‘Local content’ measures in Francophone sub-Saharan Africa

VdA’s Matthieu Le Roux and Olivier Bustin on the search for balance between legitimate ambitions, socio-economic realities and the management of expectations

In theory, the conditions of a virtuous circle of wealth creation in emerging markets can be articulated by recourse to self-evident logic: locally-established companies, namely foreign companies, are expected to both contribute to the creation of jobs for nationals and create commercial opportunities for locally-owned, companies, which will themselves provide a source of jobs, and thus income and purchasing power, thereby generating an increase in the local consumption of local goods and services. Thus articulated, the reasoning makes sense and the only debatable matter is that of the method used to achieve the objective. And this is the origin of the development of so-called ‘local content’ rules in the majority of Francophone sub-Saharan African countries: what should be done to ensure that the growth of key economic sectors benefits the national economy and the nationals of the countries in question?

In practice, the difficulty is that of reconciling different parameters that are not subject to the same timescale: the fight against the economic hardship of populations through the reduction of unemployment rates is an urgent matter, which the qualification and training of skilled personnel cannot answer immediately, or in sufficient number; this is equally true for the emergence of local economic players who can compete on the international market. The imperative of achieving concrete results as quickly as possible arises from both.

With respect to unskilled work or work requiring few skills, this could be reserved for nationals, given that by definition they do not require particular skills. On the other hand, prioritising nationals with respect to skilled work, namely by establishing minimum percentages of national employees (see, for example, the case of Decree 101/PR/MFPT/96 of 15 April 1996 on the hiring conditions of foreign workers in Chad, and Decree 162/PR/MTE of 7 March 2016 regarding the conditions applicable to foreign employees in Gabon) is problematic in the sense that an immediately available local workforce, which can address the needs of companies, is necessary (and these legal provisions do include exceptions), and thus the issue of qualification and training also arises. On this point, requiring that companies put in place training schemes for the benefit of their employees (in particular, the granting of work permits to foreign nationals in exchange for the company’s commitment to train nationals to undertake that same role) is only a partial, mid-term solution. Ongoing training, for the most skilled positions, can never entirely replace initial qualification, such that the training obligations of companies should also, if not above all, include active partnerships with secondary and tertiary education institutions. This could be achieved by the creation of professional qualification centres, qualifying degrees in specialised jobs in specific industrial sectors, benefiting from the support and involvement of potential future employers (the Port-Gentil Centre for professional specialisation and the Moanda Mining and Metallurgical School in Gabon are examples), but also through the award of scholarships, organising mentorship, putting in place a legal framework for internships (Decree 100/PR/MTE of 16 February 2016 regarding the institution of internships in Gabon), international student exchange programmes, etc. The results would not be immediate, but this approach has the advantage of putting in place the foundations for the long-term solution of the problem, by implementing a tailored and flexible framework closely related to the needs of the industries concerned.

With respect to legal minimum thresholds of national shareholders (for example, Law 3/2000 of 3 February 2000 establishing the conditions for sub-contracting in the Republic of the Congo, or Law 17/001 of 8 February 2017 establishing the rules of sub-contracting in the private sector in the Democratic Republic of the Congo), the relevance of these measures is less obvious in light of the assumed objective of fostering the involvement of nationals in the economic development of the country in question. In effect, if the intention is to favour recourse to companies belonging entirely or partially to nationals, the conditions of their participation in the share capital of the companies in question should be assessed with insight and discernment. A company whose national shareholders represent a significant contribution to share capital, whether in cash or in kind, is not in a situation comparable to a company whose national shareholders have this status as consideration only for the advantage they provide of allowing the company in question to comply with legal requirements, ie having national shareholders. This distinction is, of course, difficult to implement in a legal framework. It is nonetheless true that ignoring this could promote the involvement of intermediaries who add no real value and the participation of which has the main consequence of increasing the ultimate price of goods and services, while also dissuading those investors who are not inclined to issue shares to persons who add nothing beyond the ‘trading’ of their nationality.

Finding the right balance may well be difficult. Another approach could be to implement measures that facilitate national natural persons’ access to finance to allow them to set up new businesses. In this regard, a company with foreign shareholders could benefit from tax advantages subject to its contribution to the financing of a business project submitted by a national individual. In this case, the guiding principle should be that of creating incentives to such contribution, without imposing any sort of penalty on companies that opt out (see, for example, Law 2013/4 of 19 April 2013 establishing the incentives to private investments in Cameroon, as amended by Law 2017/015 of 12 July 2017).

This is particularly true because almost all Francophone African countries are part of economic and/or customs unions (the Economic and Monetary Community of Central Africa, Common Market for Eastern and Southern Africa, West African Economic and Monetary Union), which seek to create common markets between member states, where discrimination – whether direct or indirect – based on nationality is strictly limited.

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