UK, the Netherlands and Germany in chapter 4. These treaties are broadly similar in many respects. As was demonstrated in chapter 4, they define investment broadly and cover investments made before and after the agreements. Investment promotion and protection are also considered in the treaties, and the obligation to contracting parties consists of the need to encourage and create a favourable environment for their nationals or companies to invest capital in each other's territory, depending on existing laws. They contain provisions dealing with fair and equitable treatment, including non-discriminatory full protection and security for each other's investment, and MFN and national treatment between the nationals or companies of contracting parties and third countries. Expropriation and losses arising from unforeseen events and corresponding 'compensations, restitution, indemnification or other settlements', and the settlement of disputes arising from the interpretation of the treaties are also covered.

Regional investment treaties: Lomé and the Cotonou Partnership Agreement

The main regional investment treaties analysed in chapter 4 were the Lomé Conventions. The analysis indicated that Lomé III was the first to deal explicitly with investment promotion and post-admission treatment such as fairness, equitability, protection and security. Lomé IV represented an extension of Lomé III and included provisions on protection, financing and support of investment.

The CPA's provisions on investment promotion, protection, financing and support were similar to those of Lomé III and IV. Its equity participation provision was limited to non-controlling minority holdings, and it affirmed the significance of concluding investment protection agreements that may be a basis for insurance and guarantee schemes as was the case under Lomé IV. The CPA required parties not to discriminate between investors of the parties and third countries, but limited issues arising from MFN, expropriation, transfer of capital and international dispute arbitration to further research.

The General Agreement on Trade in Services

This multilateral agreement signed by the EU and many countries in West Africa also provides an insight into the elements of investment agreements that may evolve in the EPA negotiations. In particular, its application to mode 3 or 'commercial presence' has been referred to as an 'investment agreement in disguise', due to its relationship with the establishment, through a subsidiary, affiliate or branch, of a firm of a WTO member in the territory of another member, in the form of FDI. In relation to this, the GATS contains three important principles: MFN (Article II), market access (Article XVI) and national treatment (Article XVII).

The article on MFN treatment, with some exemptions, requires each member to accord treatment 'no less favourable' to services and services suppliers of any other member. Market access provision prohibits a member from treating services and services suppliers of another member 'less favourably' than the terms, limitations and conditions in its schedule of commitment; and from adopting or maintaining measures not contained in its schedule which limit the number of service suppliers, the total value of service transactions or assets, the total number of service operations, the total number of natural persons that may be employed, the type of legal entity or joint ventures and the extent of participation of foreign capital in the scheduled services sector.

The provision on national treatment requires each member to accord to services and services suppliers of another member treatment no less favourable than it accords to its own services and services suppliers. A measure is 'less favourable' if it modifies the conditions of competition in favour of domestic firms. The WTO's dispute settlement mechanism is available to resolve disputes if any member fails to carry out its obligation under the GATS.

EU free trade agreements

To date, the EU has concluded about 34 FTAs with countries spread across North America (two), South America (six), Europe (seven), Asia (five), North Africa and the Middle East (eleven), Southern Africa (one), and with Australia and New Zealand. A detailed analysis of EU FTAs, focusing on the EU-Mediterranean countries (Med agreements), EU-South Africa Trade, Development and Co-operation Agreement (TDCA), and EU-Chile and EU-Mexico agreements, indicates that the TDCA and Med agreements have provisions on investment that are relatively lightweight (Szepesi, 2004). This is because the provisions on the liberalisation of capital movements are an expression of interest rather than a commitment. For instance, the Med agreements and the TDCA contain investment promotion provisions that underscore co-ordination and co-operation, with measures including harmonisation and simplification of procedures, examination of the creation of joint ventures, establishment of co-investment machineries and provision of technical assistance. Additional measures are included in the EU-Chile agreements, such as the establishment of a favourable legal framework which may be bilateral and the development of uniform procedures for promoting investment. Few of the agreements are biased in favour of industries such as tourism and mining, to which the measures will apply. The TDCA and Med agreements do not include detailed commitments on investment promotion, as is the case with the EU-Mexico agreement.

In general, investment protection provisions do not appear to be sufficiently strong or detailed in relation to current payments and FDI-related capital flows. The agreements leave investment protection to BITs involving Mediterranean countries and EU member states. The slight difference in the EU-Mexico and EU-Chile agreements is that investment protection provisions only cover payments and capital flows, and the rest is left to BITs. The EU-Mexico agreement defines payments and capital movements broadly as involving FDI, real estate investment and the purchase and sale of any kind of securities, and is similar to the OECD Codes of Liberalisation (Szepesi, 2004). This broad definition perhaps explains why it was necessary to include protection provisions in the agreement.

The Med agreements are compelling in terms of market access conditions relating to current payments and capital flows which are free of restrictions (EU-Lebanon) and which are allowed in a freely convertible currency (EU-Algeria). In effect, the parties are required to ensure free movement of capital relating to FDI, its liquidation and repatriation and the profits thereof (EU agreements with Algeria, Morocco, South Africa and Tunisia), while full liberalisation of the movement of capital other than FDI is limited to parties' consultations (TDCA) and at an appropriate time (EU-Tunisia and EU-Morocco) or appropriate condition (EU-Jordan). Despite their appearing to liberalise capital movement, the agreements make important exceptions through the inclusion of provisions which cater for serious balance of payment difficulties (EU agreements with Algeria, Lebanon, Morocco, the Palestinian Authority, South Africa and Tunisia) and for serious problems with the operation of monetary and or exchange rate policies (EU-Jordan and EU-Israel); and freedom to maintain any restrictions which existed before the agreements came into force (EU-Israel, EU-Jordan and EU-Lebanon). The EU-Mexico agreement favours progressive elimination of restrictions on payments and introduces a standstill on any new restrictions, but also grants exceptions for serious balance of payment difficulties and problems with the operation of monetary and or exchange rate policies. The provisions of the EU-Chile agreement are similar to those of the TDCA, Med and EU-Mexico agreements with regard to current payments and capital movements, but contain substantial derogation (limitation to market access) from the market access principle. In addition, Chile reserves the right to maintain or introduce investment legislation that may restrict capital movements.

The contentious issue of equal treatment of foreign investors in relation to domestic investors appears to be played down in the TDCA and Med agreements, as they do not include national treatment provisions, except in the case of the agreement with Jordan which also features many exemptions that make the provisions less significant. In contrast, the definition of national treatment in the EU-Mexico agreement is more robust in the sense that it applies to the establishment, acquisition, expansion, management, conduct, operation, sale or other disposition of commercial operations of financial services suppliers, implying coverage of pre-and post-admission issues. In the EU-Chile agreement, the principle of national treatment, though it is formulated in line with GATS, is not as explicit as in the EU-Mexico agreement in terms of its definition of financial services. The principle was adopted for all non-service sectors in the EU-Chile agreement, with full application of the principle regarding establishment in agriculture and manufacturing.

The relationship between the relevant investment sections of regional integration agreements (RIAs) and the GATS is a subject for comparison in the literature. Hoekman and Saggi (1999) consider that the extent to which RIAs go beyond GATS in eliminating discrimination in services markets helps to determine whether RIAs have a discriminatory effect, and that the further RIAs go beyond the GATS, the greater the potential negative spill-over. Assessed from this point of view, the TDCA and Med agreements only refer to parties' commitments in the GATS and refrain from assuming additional commitments. In comparison, the EU-Mexico agreement explicitly incorporates the GATS principles of market access, MFN and national treatment, particularly in the chapters on services and financial services and contains nothing more than these pre- and post-admission investment commitments. However, these principles are contained in the EU-Chile agreement for financial services and the relevant provisions go further in prohibiting all measures that restrict or require a foreign financial services supplier to engage in specific legal entity or joint venture.

The EU-Mexico and EU-Chile agreements have no separate dispute settlement mechanism for investment except in the case of financial services, where an arbitral panel 'shall be set up for the specific service', the members of which must be appointed before disputes arise.

6.3 Options in a West Africa-EU EPA investment agreement

Unilateral investment policies, BITs, RIAs and the Multilateral Agreement on Investment

In addition to the indications given by the various agreements described above, the investment component of the West African-EC EPA will be driven by the desire of both parties to increase investment flows between themselves with a view to strengthening the EU-ACP relations that have existed for over three decades. However, because the relationship is between developed and developing countries, and the groups are in an unequal stage of development, this objective of increasing the capital flows between the contracting parties has two important dimensions. The developed countries have an export interest in capital flows or investments and to that extent want investment flows from their countries to the developing and least developed countries to be faced with less cumbersome pre-entry and post-entry requirements. The least developed and developing countries, on the other hand, while they need investment flows from developed country partners to bridge their widening domestic savings-investment gap, are tend to want to be able to deliberately cultivate such investment flows with appropriate government policies.

As large importers of FDI, LDCs and developing countries are faced with the implications of unfettered foreign investment flows disrupting the profits of domestic investors and may therefore wish to protect such investments and adopt a restrictive investment policy in the context of their objective of attracting increased foreign capital flows into their territories. While many developing countries are now more eager than they were in the 1960s to attract FDI and have taken steps to promote investment through domestic incentives and bilateral BITs, they continue to subject multinational corporations, the main vehicle for the flow of FDI, to performance requirements (Hoekman and Saggi, 1999). Hoekman and Saggi show that such restrictions have existed in spite of theoretical submissions on their welfare-reducing nature and their ability to create investment in 'hub' countries which discriminate against non-originating FDIs. There are also issues concerning ineffectiveness and the heavy economic costs that entry and performance requirements impose on the investment-importing country in terms of the creation of less than expected backward and forward linkages, encouragement of inefficient entry, and, in the view of Moran (1998), their ability to render future liberalisation more difficult. One significant implication of such restrictions is the proposition that unilateral FDI policies do not generate considerable supply response, this being induced by policy reversals which risk-averse investors have learned to incorporate into their investment decision process. Regrettably, evidence linking the conclusion of BITs, an alternative to using unilateral investment policies, with increases in FDI flows is also scanty (Szepesi, 2004).

The drawbacks with which restrictions on investment flows have been afflicted provide ample explanation for the emergence of BITs and RIAs. Attempts to impose a multilateral framework on the international flow of investments have failed twice, once with the Multilateral Agreement on Investment (MAI) which was under negotiation among the OECD countries until April 1998, and once as part of the Singapore issues that the WTO's Ministerial Conference in Cancun in 2003 failed to discuss. The failure has been attributed to the fact that most countries are either lukewarm or opposed to committing themselves to a multilateral framework because of the perception that multilateral investment rules may undermine their sovereign right to pursue their own domestic development policies. In the case of the MAI, the fear that too much power would be transferred from host governments to foreign investors through provisions on investor-state dispute settlement procedures was central to its breakdown; many countries attempted to circumvent clauses relating to investment protection through derogations and exceptions which whittled away the provisions of the proposed agreement. The investor-bias of the MAI, in the sense that the agreement did not contain correspondingly effective provisions on investors' responsibility to consumers, workers and the environment in the host countries, coupled with coverage of movements of portfolio capital and know-how, constrained the ability of host governments to regulate investment flow in the national interest.

From the perspective of the host country, BITs appear to be the most stringent of the available investment-related options with regard to the post-admission requirements of FDI. Nevertheless, they have proliferated. This is probably because countries perceive that BITs are under their control in that they can decide which country to negotiate with and have space to shape the quantum, direction, pace, form and character of BIT-induced FDIs. Despite the fact that developing countries are agreeable to BIT-induced FDIs, BITs are considered more far-reaching than the MAI (Sauve, 1998) in terms of the stringency of their provisions on investment protection. A study by UNCTAD (2001) shows that there were over 1,900 BITs and 2,100 double taxation treaties by the end of 2000. BITs generally include binding commitments, provided on a national treatment or MFN basis, on expropriation, transfer of funds and compensation for losses caused by armed conflict or political instability. The International Centre for Settlement of Investment Disputes constitutes the main arbitration channel for disagreements between foreign investors and host governments.

Despite the bias of BITs towards the protection of foreign investors, they may not always be implemented effectively in lower-income countries, and there is inadequate empirical evidence showing strong links between BITs and increases in FDI flows (Brooks and Hill, 2003). BITs reduce policy options for the host country's government and make it vulnerable to litigation, the resolution of which cannot by changed by the domestic legal system. According to Hoekman and Saggi (1999), BIT-type disciplines have formed the fulcrum of most RIAs, which have also required national treatment (subject to exceptions of a negative list type) and limitations on the use of performance requirements. In effect, RIAs have become as stringent as BITs as they have proliferated. This proliferation appears to have intensified after the demise of the MAI. However, the stringency of RIAs depends on many factors, some of which are not obvious. For example, the EU has concluded agreements which are either already in force or undergoing national ratification with Mediterranean countries, namely Tunisia (since 1998), Israel (2000), Morocco (2000), Jordan (2002), Egypt (2004), the Palestinian Authority (on an interim basis since 1997), Algeria (2001), Lebanon (2002) and Syria (negotiations concluded in October 2004). These agreements contain no specific commitments on the liberalisation of services and no right of establishment is granted, while their provisions on investment consist of future objectives and to that extent constitute an expression of intent (Szepesi, 2004; Hoekman and Saggi, 1999).

West Africa-EU EPA investment agreement: provisions, prohibitions and likely concessions

Based on the foregoing analysis, it is possible to summarise the investment component of the West Africa-EU EPA in three propositions:

- First, many West African countries can currently lay claim to investment rules that are liberal with respect to FDI, even though they may be wary of admitting FDI from all the EU countries on the basis of national treatment and MFN principles;

- Second, many of those with liberal domestic investment rules have also entered into bilateral investment treaties with developed countries, the implementation experience of which will become useful in dealing with partner countries within the EPA framework;

- Third, West African countries have historical ties in terms of social, political and economic co-operation with their EU partners, from the Yaoundé II agreements through the Lomé Conventions to the CPA, so that it is also possible to draw on the experience of these relationships in the EPA negotiations in general and its investment component in particular.

More specifically, the Lomé Conventions granted preferences to ACP countries on a wide range of manufactured products and on some agricultural products, but these preferences were granted to countries with little export potential in manufactures and to agricultural goods that do not actually or potentially compete with EU products. Where agricultural products benefited from preferences, they were limited by quotas, seasonal restrictions and rules of origin which did not allow much cumulation with non-ACP countries. Not surprisingly, the EU Green Paper of 1997 found that ACP countries' share of the EU market fell from 6.7 per cent in 1976 to 3 per cent in 1998; ten products accounted for 60 per cent of total ACP exports to the EU between 1962 and 1992; GDP per person in sub-Saharan Africa grew by 0.4 per cent, compared to 2.3 per cent for all developing countries; and in general, EU preference schemes had only a marginal effect on the economies of the ACP states. West African countries would replicate these experiences in their potential relationship with the EU.

The tendency of these considerations, and perhaps others such as the stage of development of West African countries, to shape the investment negotiations of the West Africa-EC EPA cannot be ruled out. Indeed, they will define the type of prohibitions and concessions that West African countries may be allowed to retain, including the character of investment promotion, protection and guarantee measures, as well as the scope of application that may be included in the EPA investment agreement. Table 6.1 shows indicators of economic size and investment ratios of Mediterranean and West African countries in addition to those of Mexico and Chile, and Tables 6.2 and 6.3 compare current EU FTAs in terms of investment promotion, protection measures and provisions relating to current payments and capital movements. The tables also show two scenarios with respect to the probable form that the investment component of the West Africa-EU EPA will take on pre- and post-admission issues.

At least two scenarios can be explored, given the trend of events indicated by Tables 6.1–6.3. In the first, because the Med agreements were recently signed but have modest provisions on post-admission issues, coupled with the size of West African countries' economies (which has been used to approximate stage of development) relative to Mediterranean countries, the investment provisions of the West Africa-EU EPA may bear a close resemblance to those of the Med agreements. In the second scenario, employing in the analysis the trend of the investment provisions in the Lomé Conventions and the wording of the CPA, the West Africa-EU EPA may develop into an agreement similar to the EU-Mexico or EU-Chile agreements.

Analysing the first option, therefore, the investment component of the West Africa-EU EPA could contain investment promotion provisions that stress co-ordination and co-operation, as well as investment promotion measures relating to harmonisation and simplification of procedures, creation of joint ventures, establishment of co-investment machineries and provision of technical assistance, and perhaps the establishment of a favourable bilateral legal framework and the development of uniform procedures for promoting investment. These are also contained in the Lomé Conventions and the CPA. It may be reasonable to favour specific sectors to hasten the pace of their development. The investment protection provisions would also not be stringent, with the EU preferring to leave investment protection issues to BITs with EU member states. There could also be a standstill on new restrictions to current payments and capital movement, but with an obligation to liberalise these over time.

Table 6.1 Economic size and investment ratios, 2000

	Foreign direct investment, net inflows (% of gross capital formation)	Foreign direct investment, net inflows (% of GDP)	GDP as a proportion of Mexico's GDP (%)
Chile	22.2	5.2	12.3
Mexico	9.9	2.3	100.0
Mediterranean countries			
Algeria	0.1	0.0	9.3
Egypt, Arab Rep.	5.2	1.3	17.2
Israel	20.6	4	19.2
Jordan	0.7	6.7	1.5
Lebanon	10.0	1.8	2.9
Morocco	1.3	0.0	5.8
Syrian Arab Republic	3.2	0.7	3.0
Tunisia	11.3	3.9	3.4
West African countries			
Benin	7.0	1.4	0.4
Burkina Faso	1.7	0.5	0.4
Côte d'Ivoire	9.2	1.1	1.6
Gambia, The	19.2	3.3	0.1
Ghana	8.9	2.1	0.9
Guinea	9.5	2.1	0.5
Guinea-Bissau	–	0.0	0.0
Liberia	–	–	–
Mauritania	1.8	0.5	0.2
Niger	7.7	0.8	0.3
Nigeria	11.6	2.6	7.2
Senegal	12.3	2.4	0.8
Togo	12.0	2.5	0.2
Sierra Leone	2.0	0.2	0.1
Mali	14.6	3.3	0.4
Cape Verde	9.3	1.8	0.1

Source: World Development Indicators CD-ROM, 2002

Market access conditions for current payments and capital flows would be free of restrictions and allowed in a freely convertible currency, with the parties ensuring free movement of capital relating to FDI. This would imply the inclusion of provision for exemptions for serious balance of payments and exchange rate or monetary policy difficulties, while repatriation or liquidation of investments or the profits derived thereof would be guaranteed. Full liberalisation of the movement of capital other than FDI (i.e. portfolio capital) would be left to consultations between the parties. The West Africa-EU EPA may not include national treatment provisions; if it does include them, there would be many exemptions to safeguard West African countries. In relation to West African countries' commitments in the GATS, the West Africa-EU EPA may not go beyond these countries' GATS commitments. Where dispute settlement procedures are included, there is little likelihood that they would have investor-to-state provisions, which would be too stringent for West African countries to comply with.

With respect to the second option, the provisions and measures of the CPA in relation to investment promotion which are similar to EU FTAs provide an insight into the West Africa-EU EPA negotiations. Considered in this context, the investment promotion provisions in the West Africa-EU EPA would emphasise co-ordination and co-operation as in the CPA and other EU FTAs. The measures for promoting investment would therefore include harmonisation and simplification of procedures, examination of the creation of joint ventures, establishment of co-investment machineries and provision of technical assistance, the establishment of a favourable legal framework, which may be bilateral, and the development of uniform procedures for promoting investment.

Apart from the standard investment finance and support provisions in the CPA which grant financial and technical assistance, equity participation as a condition of investment financing, though limited to non-controlling minority holdings, suggests portfolio investment flows. Thus West African countries appear to have been prepared in the CPA for a subsequent portfolio investment agreement. In terms of market access conditions for current payments and capital flows, the West Africa-EU EPA could include provisions for the progressive elimination of restrictions on payments, but maintain a standstill on any new restrictions and grant exceptions for serious balance of payments difficulties and problems with the operation of monetary and/or exchange rate policies. It may also contain many exemptions to this principle. As a corollary, West African countries could have reservations in relation to the right to maintain or introduce investment legislation that might restrict capital movements. Investment protection provisions could only then cover payments and capital flows, while other flows would be determined under BITs with EU member states.

The West Africa-EU EPA may explicitly integrate the GATS principles of market access, MFN and national treatment for services generally, and financial services in particular. It could thus forbid all measures that restrict or require a foreign financial services supplier to take the form of a specific legal entity or joint venture. The national treatment principle is likely to be adopted for all non-services sectors in the West Africa-EU EPA. This is because Article 15 of Annex II of the CPA already requires the parties to take account of such principles as non-discrimination between the investors of the parties and third countries. The definition of national treatment may apply to the establishment, acquisition, expansion, management, conduct, operation, sale or other disposition of the commercial operations of financial services suppliers.

Finally, the West African-EC EPA may not have separate dispute settlement mechanism for investment as in the EU agreements with Mexico and Chile. For financial services, an arbitral panel may be established for the specific service, the members of which may be appointed before or after disputes arise. This is similar to the ground-clearing provision in the CPA regarding investment protection, which acknowledged the significance of concluding investment protection agreements that may be a basis for insurance and guarantee schemes. It also contains provisions for the study of issues relating to legal guarantees, a most favoured investor clause, protection in cases of expropriation and nationalisation, transfer of capital and profits, and international dispute arbitration.

6.4 What are the investment provisions of the interim EPA texts of Ghana and Côte d'Ivoire?

On 10 November 2008, only Ghana and Côte d'Ivoire initialled a bilateral 'stepping stone' or interim EPA with the EC. Title IV of both interim texts contained provisions relating to services, investment and trade-related rules. The provisions specified that the parties will co-operate in facilitating all measures necessary to conclude global EPAs between the whole of the West Africa region and the EC on these issues, including investments, before the end of 2008. The text also stated that negotiations on global EPAs would be based on the EC-West Africa road map and subsequent developments since its adoption. A two-step approach would be pursued, commencing with the formulation and implementation of regional policies and building of regional capacities, and deepening the EC-West Africa trade provisions that had been mutually agreed.

Table 6.2 Investment promotion and protection provisions in selected EU FTAs

	Investment promotion			Investment protection							
	Technical assistance/ investment promotion instruments	Harmonisation and simplification	Co-investment machinery	Reference to BITs	National treatment		Performance requirements Commitments not to maintain or introduce			Horizontal reservation	Protection against expropriation
					For services	For other economic sectors	Quantitative restrictions on suppliers, transactions, operations or personnel	Legal entity require-ments for inward investment (e.g. joint ventures)	Limits on proportion of foreign ownership	Specific reservation to retain limits on the proportion of foreign ownership	
Med	√	√	√	√	–	–	–	–	–	–	–
South Africa	√	√	√	√	–	–	–	–	–	–	–
Palestinian Authority	√	√	√	–							
Jordan	√	√	√	√	√	√	–	–	–	√	–
Lebanon	√	√	√	√							
Israel	–	–	–	–							
Mexico	–	√	–	√	√	√	–	–			
Chile	√	√	–	√	√	√	√	√	√	–	–
West Africa (option 1)	√	√	√	√	√	–	–	–	–	√	–
West Africa (option 2)	√	√	–	√	√	√	√	√	√	–	–

Source: Adapted from Szepesi, 2004

Table 6.3 Current payments and capital movements in EU FTAs

Agreements	Standstill on new restrictions to payments or capital movements	(Progressive) liberalisation of current payments and capital movements	Exemptions for		Repatriation/liquidation of investments or the profits derived thereof	
			Serious balance of payments difficulties	Serious exchange rate or monetary policy difficulties	Guaranteed	Exemption for specific investment laws
Med4/TDCA	√	√	√	–	√	–
Israel	√	–	√	–	√	–
Jordan	√	–	√	√	√	–
Lebanon	√	–	√	–	√	–
Mexico	√	√	√	√	√	–
Chile	√	√	√	√	√	–
West Africa (option 1)	√	–	√	√	√	–
West Africa (option 2)	√	√	√	√	√	–

Source: Adapted from Szepesi, 2004

7

Conclusions and Recommendations

This chapter sets outs the conclusions and recommendations that emerge from the analysis in chapters 2–6.

ECOWAS economic performance and investment patterns

Conclusion

There is a need to design policies to attract more FDI inflow into the ECOWAS subregion, particularly into the services sector, which has the greatest potential to contribute to economic growth in the sub-region. When combined with increased domestic private savings and a favourable macroeconomic environment, increased inflow of FDI is likely to propel growth in the ECOWAS countries to the level required for attaining the MDGs and the NEPAD targets.

Recommendations

Given the observed large gap in resources, there is a need to promote domestic private savings and increased inflow of FDI into both the LDCs and developing countries in the ECOWAS region. Since saving is a direct function of income level, there is a need to boost the level of economic activities in the ECOWAS so as to increase income levels and consequently raise the level of savings. This involves the creation of a favourable macroeconomic environment to promote economic activity in the region. The attraction of greater levels of FDI into the ECOWAS region requires the maintenance of macroeconomic and political stability, outward-oriented policies, sound economic management and the eradication of corruption.

The domestic investment environment

Conclusion

In general, West African countries moved from a control of foreign investment policy stance in the 1960s and 1970s to a policy of investment promotion from the mid-1980s. The emerging investment legislation reflects a significant degree of liberalisation, indicated by the elimination of certain government control measures and the application of positive standards of treatment aimed at eliminating discrimination against foreign investors. This liberalisation process remains an ongoing process in many West African countries.

Recommendations

While recommending the continuation and sustenance of this process, West African countries may wish to re-examine the use of fiscal incentives to attract foreign investment, which the literature shows to be largely ineffective. Similarly, the use of certain performance requirements for regulating foreign investment may be counterproductive. Many West African countries are involved in negotiating investment issues in various bilateral, regional and multilateral fora. These countries need to exercise caution and ensure that the various arrangements enable them to establish coherent investment regimes.

Bilateral and regional investment arrangements or treaties

Conclusion

The bilateral investment treaties between West African countries and the EU have not attracted a significant increase in the flow of investment to West Africa except in few cases. Investment performance under regional arrangements, however, and specifically under Lomé III and Lomé IV, has exhibited a classic average increase over the timespan of each of the agreements. Given the weakness of the West African economies compared with those of the EU countries, maintaining this trend under the reciprocal EPA requires a strategic positioning of the West African countries to encourage the flow of investment.

Recommendation

A way to achieve the proper positioning of the West African countries is for the countries of the region to team up to attract specific concessions from the EU such that the FDI performance enjoyed under the Lomé Agreements can be surpassed under the EPA.

International institutions and enterprise development in West Africa

Conclusion

There is a plethora of bilateral, regional and multilateral development agencies and financial institutions involved in providing both financial and technical support for private sector development, especially in relation to SMEs in West Africa. Several ACP-EU institutions constitute an important block among these agencies and institutions. Within this block, duplication of efforts and the absence of an integrated approach to the delivery of financial and technical support, which is what SMEs need, constitute significant defects that affect the effectiveness of the support that is being provided. In addition, this support is likely to have a larger developmental impact when provided through channels which 'crowd in', rather than displace, available private local resources.

Recommendation

In order for the ACP-EU institutions to fulfil their mandate under Cotonou, their lending programme will have to expand its coverage of countries and enterprises in West Africa, and also strengthen the capacity of these enterprises to participate more effectively in the programme. The latter requires a more effective integration of the lending and investment programme with the technical assistance programme. A reform of the ACP-EU institutions along these lines could significantly enhance the effectiveness and developmental impact of their support for private enterprise in West Africa.

Investment negotiations in the Economic Partnership Agreements

Conclusion

West African countries can generally rely on their experiences with domestic investment regulations, bilateral investment treaties, the Lomé Conventions and CPA, the GATS and EU FTAs to envisage in which direction the investment component of the West Africa-EU EPA will go and plan ahead for eventualities. Specifically, growth-inhibiting or growth-enhancing provisions in these agreements can be harnessed, studied and presented as negotiating instruments to the EU. In this way, West African countries can, for the first time, become proactive rather than reactive to EU proposals concerning investment. West African countries need to take cognisance of the reciprocity of the EPA; presenting proactive qualitative proposals will thus demonstrate their readiness to engage in effective investment negotiations.

Recommendation

The various studies on different aspects of investment, such as those related to legal guarantees, a most favoured investor clause, protection in cases of expropriation and nationalisation, transfer of capital and profits, and international dispute arbitration, mandated by the CPA, need to be concluded before negotiations on investment commence. Furthermore, the West Africa-EU EPA should initially take a less stringent form, similar to the EU-Med agreements and the TDCA, to allow West African countries to properly examine the implications of the full liberalisation of capital flows on their economies and adequately prepare for them.

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The Economic Partnership Agreement between the European Union and the ECOWAS states of West Africa envisages co-operation between the two sides with the aim of enhancing investment and private sector development in the ECOWAS region.

This study explores the options available to ECOWAS states for promoting, protecting and guaranteeing flows of domestic and foreign direct investment, in the context of the ACP-EU Economic Partnership Agreements, so that development gains are realised in these economies.

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