

International Telecommunication Union

Establishment of Harmonized Policies for the ICT Market in the ACP

**ICT Regulatory Harmonization:
A Comparative Study of
Regional Initiatives**

HIPSSA

Harmonization of
ICT Policies in
Sub-Sahara Africa



ICT Regulatory Harmonization: A Comparative Study of Regional Initiatives

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**Support for Harmonization of ICT Policies
In Sub-Sahara Africa
(HIPSSA)**

Activity G-1 of HIPSSA Project

Table of contents

EXECUTIVE SUMMARY	7
> CONTEXT.....	7
> MAIN FINDINGS	8
REPORT	11
> REGIONAL INITIATIVES FOR HARMONIZATION OF THE ICT LEGAL AND REGULATORY FRAMEWORK: LEGAL BASES, LEGAL FORM AND ENFORCEMENT	13
1 <i>Regional integration organizations initiated regulatory harmonization</i>	13
1.1 African Union (AU).....	13
1.2 Economic Community of West African States (ECOWAS)	16
1.3 West African Economic and Monetary Union (UEMOA)	18
1.4 Economic Community of Central African States (ECCAS)	19
1.5 Central African Economic and Monetary Community (CEMAC)	20
1.6 East African Community (EAC)	21
1.7 Common Market of Eastern and Southern Africa (COMESA)	22
1.8 Southern African Development Community (SADC)	25
1.9 InterGovernmental Authority on Development (IGAD).....	29
1.10 Indian Ocean Commission (IOC).....	30
2 <i>Regional ICT/Telecommunication regulators' associations are key players in regulatory harmonization</i>	31
2.1 Association of Regulators of Information and Communications for Eastern and Southern Africa (ARICEA) of COMESA	31
2.1.1 Objectives.....	31
2.1.2 Competencies.....	31
2.2 African Telecommunication Regulators' Assembly (ATRA)	31
2.3 Committee of Regulators (CRTEL) of UEMOA	32
2.3.1 Objectives.....	32
2.3.2 Competencies.....	32
2.4 Communication Regulators' Association of Southern Africa (CRASA) for SADC	32
2.4.1 Objectives.....	32
2.4.2 Competencies.....	33
2.5 East Africa Regulatory, Postal and Telecommunications Organization (EARPTO) for EAC, now called East African Communications Organization (EACO).....	33
2.5.1 Objectives.....	33
2.5.2 Competencies.....	33
2.6 Technical Committee for Regulation (CTR) of CEMAC	34
2.6.1 Objectives.....	34
2.6.2 Competencies.....	34
2.7 Telecommunication Regulators' Association of Central Africa (ARTAC) for ECCAS.....	34
2.7.1 Objectives.....	34

2.7.2 Competencies.....	34
2.8 West African Telecommunication Regulators' Assembly (WATRA) for ECOWAS:	35
2.8.1 Objectives.....	35
2.8.2 Competencies.....	35
3 Regional courts as potential players in regulatory harmonization initiatives.....	35
3.1 AU Court of Justice.....	35
3.2 CEMAC Court of Justice.....	36
3.3 COMESA Court of justice	36
3.4 EAC Court of Justice	36
3.5 UEOMA Court of Justice.....	36
> COMPARATIVE STUDY AND GAP ANALYSIS OF REGIONAL REGULATORY HARMONIZATION	
INITIATIVES	38
1 Comparative study.....	38
1.1 Harmonization method (Table 1)	38
1.2 Harmonized content (Table 2)	44
2 Gap analysis	49
2.1 Harmonization method.....	49
2.1.1 Repartition of methods across regional organizations	49
2.1.2 Repartition of methods across the time	49
2.2 Harmonization contents	50
2.2.1 Repartition of contents across the regional organizations	50
2.2.2 Repartition of contents across the time.....	51
3 Key differences and commonalities for harmonized contents	51
3.1 Licensing	51
3.2 Universal service and access	53
3.2.1 Definition of universal service and access	53
3.2.2 Implementation	54
3.2.3 Funding.....	54
3.2.4 Quality of service	55
3.3 Scarce resources: frequencies and numbering	55
3.4 Interconnection	56
3.4.1 Obligation of interconnection	56
3.4.2 Interconnection contracts.....	56
3.4.3 Interconnection tariffs	57
3.5 Cybersecurity.....	58
3.6 Consumer's protection.....	58
3.7 Competition	58
3.8 Pre-selection, sharing of infrastructures and roaming	59
> SWOT ANALYSIS AND INTERNATIONAL COMPARISONS	61
1 Strengths, weaknesses, opportunities and threats analysis	61
1.1 African Union (AU).....	61
1.2 Arab Maghreb Union (AMU)	62
1.3 Economic Community Of West African States (ECOWAS)	62

1.4 West African Economic and Monetary Union (UEMOA)	62
1.5 Economic Community of Central African States (ECCAS)	63
1.6 Economic and Monetary Community of Central Africa (CEMAC)	63
1.7 Common Market for Eastern and Southern Africa (COMESA)	63
1.8 East African Community (EAC)	64
1.9 Intergovernmental Authority for Development (IGAD)	64
1.10 Indian Ocean Commission (IOC)	64
1.11 Southern African Development Community (SADC).....	65
2 Comparing African telecommunications harmonization initiatives with European Union and United States respective harmonization process.....	66
2.1 Comparison with the European Union (EU).....	66
2.2 Comparison with the United States (US)	67
> EIGHT FORWARD LOOKING RECOMMENDATIONS	70
1 Adopting an overall strategy	70
2 Setting common principles in a pan-African binding instrument	70
3 Organizing consultation and consensus-building at all levels (pan-African level, regional and national level).....	70
4 Setting common streamlined processes for each and every regional organizations....	70
5 Setting an independent pan-African regulatory agency with enforcing powers together with a pan-African appeal mechanism.....	70
6 Reducing level of regulatory discretion at national and regional level.....	71
7 Increasing clarity and transparency with more detailed and binding rules	71
8 Developing pan-African competition law.....	71
ANNEXES	72
> ANNEX 1 : LIST OF REGIONAL INITIATIVES FOR HARMONIZATION OF THE LEGAL AND REGULATORY FRAMEWORK FOR ICT IN AFRICA	72
1 International Telecommunication Union (ITU)	72
2 African Union (AU).....	72
3 Arab Maghreb Union (AMU)	72
4 Economic Community of West African States (ECOWAS).....	73
5 West African Economic and Monetary Union (UEMOA).....	73
6 Economic Community of Central African States (ECCAS)	74
7 Economic and Monetary Community of Central Africa (CEMAC).....	74
8 Common Market for Eastern and Southern Africa (COMESA).....	75
9 East African Community (EAC)	76
10 InterGovernmental Authority on Development (IGAD)	76
11 Indian Ocean Commission (IOC).....	76
12 Southern Africa Development Community (SADC)	77

table of contents

> ANNEX 2 : LIST OF INITIALS AND ACRONYMS..... 78

> CONTACTS..... 80

Executive Summary

summary

> CONTEXT

Since 2008 the International Telecommunication Union (ITU) has been conducting, in collaboration with the European Union, the HIPSSA project (Harmonization of ICT Policies in Sub-Saharan Africa) which is a component of programme “ACP-Information and Communication Technologies (@CP-ICT)” within the framework the 9th European Development Fund (EDF). This project aims at developing and promoting legal and regulatory harmonized telecommunications/ICT frameworks and to strengthen human resources and institutional capacities.

Further to a call for tender organized by the ITU in June 2009 to select a consultant to conduct an **assessment of the current level of harmonization of ICT/telecommunications in the different African regional organizations**, the Telecom Media Technologies team headed by Rémy Fekete, of the international law firm Gide Loyrette Nouel, has been selected. The consultant has been commissioned to undertake three studies:

- a comprehensive review of all regional ICT regulatory harmonization initiatives in Sub-Saharan Africa;
- a review of regional harmonization initiatives' legal bases, legal instruments and enforcement mechanisms; and
- a comparative study based on the analytical orientations identified below including summary tables and a gap analysis,

Particular attention was paid to their common points and differences in their normative nature, the subjects covered (licensing, universal access and service, interconnection, etc.) and identifying the temporal trends in both the methods and contents of harmonization.

Furthermore, the consultant has analyzed key challenges and opportunities related to achieving a harmonized regulatory approach, presenting the results under a SWOT analysis for each regional organization.

Finally, the consultant briefly commented on harmonization initiatives in Sub-Saharan Africa comparing them to other international ones and proposed forward looking recommendations on the potential development of a pan-African regulatory framework.

The consultant has discussed the draft report with the ITU and African Union Commission (AUC) and has taken into account their comments and recommendations.

The present final report covers all above mentioned steps including the previous deliverables and an executive summary. In addition and under annex format, the report includes the list of ICT/telecommunications initiatives in Sub-Saharan Africa resulting from the conducted review and a copy of all the legal texts used for the assessment is provided on the included CD-Rom.

All documents related to the study are also available online on ITU website:
http://www.itu.int/ITU-D/projects/ITU_EC_ACP/

> **MAIN FINDINGS**

Two preliminary remarks are worth being underlined:

- If African regional organizations are very diverse as to their (i) means, (ii) way of functioning, (iii) history and (iv) methods of harmonization, this diversity is not impeding however a true convergence over ICT and telecommunications regulatory harmonization challenges regarding issues such as licensing, universal access/service, frequency management, numbering, interconnection and cybersecurity.
- It is also important to be wary of the "volume effect" resulting from the productivity of this or that regional organization at issuing initiatives on the matters, and rather examine the efficiency of the implementation of the initiatives at national level and their related effects.

With respect to **regional organisations' behaviour and the repartition of roles**, the consultant has three main observations:

- The temporal approach has clearly shown that African regional organizations are not progressing at the same rhythm in the harmonization process, and this is also true for their respective Member States. This might deepen the gap between the frontrunners and followers and may lead to market distortions at a pan-African level.
- Complementing the previous observation, some regional organizations generally grant a big room of manoeuvre to Member States, which leads to more flexibility (such as COMESA and SADC).
- Some regional regulators' associations have been instituted and they work more or less closely with their respective regional organizations, such as ARICEA (COMESA) ARTAC (ECCAS), CRASA (SADC), EACO (EAC), WATRA (ECOWAS), etc. They may play a role in the harmonization process but it is now too early to draw any conclusion as to the significance of their roles.

Therefore, the consultant has recommended to:

- *set common streamlined processes for these regional organizations; and*
- *reduce the level of regulatory discretion at national and regional level.*

With respect to the **harmonization method**, five findings shall be emphasized:

- The harmonization process is on three levels and this renders the process unusually intricate and complex:
 - pan-African level;
 - regional level;
 - national level.
- Generally, the legal and policy approach has been more favoured than the regulatory approach. There are not as many regional regulators as regional organizations and this might explain this difference.
- It has also been noted that initiatives are more focused on harmonization than liberalization.
- Even if some "packages" strategies allow clarity and legal certainty (CEMAC, ECOWAS, WAEMU respective packages on telecommunications), major risks of conflicts of rules exist between some regional organizations because of common memberships (e.g. WAEMU

member states also belong to ECOWAS while some rules differ between the two organizations).

- At last but not least, most of the initiatives do not have a binding nature. Paralleling this lack of binding nature, some organizations lack enforcement mechanisms to render the initiative effective.

Therefore, the consultant has recommended to:

- *lay in a pan-African binding instrument common principles such as: objectivity, transparency, proportionality, non-discrimination, technological neutrality with regard to convergence, minimizing barriers to market entry, minimizing regulatory burdens, implementing a two-tier regulation, more stringent on operators with significant market power with more detailed and binding rules to increase clarity and transparency.*
- *set an independent pan-African regulatory agency with enforcing powers together with a pan-African appeal mechanism.*

With respect to the **harmonization content**, six topics have been retained for the analysis: licensing, universal access and service, frequency management, numbering, interconnection and cybersecurity. This analysis has led to a several observations:

- If some organizations' initiatives cover the main issues (CEMAC, COMESA, ECOWAS, SADC, WAEMU, etc.), others do not such as AMU, EAC, IGAD, and IOC.
- Concerning licensing, there are a lot of divergences both on the definition and the scope of the different regimes. For example, independent networks are subject to licensing in CEMAC while there are subject to general authorization - more or less equivalent to the CEMAC declaration, in the ECOWAS.
- In terms of universal access/service, regional organizations generally agree on the content and principles governing both universal access/service. However, there are divergences as to the implementation and particularly on the funding issue.
- Regarding scarce resources, they are generally understood as the management of frequency and numbering. CEMAC is the only one to include domain names in scarce resources. Further, most of the regimes differ, if there is no specific regime for frequencies in CEMAC for frequencies nor numbering even if it comes out from the regime governing the supply of electronic communications network and services and from the general attributions of the NRA that an authorization is required for the use of frequencies and the attribution of numbering, ECOWAS, on the opposite, provides a specific regime for frequencies, but also for numbering with a detailed set of provisions such as the development of a numbering plan. It is to be noted that ECOWAS, SADC and WAEMU insist particularly on cooperation at a regional level.
- With respect to interconnection most organizations have laid down an obligation of interconnection and such interconnection is governed by an interconnection contract. The contract's content is more or less detailed according to the organizations. Most of the organizations agree on the fact that national regulatory authorities have a role to play concerning the negotiation and/or content of the interconnection contract, but the modalities of this role (if any) slightly differ.
- In terms of cybersecurity, few initiatives have been issued and if any, the scope varies from one organization to another. For example, CEMAC focuses more on the protection of user rights, while others such as COMESA and EAC focus more on cybercriminality.
- While the consultant has underlined that in other jurisdiction such as the United States or the European Union, general competition law was complementing sector-specific legislation such as ICT/telecommunications legislation, it has been noted that competition law was burgeoning in Africa.

Therefore, the consultant has recommended to:

- *adopt an overall strategy and organize consultation and consensus-building at all levels (pan-African level, regional and national level); and*
- *develop pan-African competition law.*

Report

introduction

The present study represents the achievement of the first activity (G-1) conducted under the project supporting “Harmonisation of ICT Policies in Sub-Sahara Africa” (HIPSSA) which was officially launched in December 2008 in Addis Ababa, Ethiopia.

In response to both challenges and opportunities of ICT’s contribution to political, social, economic and environmental development, the International Telecommunication Union (ITU) and the European Commission (EC) joined forces and signed an agreement aimed at “Support for the Establishment of Harmonized Policies for the ICT market in the ACP” which is a component of programme “ACP-Information and Communication Technologies (@CP-ICT)” within the framework the 9th European Development Fund (EDF).

This agreement is being implemented with funding by the European Union through three separate sub-projects in order to customize it to specific needs of each region: Sub-Saharan Africa (HIPSSA), the Caribbean (HIPCAR) and the Pacific Island Countries (ICB4PIS). The projects build on the experience gained from a previous pilot project successfully implemented in West Africa and use a demand-driven bottom-up approach that provides support for ICT human and institutional capacity development.

The objective of this project is to increase harmonization of ICT policies and regulation for the whole Sub Saharan Africa region. It involves the African Union, Regional Economic Communities (RECs), their respective Member States, regional association of regulators as well as associations of operators and service providers.

The HIPSSA Steering Committee co-chaired by the ITU and the African Union Commission (AUC) has selected the international law firm Gide, Loyrette and Nouel which has been requested to work with the organisations involved in harmonization of ICT regulatory policies and legal frameworks. This study has been prepared by Jean-Christophe Duton, Associate, under the supervision of Rémy Fekete, Partner. The views expressed in the report are those of the authors and do not necessarily reflect the opinions of ITU, its membership or its partner organisations in this project.

The consultant has been requested to first assess and compare the regional harmonisation initiatives then to compare the legal instruments that have been used and finally to identify the main common points and differences regarding the harmonisations of the topics selected by the HIPSSA project.

In this perspective, this comparative study provides an up-to-date and extensive overview of all initiatives for harmonisation of ICT policy, legal and regulatory frameworks led by Regional Economic Communities (RECs) and other regional integration organisations in Africa.

The scope of the study is centred on Sub-Saharan Africa but also covers North Africa in order to benefit from lessons and experiences gained from all harmonisation initiatives on the continent. The study will serve as a reference for implementation of all project activities in Sub-Saharan Africa. With this study and in line with the commitment made at its launching meeting, the HIPSSA project actively contribute to the implementation of the AU “Reference

framework for harmonization of telecommunication and ICT policies and regulation in Africa” adopted in May 2008 in Cairo (Egypt) by the 2nd Conference of African Ministers in charge of Communication and Information Technologies (CMCIT).

While the HIPSSA project does not cover North Africa, this initiative may be considered as an important contribution to the current discussions regarding regional and pan-African harmonisation which imperatively need to take into account the high degree of heterogeneity between the different sub-regions. The ongoing technology and market evolutions will require, in the future, the convergence of regional frameworks towards the adoption of common principles at continental level under the aegis of the African Union.

> **REGIONAL INITIATIVES FOR HARMONIZATION OF THE ICT LEGAL AND REGULATORY FRAMEWORK: LEGAL BASES, LEGAL FORM AND ENFORCEMENT**

The consultant was commissioned to undertake three studies: (i) a complete inventory of the regional texts and draft texts generated by the organizations concerned; (ii) an institutional analysis of the regional regulatory harmonization initiatives, *inter alia* commenting on their legal bases, the juridical form of their respective decisions, their legal force and adoption mechanisms, and (iii) a comparative study of the various initiatives identified, highlighting their commonalities and differences as regards their normative nature and subjects covered (licensing, universal access and service, interconnection, etc.) and identifying the temporal trends as regards both their form and substance.

This first part falls within the framework of the second study and it presents the review of the legal bases, legal form and enforcement of the regional regulatory harmonization initiatives.

The scope of the study covers the list of initiatives drawn up under the inventory resulting in the Annex 1 list of documents. The study does not include the documents which were not available to the consultant and are followed by an asterisk in Annex 1.

The second part is dedicated to the third study.

1 Regional integration organizations initiated regulatory harmonization

1.1 African Union (AU)

The African Union Assembly of Head of State and Government and Executive Council of Ministers of Foreign Affairs have a decision making power (Articles 9 and 13 of the Constitutive Act). The Executive Council may delegate any of its powers and functions, including the decision power to the Specialized Technical Committees.

Decisions of the Specialized Technical Committees are subjected to an approval decision of the Executive Council. Decisions of the Assembly and the Executive Council have a binding effect. Indeed, Article 23 provides that "any Member State that fails to comply with the decisions and policies of the Union may be subjected to other sanctions, such as the denial of transport and communications links with other Member States and other measures of a political and economic nature to be determined by the Assembly".

Acts of primary law - that have been signed by Member States and not by one of the organization's institutions - are subject to signatories' ratification process.

Initiative / Analysis	Legal basis	Legal form	Enforcement
<p>NEPAD reference document (October 2001)</p>	<p>Article 9 of the Constitutive Act of the African Union (2000) <i>" The Assembly has decision-making power, to:</i> - <i>Receive, consider and take decisions on reports and recommendations from the other organs of the Union."</i></p>	<p>Secondary legislation (foreseen under the Constitutive Act of the African Union (2000) in its Article 9 (b))</p>	<p>Decision of the Assembly of the Heads of State and Government of the African Union (July 2002) <i>"WE, the Heads of State and Government of Member States of the Organization of African Unity [...]:</i> <i>MANDATE the Heads of State and Government Implementation Committee of NEPAD and its Steering Committee to continue the vital task of further elaborating the NEPAD Framework and ensuring the implementation of NEPAD Initial Action Plan, until reviewed at the 2nd Assembly of Heads of Government of the African Union in Maputo, Mozambique, in 2003".</i></p>
<p>Protocol on High Level Policy and Regulatory Framework for NEPAD Broadband ICT Infrastructure for Eastern and Southern Africa (2006)</p>	<p>Article 3 (l) of the Constitutive Act of the African Union (2000): <i>"The objectives of the Union shall be to: [...]</i> <i>((l) coordinate and harmonize the policies between the existing and future Regional Economic Communities for the gradual attainment of the objectives of the Union; [...]"</i></p> <p>Article 4 (k) and (n) of the Constitutive Act of the African Union (2000): <i>"The Union shall function in accordance with the following principles:</i> (k) <i>Promotion of self-reliance within the framework of the Union; [...]</i> (n) <i>Promotion of social justice to ensure balanced economic development; [...]"</i></p>	<p>Act of primary law: international agreement binding the signatory States (subject to national ratification mechanisms).</p>	<p>Article 22 of the Protocol: Signature, ratification and accession 1. <i>"This Protocol shall be open for signature by or on behalf of any High Contracting Party.</i> 2. <i>The High Contracting Parties shall:</i> a. <i>Ratify the Protocol in accordance with their constitutional procedures; beamed, repeal, if required, national legislation to give effect to the provisions of this Protocol; and</i> 3. <i>Any Eastern and Southern African State may accede to the Protocol subject to accepting the provisions of this Protocol."</i></p> <p>Article 23 of the Protocol: Entry into force 1 <i>"This Protocol ... shall enter into force on ratification by at least 51 (fifty one) per cent of the High Contracting Parties.</i> 2 <i>This Protocol shall come into force in relation to the acceding State on the date its instrument of accession is deposited with the [...] NEPAD e Africa Commission"</i></p>
<p>Decision document of the ministers responsible for ICTs and/or Telecommunications on the policy, legal and regulatory aspects of the NEPAD ICT Broadband infrastructure Network for Eastern and Southern Africa (June 2006)</p>	<p>Article 15 (c) and (d) of the Constitutive Act of the African Union (2000): <i>"Each Committee shall within its field of competence: [...]</i> (c) <i>ensure the coordination and harmonization of projects and programmes of the Union;</i> (d) <i>submit to the Executive Council either on its own initiative or at the request of the Executive Council, reports and recommendations on the implementation of the provisions of this Act; [...]"</i>. ensure the coordination and harmonization of projects and programmes of the Union;"</p> <p>Comments: Pursuant to Article 14.3 of the Constitutive Act of the African Union, the Specialized Technical Committees shall be composed of Ministers or senior officials responsible for sectors falling within their respective areas of competence.</p>	<p>Non-enforceable unilateral act (submitted to the Executive Council for approval pursuant to Article 15 (d) of the Constitutive Act of the African Union).</p>	<p>Comments: We do not have the Executive Council's decision of approval.</p>

Initiative / Analysis	Legal basis	Legal form	Enforcement
Resolution of the first inter-governmental assembly (IGA) ministerial meeting on implementing the Kigali Protocol (October 2007)	<p>Article 18 of the Protocol on High Level Policy and Regulatory Framework for NEPAD Broadband ICT Infrastructure for Eastern and Southern Africa</p> <p><i>"4. The IGA shall have the following functions:</i></p> <p><i>a. Facilitate and assist in promoting the NEPAD ICT Broadband Infrastructure Network, including the East African Submarine System (EASSy) Cable. [...]</i></p> <p><i>d. Have oversight role in respect of issues of a Policy and Regulatory nature."</i></p>	Annex to the Protocol on High Level Policy and Regulatory Framework for NEPAD Broadband ICT Infrastructure for Eastern and Southern Africa	<p>Comments:</p> <p>The directive must be duly issued in order to take the form of an annex to the Protocol</p>
Report on licensing and interconnection framework for the NEPAD Broadband ICT infrastructure network for Eastern and Southern Africa (October 2007)	<p>Article 15 (d) of the Constitutive Act of the African Union (2000):</p> <p><i>"Each Committee shall within its field of competence: [...]</i></p> <p><i>(d) submit to the Executive Council either on its own initiative or at the request of the Executive Council, reports and recommendations on the implementation of the provisions of this Act; [...]"</i>.</p>	Not a legal document	
Reference Framework for the Harmonization of Telecommunication and ICT Policies and Regulations in Africa (May 2008)	<p>Article 9 of the Constitutive Act of the African Union (2000):</p> <p>The Assembly has decision-making power to:</p> <p><i>"Receive, consider and take decisions on reports and recommendations from the other organs of the Union".</i></p>	Secondary legislation: Decision (foreseen under the Constitutive Act of the African Union).	<p>Decision EX.CL/434 (XIII) of the Executive Council:</p> <p><i>"The Executive Council: [...]</i></p> <p><i>5. URGES Member States to ensure effective use of the Reference Framework for the Harmonization of Telecommunications/ICT Policies and Regulations and the implementation of the Strategic Orientation and Action Plan for the Development of Postal Services in Africa;</i></p> <p><i>6. REQUESTS the Commission to disseminate the Reference Framework for the Harmonization of Telecommunications/ICT Policies and Regulations, and the Strategic Orientation and Action Plan for the Development of Postal Services in Africa to all Member States and other key stakeholders as well as facilitate their application;</i></p> <p><i>7. FURTHER REQUESTS the Commission, in collaboration with the Regional Economic Communities (RECs), specialized institutions, Member States and other stakeholders to take the necessary measures to speed up the implementation of the Reference Framework for Telecommunication and ICT [...]"</i>.</p>
Study on the harmonization of telecommunications/ICT policies and regulations in Africa - Executive summary and draft report (2008)	N/A	Not a legal document	N/A

Initiative	Analysis	Legal basis	Legal basis	Enforcement
Report of the Second Session of the Conference of African Ministers in charge of Communication and Information Technologies (ICT) (Cairo Declaration annexed) (2008)	<p>Article 15 (c) and (d) of the Constitutive Act of the African Union (2000): <i>"Each Committee shall within its field of competence: [...]</i> <i>(c) ensure the coordination and harmonization of projects and programmes of the Union;</i> <i>(d) submit to the Executive Council either on its own initiative or at the request of the Executive Council, reports and recommendations on the implementation of the provisions of this Act; [...]"</i>.</p>	Non-enforceable unilateral act (subject to approval by the Executive Council pursuant to Article 15 (d) of the Constitutive Act of the African Union)	<p>Decision EX.CL/434 (XIII) of the Executive Council: <i>"The Executive Council:</i> 1. TAKES NOTE of the Report of the Second Session of the Conference of African Ministers in charge of Communication and Information Technologies (ICT), held in Cairo, Egypt, from 11 to 14 May 2008; [...]"</p>	
Plan for the implementation of Decision EX.CL/434 (XIII) of the Executive Council on the Second Session of the Conference of African Ministers in charge of Communication and Information Technologies (ICT) (2008)	<p>Article 3.2 (c) of the Statutes of the Commission of the African Union (2002) <i>"The Commission shall:</i> [...] <i>((c) Implement the decisions taken by other organs"</i>.</p>	Enforcement mechanism for secondary legislation (foreseen under Article 13 of the Constitutive Act of the African Union.	<p>Comments: This being an action plan, it identifies both the stakeholders (Commission of the African Union and RECs essentially) and actions to be undertaken.</p>	
Yamoussoukro Cybersecurity Plan, adopted by the African Cybersecurity Conference, (18-20 November 2008)	N/A	Direction document with no legal force.	N/A	

1.2 Economic Community of West African States (ECOWAS)

The Authority of Heads of State and Government and the Council of Ministers have a decision making power (Articles 9 and 12 of the revised Treaty)

Decisions of the Authority and of the Council have a direct effect pursuant to Articles 9 and 12 of the revised Treaty, which provide that decisions shall automatically enter into force sixty days after the date of their publication in the Official Journal of the Community and that they shall be published in the National Gazette of each Member State within the same period.

Acts of primary law - that have been signed by Member States and not by one of the organization's institutions - are subject to signatories' ratification process.

Initiative	Analysis	Legal basis	Legal form	Enforcement
Revised Treaty establishing ECOWAS (1993) Comments: Particularly Article 33(2) on Posts and Telecommunications.		Constitution or constitutional procedures of States wishing to be parties.	Act of primary law: international agreement binding signatory States (subject to national ratification mechanisms).	Article 89 of the Revised ECOWAS Treaty (1993) <i>"This Treaty and the Protocols which shall form in an integral part thereof shall respectively enter into force, upon ratification by at least nine signatory States, in accordance with the constitutional procedures of each State".</i>
Supplementary Protocol A/SP.1/06/06 amending the revised ECOWAS treaty Comments: Particularly Article 9(2)(a) which allows the Authority to adopt Supplementary Acts, and Article 79, which allows the President of the Commission to conclude cooperation agreements with other regional organizations.		Constitution or constitutional procedures of States wishing to be parties.	Act of primary law: international agreement binding signatory States (subject to national ratification mechanisms).	Article 5 of Supplementary Protocol A/SP.1/06/06 amending the revised ECOWAS treaty <i>"Member States shall adopt constitutional, legislative and regulatory provisions to ensure full application of the present Supplementary Protocol".</i>
Constitution of WATRA (17 18 November 2002) Comments: Creation of WATRA		Constitution or constitutional procedures of the Member States of ECOWAS wishing to see their respective regulatory authorities or competent ministerial departments become parties to the Convention.	Act of primary law: agreement on the constitution of the association (WATRA), accession to which is open to regulatory authorities or competent ministerial departments provided they belong to Member States that are parties to the revised treaty.	Article 19 of the Constitution of WATRA <i>"The Constitution comes into force on the date of its official adoption on the occasion of a ceremony officially convened for the purpose, following its signature by at least three regulators, whether such signature be prior to or on the date and occasion of its official adoption".</i>
Strategic plan of WATRA (2005 2008)		N/A	Working document with no legal force.	N/A
Strategic roadmap for WATRA (2007-2010)		N/A	Working document with no legal force.	N/A
Telecoms package - Supplementary Act A/SA 5/01/07 on the management of the radio-frequency spectrum - Supplementary Act A/SA 2/01/07 on access and interconnection in respect of ICT sector networks and services - Supplementary Act A/SA 4/01/07 on numbering plan management - Supplementary Act A/SA/1/01/07 on the harmonization of policies and of the regulatory framework for the ICT sector - Supplementary Act A/SA/3/01/07 on the legal regime applicable to network operators and service operators - Supplementary Act A/SA 6/01/07 on universal access/service.		Article 9 (2) (a) of Supplementary Protocol A/SP.1/06/06 amending the revised ECOWAS treaty of 1 June 2006 <i>"The Authority shall adopt Supplementary Acts which shall be annexed to the Treaty".</i>	Act of primary law: international agreement binding on signatory States (subject to national ratification mechanisms).	Article 9 (3) of Supplementary Protocol A/SP.1/06/06 amending the revised ECOWAS treaty of 1 June 2006 <i>"Supplementary Acts ... shall be binding on the Community Institutions and Member States ..."</i> Comments: The final provisions of the Acts stipulate that national law must be adapted within two years, i.e. by January 2009. That deadline has nevertheless been pushed back to June 2009.

Initiative	Analysis	Legal basis	Legal form	Enforcement
Draft Supplementary Act A/SA/12/08 on electronic transactions		Article 9 (2) (a) of Supplementary Protocol A/SP.1/06/06 amending the revised ECOWAS treaty of 1 June 2006 <i>"The Authority shall adopt Supplementary Acts which shall be annexed to the Treaty".</i>	Act of primary law: draft international agreement binding on signatory States (subject to national ratification mechanisms).	Article 9 (3) of Supplementary Protocol A/SP.1/06/06 amending the revised ECOWAS treaty of 1 June 2006 <i>"Supplementary Acts ... shall be binding on the Community Institutions and Member States ..."</i> Comments: This document was reviewed by the preparatory meeting of experts and has since evolved. It was validated by the 8 th meeting of ECOWAS Telecom/ICT Ministers in Dakar in October 2009 in order to be adopted the Council of Ministers
Draft Directive D/12/09 on combating cybercrime in ECOWAS		Article 9 (2) (b) of Supplementary Protocol A/SP.1/06/06 amending the revised ECOWAS treaty of 1 June 2006 <i>"The Council shall [...] issue Directives [...]".</i>	Draft secondary legislation	Article 9 (5) of Supplementary Protocol A/SP.1/06/06 amending the revised ECOWAS treaty of 1 June 2006 <i>"Directives shall be binding on all the Member States in terms of the objectives to be realized. However, Member States shall be free to adopt modalities they deem appropriate for the realization of such objectives."</i> Comments: The initial version of the draft was examined by the 7 th meeting of ECOWAS Telecom/ICT Ministers in Praia in October 2008. Since then it evolved and was validated by the 8 th Ministers meeting in Dakar in October 2009 in order to be adopted the Council of Ministers
Draft Supplementary Act A/SA/12/09 on guidelines for the protection of personal data in ECOWAS		Article 9 (2) (a) of Supplementary Protocol A/SP.1/06/06 amending the revised ECOWAS treaty of 1 June 2006 <i>"The Authority shall adopt Supplementary Acts which shall be annexed to the Treaty".</i>	Act of primary law: Draft international agreement binding on signatory States (subject to national ratification mechanisms).	Article 9 (3) of Supplementary Protocol A/SP.1/06/06 amending the revised ECOWAS treaty of 1 June 2006 <i>"Supplementary Acts adopted by the Authority shall be binding on the Community Institutions and Member States ..."</i> Comments: The initial version of the draft was examined by the 7 th meeting of ECOWAS Telecom/ICT Ministers in Praia in October 2008. Since then it evolved and was validated by the 8 th Ministers meeting in Dakar in October 2009 in order to be adopted the Council of Ministers

1.3 West African Economic and Monetary Union (UEMOA)

Pursuant to Article 42 of the UEMOA Treaty, the Assembly adopts additional Acts where necessary, the Council of Ministers (of Foreign Affairs) enacts regulations, directives and decisions and the Commission adopts regulations for the implementation of the Council's acts and decisions.

Pursuant to Article 43, regulations have a direct and binding effect, directives have to be transposed into national Law with an obligation to achieve the defined result and the decisions have a direct effect for the addressee.

Acts of primary law - that have been signed by Member States and not by one of the organization's institutions - are subject to signatories' ratification process.

Initiative	Analysis	Legal basis	Legal form	Enforcement
<p>Telecoms package</p> <ul style="list-style-type: none"> - Directive No. 01/2006/CM/UEMOA relating to harmonization of policies for the control and regulation of the telecommunication sector ; - Directive No. 02/2006/CM/UEMOA relating to the harmonization of regimes applicable to network operators and service providers; - Directive No. 03/2006/CM/UEMOA relating to the interconnection of telecommunication networks and services - Directive No. 04/2006/CM/UEMOA relating to universal service and network performance obligations; - Directive No. 05/2006/CM/UEMOA relating to harmonization of telecommunication tariffs; and - Directive No. 06/2006/CM/UEMOA organizing the general framework for cooperation between national telecommunication regulators. 		<p>Article 42 of the amended UEMOA Treaty of 29 January 2003</p> <p><i>"The Council shall enact [...] directives [...]"</i>.</p>	<p>General, secondary legislation (foreseen under the amended UEMOA Treaty of 29 January 2003)</p>	<p>Article 43 of the amended UEMOA Treaty of 29 January 2003</p> <p><i>"The directives shall be binding on all Member States as regards the results to be achieved"</i>.</p> <p>Comments: The final provisions of the directives provide that Member States shall take all necessary steps to adapt their national sectoral legislation and regulations within a maximum of two years following the date of entry into force of the directive, that date being their date of signature (we do not have the dates of signature of the directives). They are to immediately inform the Commission accordingly.</p> <p>The legal texts adopted shall contain a reference to the directive in question or shall be accompanied by such a reference when officially published.</p> <p>The Member States shall send the Commission the provisions of domestic law that they adopt in the field dealt with by the Directive.</p>
<p>Decision No. 09/2006/CM/UEMOA establishing the Committee of National Telecommunication Regulators of the Member States of UEMOA.</p>		<p>Article 42 of the amended UEMOA Treaty of 29 January 2003</p> <p><i>"The Council shall enact [...] decisions [...]"</i>.</p>	<p>Individual secondary legislation (foreseen under the amended UEMOA Treaty of 29 January 2003).</p>	<p>Article 43 of the amended UEMOA Treaty of 29 January 2003</p> <p><i>"Decisions shall be binding in respect of all their elements upon those to whom they are addressed"</i>.</p>

1.4 Economic Community of Central African States (ECCAS)

The Conference of Heads of State and Government and the Council of Ministers have a decision power (Articles 11 and 15 of the Treaty establishing ECCAS). The General Assembly adopts decisions and directives and the Council adopts regulations.

Pursuant to Article 11 of the same treaty, decisions and regulations have a direct effect. They are enforceable within 30 days after their publication in the Official Journal of the Community. Directives have a direct effect toward institutions of the Community.

Acts of primary law - that have been signed by Member States and not by one of the organization's institutions - are subject to signatories' ratification process.

Initiative	Analysis	Legal basis	Legal form	Enforcement
<p>Regional ICT development policy for Central Africa (June 2009)</p>		<p>N/A</p>	<p>Working document (regional strategic plan)</p>	<p>Comments: These guidelines are awaiting validation by the Specialized Technical Committee on Telecommunications, the Consultative Commission of Experts, and the Council of Ministers and Heads of State of ECCAS.</p>

Initiative	Analysis	Legal basis	Legal form	Enforcement
Reference framework for the harmonization of national policies and regulations - Recommendations (June 2009)		N/A	A working document comprising recommendations	Comments: These guidelines are awaiting validation by the Specialized Technical Committee on Telecommunications, the Consultative Commission of Experts, and the Council of Ministers and Heads of State of ECCAS.

1.5 Central African Economic and Monetary Community (CEMAC)

Pursuant to Article 6 of the Treaty establishing CEMAC, the General Assembly adopts additional Acts to the Treaty. Regarding the entire agreement, it appears that the Council of Ministers adopts regulations, frame regulations, directives, decisions, recommendations or notices depending on the field concerned. In the field of telecommunications, the Council adopts regulations, decisions and recommendations pursuant to Article 30 of the Treaty.

The Council's acts do not have any direct effect pursuant to Article 47 of the Treaty.

Acts of primary law - that have been signed by Member States and not by one of the organization's institutions - are subject to signatories' ratification process.

Initiative	Analysis	Legal basis	Legal form	Enforcement
Convention governing UEAC (annexed to the treaty establishing CEMAC) (1994)		Constitution or constitutional procedures of States wishing to become parties.	Act of primary law: international agreement binding on signatory States (subject to national ratification mechanisms).	Article 82 of the Convention governing UEAC <i>"The Convention shall be ratified at the initiative of the High Contracting Parties, in accordance with their respective constitutional procedures. The instruments of ratification shall be deposited with the Government of the Republic of Chad, which shall inform the other States and provide them with a certified true copy thereof.</i> <i>This Convention shall enter into force and be applied within the territory of each signatory State as from the first day of the month following the deposit of the instrument of ratification of the signatory State that completes this formality last. However, if such deposit is effected within 15 days of the beginning of the following month, the entry into force of the supplementary act will be carried over to the first day of the second month following the date of deposit".</i>
Yaoundé Declaration (2002)		N/A	Not a legal document.	N/A
CEMAC 2010 Strategy (2005)		N/A	Not a legal document.	N/A

1.6 East African Community (EAC)

The Summit of Heads of State and Government and the Executive Council have a decision power (Articles 11 and 14 of the Treaty establishing EAC). The Council adopts regulations, directives and decisions which come into force on the date of publication unless otherwise provided therein.

According to Article 14 of Treaty, the regulations, directives and decisions of the Council taken or given in pursuance of the provisions of this Treaty shall be binding on the Partner States. No precision is given about the direct effect or not of these provisions.

Acts of primary law - that have been signed by Member States and not by one of the organization's institutions - are subject to signatories' ratification process.

Initiative	Analysis	Legal basis	Legal form	Enforcement
Development strategies: •2 nd Development Strategy (2001-2005); •Final Development Strategy (2006-2010).		Respectively Article 11 of the EAC Treaty 1999 and Article 11 of the EAC Treaty 2007 <i>"The Summit shall give general directions and impetus as to the development and achievement of the objectives of the Community".</i> Comments: The Summit gives directions for achieving the objectives of the Community.	Strategic direction document in the form of a Convention open to signature by Member States.	Comments: The document includes provisions regarding its enforcement.
EAC Private Sector Development Strategy (2006)		Article 127 (1) of the Treaty Establishing EAC (1999): <i>"The Partner States agree to provide an enabling environment for the private sector and the civil society to take full advantage of the Community. To this end, the Partner States undertake to formulate a strategy for the development of the private sector".</i> Comments: The Member States have undertaken to adopt a strategy for development of the private sector.	Strategic direction document Comments: Based on the shorter version available to us, we find no grounds to conclude that this is a legal document.	Comments: The document includes provisions regarding its enforcement.
EAC Amended Treaty (2006-2007)		Constitution or constitutional procedures of States wishing to be parties	Act of primary law: international agreement.	Comments: According to the final provisions, the Treaty shall enter into force upon ratification and deposit of instruments of ratification with the Secretary-General by the partner States.
EAC Regional e Government Framework (2006)		N/A	Working document (study by UNECA)	N/A
Catalogue of East African Standards (2007)		Section 4 (2) (e) of EAC standardization, quality assurance, meteorology and testing Act, 2006 <i>"The functions of the Committee shall be to: [...]submit standards, reports and recommendations to the Council on its own initiative or upon request of the Council concerning the implementation of the Treaty that affect standardization, metrology and conformity assessment; [...]."</i> Comments: The Committee has the authority to submit standards.	Not a legal document	Comments: The standards are submitted to the Council for approval.

Initiative	Analysis	Legal basis	Legal form	Enforcement
Regional Strategy Paper and Regional Indicative Program between EU and COMESA, EAC, IGAD and IOC under 10 th EDF (2008-2013)	<p>Article 130 (3) of the amended Treaty establishing EAC (2007) <i>"[...] With a view to contributing towards the achievement of the objectives of the Community, the Community shall foster co-operative arrangements with other regional and international organizations whose activities have a bearing on the objectives of the Community."</i></p> <p>Comments: The Community is to foster cooperation with other regional and international organizations.</p>	Financial cooperation agreement	<p>Comments: The agreement includes provisions regarding its enforcement.</p>	
EAC Legal Framework for Cyberlaws (November 2008).	N/A	Draft established in partnership with UNCTAD comprising recommendations.	N/A	

1.7 Common Market of Eastern and Southern Africa (COMESA)

The Authority of Heads of States and Government and the Council of Ministers (of Foreign Affairs) have a decision power. Pursuant to Article 8 of the COMESA Treaty, the Authority adopts directions and decisions. Pursuant to Article 10 of the same treaty, the Council shall make regulations, issue directives, take decisions, make recommendations or deliver opinions.

Pursuant to Article 8 of the above mentioned treaty, directions and decisions of the Authority take effect upon the receipt of such notification or on such date as may be specified in the direction or decision. Pursuant to Article 12 of the same treaty regulations enter into force on the date of their publication or such later date as may be specified in the Regulations and directives and Regulations take effect upon the receipt of such notification or on such date as may be specified in the directives or decisions. No precision is given about the direct effect of such decisions.

Acts of primary law - that have been signed by Member States and not by one of the organization's institutions - are subject to signatories' ratification process.

Analysis Initiative	Legal basis	Legal form	Enforcement
COMESA Treaty (1993)	Constitution or constitutional procedures of States wishing to become parties.	Act of primary law: international agreement binding on signatory States (subject to national ratification mechanisms).	<p>Comments: Article 5 of the COMESA Treaty provides that the Member States shall make every effort to plan and direct their development policies with a view to creating conditions favourable for the achievement of the aims of the Common Market and the implementation of the provisions of the Treaty. They shall abstain from any measures likely to jeopardize the achievement of the aims of the Common Market or the implementation of the provisions of the Treaty.</p>
<p>The Constitution (24 January 2003), hereinafter "ARICEA Constitution"</p> <p>Comments: Creation of ARICEA</p>	Constitution or constitutional procedures of the COMESA Member States that wish to see their respective regulatory authorities or competent ministerial departments become parties to the agreement.	Act of primary law: agreement on the Constitution of ARICEA, accession to which is open to regulatory authorities or competent ministerial departments subject to their belonging to Member States that are parties to the COMESA treaty.	<p>Article 19 of the ARICEA Constitution <i>"This Constitution shall enter into force on the date it is signed by Regulators from at least five Member States. Any Founding Member signing the Constitution and requires necessary approvals from its competent authority may submit such approval to the Secretariat within three (3) months of signing".</i></p> <p>Report and decisions: 15th meeting of the COMESA Council of Ministers of 13 15 March 2003 (§ 71) <i>"Council decided as follows: Member States should provide support to the Association of Regulators of Information and Communications for Eastern and Southern Africa (ARICEA)."</i></p> <p>Comments: The Constitution that is the subject of the agreement shall enter into force when signed by the fifth Member State. Pursuant to the above-mentioned decision of the Council, the States are to support ARICEA.</p>
ICT Policy for COMESA (2003)	<p>Article 9(2)(d) of the Treaty establishing COMESA (1993)</p> <p><i>"It shall be the responsibility of the Council to: Make recommendations and take decisions [...] in accordance with the provisions of this Treaty".</i></p>	<p>Sectoral direction policy document equivalent to a recommendation in accordance with Article 9(2)(d) of the Treaty establishing COMESA.</p> <p>Comments: The document itself is not binding as a recommendation, but a decision by the Council addressed to the Member States makes it mandatory.</p>	<p>Report and decisions: 15th meeting of the COMESA Council of Ministers of 13-15 March 2003 (§ 71) <i>"Council decided as follows:</i></p> <p><i>a. Member States adopt the Policy together with the accompanying Model Bill as guidelines for harmonizing institutions, policy and regulations in the region;</i></p> <p><i>b. Member States implement the strategies set out in the ICT Policy document within a period of five (5) years from the date on which Council of Ministers approves it."</i></p> <p>Article 10(4) of Treaty establishing COMESA (1993) A decision shall be binding upon those to whom it is addressed</p> <p>Article 96 (a) of the Treaty establishing COMESA (1993) <i>"The Member States shall:</i></p> <p><i>Adopt common telecommunications policies to be developed within the framework of the Common market in collaboration with other relevant international organizations including the Pan-African Telecommunications Union and the International Telecommunications Union [...]."</i></p> <p>Comments: The Member States are to adopt common telecommunication policies pursuant to Article 96 of the Treaty establishing COMESA.</p> <p>Report and decisions: the 15th meeting of the COMESA Council of Ministers of 13 15 March 2003 (§ 71) specifies the enforcement modalities: The States are to implement the strategy promulgated in the direction document within five years following approval by the Council.</p>

Initiative	Analysis	Legal basis	Legal form	Enforcement
Policy Guidelines on Consumer Protection (2007)		<p>Article 3(2)(c) of the Constitution of ARICEA <i>"In pursuit of these objectives the Association may: Develop and adopt guidelines and model regulations in specialist areas of ICT regulation".</i></p> <p>Comments: Under its Constitution (Article 3(2)(c)) ARICEA can adopt guidelines.</p>	Guidelines	<p>Comments: The guidelines provide national regulators with the course of action to be followed.</p>
Draft RICTSP Implementation Strategy (2007)		N/A	Working document with no legal force.	N/A
Roadmap for e-Readiness Assessment and Information Society Measurement in ESA (2008)		N/A	Working document with no legal force.	N/A
Report of the Working Group 1 meeting (2008)		N/A	Working document with no legal force.	N/A
Organizational and Data Issues for e-Readiness Measurement in ESA (2008)		N/A	Working document with no legal force	N/A
Harmonized ICT Indicators and Indices for ESA (2008)		N/A	Working document with no legal force	N/A
Draft regional reference framework on e-government for COMESA (2008)		N/A	Study with no legal force	N/A
Regional Strategy Paper and Regional Indicative Programme between EU and COMESA, EAC, IGAD and COI under the 10 th EDF (2008-2013)		<p>Treaty establishing COMESA</p> <p>Comments : As COMESA has a legal status, it is empowered to contract.</p>	Financial cooperation agreement between the European Commission, COMESA and other regional organizations.	The Agreement includes provisions regarding its enforcement.
Memorandum of Understanding (MoU) between Members of the Annual Regional Telecommunications Conference (ARTC)		Constitution or constitutional procedures of States wishing to see their respective regulatory authorities or competent ministerial departments become parties to the MoU.	International agreement reflecting a converging point of view on the role and objectives of ARTC (MoU).	<p>Comments: Article 8 of the MoU provides that it will enter into force as of the 33rd annual regional telecommunications conference (ARTC).</p>

Initiative	Analysis	Legal basis	Legal form	Enforcement
Policy Guidelines on Equipment Type Approval and Standards	<p>Article 3(2)(c) of the Constitution of ARICEA <i>"In pursuit of these objectives the Association may: Develop and adopt guidelines and model regulations in specialised areas of ICT regulation".</i></p> <p>Comments: Under its Constitution (Article 3(2)(c)) ARICEA can adopt guidelines.</p>	<p>Article 3(2)(c) of the Constitution of ARICEA <i>"In pursuit of these objectives the Association may: Develop and adopt guidelines and model regulations in specialist areas of ICT regulation".</i></p> <p>Comments: Under its Constitution (Article 3(2)(c)) ARICEA can adopt guidelines.</p>	Guidelines	<p>Comments: The guidelines provide national regulators with the course of action to be followed.</p>
Policy Guidelines on Pricing	<p>Article 3(2)(c) of the Constitution of ARICEA <i>"In pursuit of these objectives the Association may: Develop and adopt guidelines and model regulations in specialist areas of ICT regulation".</i></p> <p>Comments: Under its Constitution (Article 3(2)(c)) ARICEA can adopt guidelines.</p>	<p>Article 3(2)(c) of the Constitution of ARICEA <i>"In pursuit of these objectives the Association may: Develop and adopt guidelines and model regulations in specialist areas of ICT regulation".</i></p> <p>Comments: Under its Constitution (Article 3(2)(c)) ARICEA can adopt guidelines.</p>	Guidelines	<p>Comments: The guidelines provide national regulators with the course of action to be followed.</p>

1.8 Southern African Development Community (SADC)

Pursuant to the Constitutive Act of the SADC, the Summit of Heads of State and Government, the Council of Ministers and the Integrated Committee of Ministers have a decision making power..

Decision of the Summit shall be binding (Article 10) but no precision is given about its direct effect or not. No precisions are either given for the Council's and Integrated Committee's decisions.

Acts of primary law - that have been signed by Member States and not by one of the organization's institutions - are subject to signatories' ratification process.

Initiative	Analysis	Legal basis	Legal form	Enforcement
SADC Protocol on Transport, Communications and Meteorology (1997)	<p>Article 22 (1) of the Treaty establishing SADC, as amended (2001)</p> <p>"1. Member States shall conclude such Protocols as may be necessary in each area of cooperation, which shall spell out the objectives and scope of, and institutional mechanisms for co-operation and integration [...]".</p> <p>Comments: Under this article, protocols can be concluded by Member States for the purpose of enhancing cooperation and integration.</p>	Individual secondary legislation provided for by Article 22 (l) of the Treaty establishing SADC, as amended	<p>Article 22 (2), (3), (4), (5) and (6) of the Treaty establishing SADC, as amended (2001)</p> <p>"[...]</p> <ol style="list-style-type: none"> Each Protocol shall be approved by the Summit on the recommendation of the Council. Each Protocol shall be open to signature and ratification. Each Protocol shall enter into force thirty (30) days after the deposit of the instruments of ratification by two thirds of the Member States. Once a Protocol has entered into force, a Member State may only become a party thereto by accession. Each protocol shall remain open for accession by any State subject to Article 8 of this Treaty. [...] <p>Comments: Article 22 of the Treaty provides that the protocols are approved by the Summit on the recommendation of the Council. The Council is composed of one minister from each Member State, preferably a minister responsible for foreign affairs, whereas the Summit is composed of the Heads of State or government of the Member States. Enforcement of the protocols requires both signature and ratification by the Member States. A protocol enters into force 30 days after the deposit of instruments of ratification by two thirds of the Member States. Thereafter, a Member State may become a party to a protocol only by accession.</p>	
Telecommunications Policies for SADC (June 1998) Telecommunications Bill Model for SADC (June 1998)	<p>Article 13.4 (4) (b) of the Protocol on Transport, Communications and Meteorology (1997)</p> <p>"The functions of the Committee of ministers shall include - [...] (b) adopting a regional transport, communications and meteorology sector policy agenda and development strategies; [...]".</p> <p>Comments: The functions of the Committee of Ministers of SATCC include the adoption of policy and development strategies. However, there is no indication of the legislation model.</p>	Document providing sector direction policy and model law. Comments: The protocol and treaty establishing SADC, as amended (2001), do not indicate the legal force of the decisions of the Committee of Ministers of SATCC. The decision of 26 June 1998 could be equated with a recommendation that is not binding on Member States	<p>Decision of the Committee of Ministers of SATCC (26 June 1998)</p> <p>The Committee of ministers:</p> <ul style="list-style-type: none"> "urged Member States to expeditiously adopt and implement the Policies and the Model Telecommunications Bill in the interest of early regional integration and economic development; urged Member States to establish and submit to the SATCC-TU, by 31 December 1998, their respective time schedules for the national adoption and implementation of the Policies and Model Telecommunications Bill; and directed SATCC-TU to monitor the implementation of the Policies and Model Telecommunications Bill and to report to the Committee of Ministers". <p>Comments: We do not have a copy of the whole of the above-mentioned decision encouraging the Member States to adopt the policies and model legislation. SATCC-TU is responsible for implementing the two documents.</p>	
Chart of Accounts and Cost Allocation Manual (September 1999)	N/A	Working document that includes the accounting obligations of fixed telephone operators.	N/A	

Initiative	Analysis	Legal basis	Legal form	Enforcement
SADC ICT Declaration (2001)	<p>Article 10 (2) of the Treaty establishing SADC, as amended (2001) <i>"[...] The Summit shall be responsible for the overall policy direction [...]"</i>.</p> <p>Comments The Summit is responsible for overall policy direction.</p>	<p>Article 10 (2) of the Treaty establishing SADC, as amended (2001) <i>"[...] The Summit shall be responsible for the overall policy direction [...]"</i>.</p> <p>Comments The Summit is responsible for overall policy direction.</p>	<p>Declaration of sectoral policy with no legal force.</p>	<p>Comments: With no legal force, this declaration by the Heads of State and Government is strategically important as regards ICTs in that it enhances SADC's ICT policy.</p>
Regional Indicative Strategic Development plan (2001)	<p>Article 10 (3) of the Treaty establishing SADC, as amended (2001) <i>"3. The Summit shall adopt legal instruments for the implementation of the provisions of this Treaty; [...]"</i>.</p> <p>Comments: The Summit adopts legal instruments to implement the provisions of the Treaty.</p>	<p>Article 10 (3) of the Treaty establishing SADC, as amended (2001) <i>"3. The Summit shall adopt legal instruments for the implementation of the provisions of this Treaty; [...]"</i>.</p> <p>Comments: The Summit adopts legal instruments to implement the provisions of the Treaty.</p>	<p>Secondary legislation (provided for by Article 10 (9)) of the Treaty establishing SADC, as amended).</p> <p>Comments: Under Article 10 (9), unless otherwise provided, the decisions of the Summit are binding on Member States.</p>	<p>Article 12 (2) (b) of the Treaty establishing SADC, as amended: <i>"[...] It shall be the responsibility of the Integrated Committee of Ministers to: [...]"</i> <i>(b) monitor and control the implementation of the Regional Indicative Strategic Development Plan in its area of competence; [...]"</i>.</p> <p>Comments: Implementation of RISDP, as decided by the Summit of Heads of State and Government at Windhoek, Namibia, in 2001, is entrusted by the Treaty establishing SADC, as amended, to the Integrated Committee of Ministers.</p>
SADC Regional Frequency Allocation plan for 20-3 100 MHz (November 2000)	N/A	N/A	Technical document (regional frequency allocation plan for 20- 3 100 MHz).	No indication.
<p>TRASA guidelines</p> <ul style="list-style-type: none"> Guidelines on Interconnection for SADC Countries (May 2000) Policy Guidelines on Tariff for Telecommunications Services (November 2000) Policy Guidelines on Licensing for SADC Countries (February 2002) Wholesale Pricing Guidelines for the ICT Sector for SADC (September 2002) Guidelines on Numbering Harmonization for SADC Countries (November 2002 and January 2003) Consumer Protection Guidelines (April 2004) 	<p>Article 3.2 of the Constitution of TRASA <i>"Deliberate on issues relating to telecommunications regulation and make recommendations to any competent authority or take any appropriate action. (...)"</i> <i>Participate as an associate member or in any institution or body whose objectives involve the regulation of telecommunications. (...)"</i> <i>Take any action that may be necessary or desirable for the achievement of these objectives."</i></p>	<p>Article 3.2 of the Constitution of TRASA <i>"Deliberate on issues relating to telecommunications regulation and make recommendations to any competent authority or take any appropriate action. (...)"</i> <i>Participate as an associate member or in any institution or body whose objectives involve the regulation of telecommunications. (...)"</i> <i>Take any action that may be necessary or desirable for the achievement of these objectives."</i></p>	<p>Technical document (regional frequency allocation plan for 20- 3 100 MHz).</p> <p>Comments: No indication.</p>	<p>Comments: No indication.</p>

Initiative / Analysis	Legal basis	Legal form	Enforcement
<p>Constitution of CRASA (21 February 2006)</p> <p>Comments: Creation of CRASA</p>	<p>Constitution or constitutional procedures of the Member States of SADC wishing to see their respective regulatory authorities or competent ministerial departments become parties to the agreement.</p>	<p>International agreement accession to which is open to the regulators of the Member States of SADC.</p>	<p>Article 29 of the Constitution of CRASA <i>"ENTRY INTO FORCE</i> <i>29.1 This Constitution shall enter into force on the date of adoption by the Annual General Meeting.</i> <i>29.2 This Constitution shall remain open for accession by any institution subject to Articles 4 and 5. The institution shall submit an application to the Secretariat with a commitment to fulfil the requirements of the Constitution. [...]"</i></p> <p>Comments: The Constitution of CRASA enters into force on the date of its adoption by the Annual General Meeting. Any institutions so wishing can accede to the Constitution after its entry into force.</p>
<p>CRASA Wireless Technologies Policy and Regulation (2004/2006)</p>	<p>Article 3.1 (3.1.1) and 3.2 (3.2.1) of the Constitution of CRASA <i>"3. 1 The objectives of CRASA shall be to :</i> <i>3.1.1 coordinate regulatory matters and exchange ideas, views and experience on all aspects of regulation of the communications sector throughout the Southern Africa region; [...]</i> <i>3.2 In pursuit of these objectives, CRASA shall:</i> <i>3.2.1 [...] make recommendations to SADC or other appropriate authorities;"</i></p> <p>Comments: Under the Constitution, CRASA can make recommendations to SADC or to other appropriate authorities.</p>	<p>Guidelines</p>	<p>Comments: The guidelines provide national regulators with the course of action to be followed.</p>
<p>Guidelines on Standards and Equipment Type Approval (January 2006)</p>	<p>Article 3.1 (3.1.1) and 3.2 (3.2.1) of the Constitution of CRASA <i>"3.1 The objectives of CRASA shall be to:</i> <i>3.1.1 coordinate regulatory matters and exchange ideas, views and experience on all aspects of regulation of the communications sector throughout the Southern Africa region; [...]</i> <i>3.2 In pursuit of these objectives, CRASA shall:</i> <i>3.2.1 [...] make recommendations to SADC or other appropriate authorities;"</i></p> <p>Comments: Under the Constitution, CRASA can make recommendations to SADC or to other appropriate authorities.</p>	<p>Guidelines</p>	<p>Comments: The guidelines provide national regulators with the course of action to be followed.</p>

Initiative	Analysis	Legal basis	Legal form	Enforcement
Policy Guidelines on Gender Equality and Empowerment of Disadvantaged People (March 2007)	<p>Article 3.1 (3.1.1) and 3.2 (3.2.1) of the Constitution of CRASA</p> <p>"3.1 The objectives of CRASA shall be to :</p> <p>3.1.1 coordinate regulatory matters and exchange ideas, views and experience on all aspects of regulation of the communications sector throughout the Southern Africa region; [...]</p> <p>3.2 In pursuit of these objectives, CRASA shall:</p> <p>3.2.1 [...] make recommendations to SADC or other appropriate authorities;"</p> <p>Comments:</p> <p>Under the Constitution, CRASA can make recommendations to SADC or to other appropriate authorities.</p>	<p>Article 3.1 (3.1.1) and 3.2 (3.2.1) of the Constitution of CRASA</p> <p>" 3. 1 The objectives of CRASA shall be to :</p> <p>3.1.1 coordinate regulatory matters and exchange ideas, views and experience on all aspects of regulation of the communications sector throughout the Southern Africa region; [...]</p> <p>3.2 In pursuit of these objectives, CRASA shall:</p> <p>3.2.1 [...] make recommendations to SADC or other appropriate authorities;"</p> <p>Comments:</p> <p>Under the Constitution, CRASA can make recommendations to SADC or to other appropriate authorities</p>	Guidelines	<p>Comments:</p> <p>The guidelines provide national regulators with the course of action to be followed.</p>
Draft SADC ICT Consumer Rights and Protection Regulatory Guidelines (2009)	<p>Article 3.1 (3.1.1) and 3.2 (3.2.1) of the Constitution of CRASA</p> <p>" 3. 1 The objectives of CRASA shall be to :</p> <p>3.1.1 coordinate regulatory matters and exchange ideas, views and experience on all aspects of regulation of the communications sector throughout the Southern Africa region; [...]</p> <p>3.2 In pursuit of these objectives, CRASA shall:</p> <p>3.2.1 [...] make recommendations to SADC or other appropriate authorities;"</p> <p>Comments:</p> <p>Under the Constitution, CRASA can make recommendations to SADC or to other appropriate authorities</p>	<p>Article 3.1 (3.1.1) and 3.2 (3.2.1) of the Constitution of CRASA</p> <p>" 3. 1 The objectives of CRASA shall be to :</p> <p>3.1.1 coordinate regulatory matters and exchange ideas, views and experience on all aspects of regulation of the communications sector throughout the Southern Africa region; [...]</p> <p>3.2 In pursuit of these objectives, CRASA shall:</p> <p>3.2.1 [...] make recommendations to SADC or other appropriate authorities;"</p> <p>Comments:</p> <p>Under the Constitution, CRASA can make recommendations to SADC or to other appropriate authorities</p>	Guidelines	<p>Comments:</p> <p>The guidelines provide national regulators with the course of action to be followed.</p>

1.9 InterGovernmental Authority on Development (IGAD)

Pursuant to the Agreement establishing IGAD the Assembly of Heads of State and Government (Article 9), the Council of Ministers (Article 10) and the Committee of Ambassadors (Article 11) are vested with a decision making power.

No precisions are provided about the effect of those decisions.

According to Article 17 of the Agreement, Member States shall conclude protocols in order to execute the aims and objectives of this Agreement. These are Acts of primary law, the implementation of which is subject to signatories' ratification process.

Initiative	Analysis	Legal basis	Legal form	Enforcement
IGAD RICTSP Workshop Report (2007)		N/A	Reports of IGAD's national working groups within the framework of RICTSP; not legal documents.	N/A

Initiative / Analysis	Legal basis	Legal form	Enforcement
Regional Strategy Paper and Regional Indicative Programme between EU and COMESA, EAC, IGAD and IOC under the 10 th EDF (2008-2013)	<p>Article 18 of the Agreement establishing IGAD (1996) <i>"In pursuit of its aims and objectives under this Agreement, the Authority may enter into agreements with other regional organizations and with intergovernmental and non-governmental agencies and non-Member States."</i></p>	Financial cooperation agreement	<p>Comments: The agreement includes provisions regarding its enforcement</p>

1.10 Indian Ocean Commission (IOC)

The Commission is vested with a decision making power pursuant to Article 7 of the General Cooperation Agreement between Member States of the IOC. Its decisions do not have a direct effect according to Article 9 of this agreement.

Acts of primary law - that have been signed by Member States and not by one of the organization's institutions - are subject to signatories' ratification process.

Initiative / Analysis	Legal basis	Legal form	Enforcement
Regional Strategy Paper and Regional Indicative Program – between EU and COMESA, EAC, IGAD and IOC under 10 th EDF (2008-2013)	<p>Article 8 (3) of the General Cooperation Agreement between the Member States of IOC (1984) <i>"The Commission [...] informs [...] the signatory States of any proposals for cooperation from non-Member States or organizations".</i></p>	Financial cooperation agreement	<p>Comments: The agreement includes provisions regarding its enforcement.</p>

2 Regional ICT/Telecommunication regulators' associations are key players in regulatory harmonization

Concerning their missions, some regional regulators' associations aim to elaborate and harmonize regulations in the field of telecommunications tariffs and services (ARTAC, EARPTO and WATRA), but most of them just aim to share experiences on telecommunications between members.

All regional regulators' associations, except the Technical Committee for Regulation (CTR) and the Committee of Regulators (CTREL), have to promote the development of the universal service and to optimize the scarce resources use. The ARTAC is the only regional regulators' association that aims to promote liberalization and competition projects.

The Comity of Regulators and CTR have a particular mission which consists in promoting collaboration between national regulatory authorities.

Regarding their scopes, all organizations have a consultative role with Member States or regional integration organizations. In the frame of that mission, some of them issue recommendations (ARTAC and WATRA) or guidelines and standard regulations (ARICEA).

2.1 Association of Regulators of Information and Communications for Eastern and Southern Africa (ARICEA) of COMESA

2.1.1 Objectives

The objectives of ARICEA are set forth in Article 3.1 of the Constitution of ARICEA.

The objectives are as follows:

- exchange ideas, opinions and experiences among members on all aspects related to facilitating and regulating the development and application of ICTs;
- promote sustainable development and the provision of efficient, adequate and cost effective ICT services and networks in the subregion;
- coordinate cross-border regulations on ICTs in the subregion;
- contribute to the achievement of subregional and regional integration;
- optimize the use of scarce resources in the ICT sector.

2.1.2 Competencies

Article 3.2 of the Constitution of ARICEA provides that, in pursuit of the above objectives the Association may, *inter alia*:

- deliberate on issues related to the development and implementation of ICTs and make recommendations to the relevant authorities or take any other appropriate action;
- develop and adopt guidelines and model regulations for ICTs;
- contribute to the development, harmonization and implementation of ICT policies and regulations within the subregion and the African continent, and at international level.

2.2 African Telecommunication Regulators' Assembly (ATRA)

The texts relating to ATRA were not available to the consultant. The constitution of this organisation is under process since the creation of its Coordination Committee in 2008 during the Forum on Telecommunication/ICT Regulation and Partnership in Africa (FTRA) organised by the ITU Regional Office for Africa.

2.3 Committee of Regulators (CRTEL) of UEMOA

Decision No. 09/2006/CM/UEMOA of 23 March 2006 establishing the Committee of National Telecommunications Regulators of UEMOA or CRTEL.

2.3.1 Objectives

The objectives of the Committee of Regulators are as follows:

- foster exchange and cooperation between members with a view to promoting regional integration network development and intra-community trade;
- participate in the establishment of a database of information on issues of common interest regarding telecommunications regulation and control at UEMOA level;
- encourage the implementation of a harmonized regulatory policy within the telecommunication sector;
- ensure compliance with community legislation on telecommunications;
- ensure the coordination and realization of actions to resolve mutual problems regarding telecommunication regulation.

2.3.2 Competencies

In pursuit of the above objectives, the competencies of the Committee of Regulators include the following:

- the provision of assistance to the Commission in the application of community texts relating to the harmonization of regulatory policy;
- follow-up of the application of telecommunication legislation adopted by the bodies of the Union;
- the proposal of amendments to community legislation to keep up with developments within the telecommunications environment;
- coordination and cooperation in the management of frequencies, numbering plan and satellite communication orbital positions;
- coordination of activities carried out at community level within the framework of universal service;
- centralization of statistical data on the sector;
- the harmonization of procedures for equipment type approval, authorization and requests for the provision of services in UEMOA Member States;
- monitoring of the evolution of telecommunication services interconnection tariffs;
- the harmonization of telecommunication sector tariff policies;
- dialogue on international issues;
- protection of the interests of telecommunication service users at community level;
- mediation between operators and other stakeholders in the telecommunication sector in UEMOA Member States regarding trans-border issues.

2.4 Communication Regulators' Association of Southern Africa (CRASA) for SADC

2.4.1 Objectives

The objectives of CRASA are set forth in Article 3.1 of the Constitution of CRASA.

Those objectives are as follows:

- coordinate regulatory matters and exchange ideas, views and experience on all aspects of regulation of the communications sector throughout the Southern Africa region;
- promote the establishment and operation of efficient, adequate and cost-effective communications networks and services in the Southern Africa region in order to meet the diverse needs of customers while being economically sustainable;
- facilitate a uniform level of understanding of regulatory matters, and
- maximize the utilization of scarce resources.

2.4.2 Competencies

In pursuit of these objectives, under Article 3.2 of its Constitution, CRASA shall:

- deliberate on issues relating to communications regulation and make recommendations to SADC or other appropriate authorities;
- coordinate the utilization of scarce resources in areas of communications regulation and cooperate through the joint use of specialized facilities;
- participate as a consultative or associate member or in any other appropriate capacity in the activities of any organization, institution or body whose objectives involve the regulation of communications; and
- take any other action that may be necessary or desirable for the achievement of its objectives.

2.5 *East Africa Regulatory, Postal and Telecommunications Organization (EARPTO) for EAC, now called East African Communications Organization (EACO)*

2.5.1 Objectives

The objectives of EARPTO are as follows:

- harmonize and promote the development of postal and telecommunication services and regulatory matters and devise ways and means to achieve fast, reliable, secure, economic and efficient services within the Community;
- ensure the provision of tariff structure and settlement of accounts;
- promote the development and application of information and communications technologies (ICT);
- promote the development of technical facilities and their most efficient utilization with a view to improving the efficiency for telecommunications and postal services, increasing their usefulness and making them generally available to the public.

2.5.2 Competencies

In pursuit of the above objectives, EARPTO shall:

- harmonize policies and legislation in the communications sector (e.g. managing competition and licensing requirements in the region);
- serve as a consultative organization for settlement of postal and telecommunications matters which are regional in nature.

2.6 *Technical Committee for Regulation (CTR) of CEMAC*

The Technical Committee for Regulation (CTR) is a body that comprises the national electronic communications regulatory authorities of CEMAC Member States.

2.6.1 Objectives

The objectives of CTR are set forth in Article 2 of Decision No. 45/08-UEAC-133-CM-18 establishing CTR for the electronic communications of CEMAC Member States:

- To foster cooperation between the national regulatory authorities of Member States.

2.6.2 Competencies

In pursuit of the above objective as set forth in Article 2 of Decision No. 45/08-UEAC-133-CM-18 establishing CTR for the electronic communications of CEMAC Member States, CRT shall:

- establish a database of information on matters of common interest relating to the regulation and control of electronic communications within the Member States;
- provide advice to the bodies of CEMAC regarding electronic communications.

2.7 *Telecommunication Regulators' Association of Central Africa (ARTAC) for ECCAS*

2.7.1 Objectives

The objectives of ARTAC are set forth in Article 3 of the Constitution of ARTAC.

The main objectives are as follows:

- encourage the introduction of modern regulatory and legislative structures related to the provision of telecommunication services in all States of the subregion;
- promote the liberalization and competition projects with a view to strengthening networks and improving the efficiency of telecommunication services in the subregion;
- foster the development of policies aimed at facilitating universal access and telecommunication penetration in rural and poorly served areas in the subregion;
- promote, in the countries of Central Africa, the creation and operation of efficient, appropriate and profitable telecommunication networks and services capable of satisfying the numerous requirements of customers while remaining economically sustainable.

2.7.2 Competencies

In pursuit of these objectives, ARTAC is to:

- work to develop and harmonize regulations governing the provision of and tariff setting for telecommunication services in the countries of the subregion;
- facilitate the exchange of ideas, opinions and experience between members on all aspects of regulation of the telecommunication sector;
- develop and formulate, with a view to its submission as a recommendation to the political authorities of the subregion, an information and communication technology master plan establishing the policy goals and milestones for modernization of telecommunication infrastructures and distribution services in the subregion;
- work to produce harmonized service standards in the subregion and to adopt harmonized technical and qualitative standards for telecommunication applications and equipment in the subregion;

- collaborate with regional and international telecommunication organizations.

2.8 West African Telecommunication Regulators' Assembly (WATRA) for ECOWAS:

2.8.1 Objectives

The objectives of WATRA are set forth in Article 3 of the Constitution of WATRA.

The main objectives are as follows:

- work to develop and harmonize regulations governing the provision of and tariff setting for telecommunication services in the countries of the subregion;
- contribute to the development of policies to facilitate universal access and telecommunications penetration in rural and poorly served areas in the subregion;
- work to produce harmonized service standards in the subregion and to adopt harmonized technical and qualitative standards for telecommunication applications and equipment in the subregion.

2.8.2 Competencies

In pursuit of the above objectives, Article 3.1 of the Constitution of WATRA provides enforcement mechanisms:

- deliberate on matters related to the regulation of telecommunications and make appropriate recommendations to the governments of member countries or other competent authorities, or adopt any other measure it deems appropriate;
- collaborate with, or participate in as a consultative member or associate or in any other capacity, the activities of any organization, institution or body whose objectives include the regulation of telecommunications, in particular the telecommunication regulatory association of the other African subregional economic groups, as well as the other international organizations and public or private programmes participating or interested in the creation and modernization of telecommunication service structures in Africa;
- coordinate the use of scarce resources in the fields of the regulation of telecommunications and enhance cooperation between members by sharing the use of specialized installations;
- take any other initiatives and adopt any other measures deemed necessary or desirable in order to achieve its objectives.

3 Regional courts as potential players in regulatory harmonization initiatives

Some regional Courts of Justice have jurisdiction over the constituting treaties and the acts of the community institutions and could have a role to play to enforce regional legal acts and to settle out transnational disputes in telecommunications.

However some regional courts only have consultative powers and the access to some of them is restricted to some petitioners such as Member States or staff of the Institutions.

Until now no case related to telecommunication was brought to any of these courts.

3.1 AU Court of Justice

Protocol on the statute of the African Court of Justice and Human Rights of 1 July 2008.

Article 35 of the Protocol provides that the Court can take provisional measures.

Article 46 of the Protocol concerns the binding force and execution of judgements. In accordance with this text, the decision is binding only on the parties to the dispute, who must comply with the judgement within the time stipulated by the Court. Where a party fails to

comply with a judgement, the Court shall refer the matter to the Assembly. The Assembly may impose sanctions by virtue of paragraph 2 of Article 23 of the Constitutive Act of the African Union.

3.2 CEMAC Court of Justice

Established by the convention governing the Court of Justice of CEMAC dated 5 July 1996, the court had its judges appointed in 2000.

Article 2 of the convention establishes the competencies of the Court of Justice. These include jurisdictional control of the activities of the institutions of CEMAC. Accordingly, the Court is mandated to:

- ensure compliance on the part of the Member States, institutions and bodies of CEMAC with the provisions of the treaties of CEMAC and subsequent agreements;
- ensure, in the judgements it passes, the harmonization of case law in matters related to the areas covered by the treaties, and contribute, in the opinions it issues, to harmonizing the national legislation of Member States on the same matters.

Pursuant to Article 5 of the convention, the judgements handed down by the Court within the framework of its jurisdictional mission are binding and enforceable. Within the framework of its consultative role, it issues opinions.

Pursuant to Article 16 of the convention, the Member State or body whose act has been judged not to be in compliance with community legislation is bound to take all necessary measures to execute the decision of the Judiciary Chamber. In the case of refusal to comply, any Member State or organ of CEMAC brings the matter before the Conference of Heads of State.

3.3 COMESA Court of justice

Pursuant to Articles 24 and 25 of the treaty establishing COMESA, a Member State or the Secretary-General can refer a matter to the Court of Justice in the case of a Member State being presumed to have failed to fulfil one of its obligations. Further, a Member State or a legal or natural person having exhausted internal means of redress may refer the matter to the Court for the latter to determine the legality of an act. The Court of Appeal is competent.

Article 40 of the Treaty foresees only the execution of a judgement of the Court which imposes a pecuniary obligation on a person.

3.4 EAC Court of Justice

Pursuant to Articles 28-30 of the treaty establishing EAC, a Member State or the Secretary-General can refer a matter to the Court of Justice in the case of a Member State being presumed to have failed to fulfil one of its obligations. Further, a Member State or a legal or natural person having exhausted all internal means of redress may refer the matter to the Court for the latter to determine the legality of an act. The Court of Appeal is competent.

Article 44 of the Treaty foresees only the execution of a judgement of the Court which imposes a pecuniary obligation on a person.

3.5 UEOMA Court of Justice

Supplementary Protocol No. 1 on the control bodies of UEMOA establishes the duties of the Court of Justice.

part 1

Pursuant to Article 1 of the Protocol, the Court of Justice ensures legal compliance regarding the interpretation and application of the UEMOA Treaty.

Pursuant to Articles 5-8, the Member States or the Commission may refer the matter to the Court in the case of a State failing to fulfil one of its obligations under the Treaty. In addition, the Court is competent to determine the legality of regulations, directives and decisions at the request of a State or a legal or natural person.

Pursuant to Article 20, the judgements of the Court of Justice are enforceable.

> COMPARATIVE STUDY AND GAP ANALYSIS OF REGIONAL REGULATORY HARMONIZATION INITIATIVES

The consultant has been commissioned to undertake two analyses:

- a comparative analysis of all regional initiatives for regulatory harmonisation based on the analytical orientations identified below including summary tables and
- a gap analysis, paying particular attention to their commonalities and differences in their normative nature and the subjects covered (licensing, universal access and service, interconnection, etc.)

These two studies take into account the temporal trends in both the methods and contents of harmonization.

This second part of the report is dedicated to this comparative analysis of harmonization initiatives' methods as well as content along a common time line. The results are summarized in two tables

It also includes a gap analysis listing the main differences and common points which have been identified during the comparative analysis.

The scope of the study covers the list of initiatives established during the inventory – subject to their availability to the consultant as indicated in Annex 1 - entering in the categories listed in the tables as defined below (in terms of either normative nature Table 1 and contents Table 2).

Further, it is to be noted that the undated documents have not been taken into account as a temporal approach is required for the present study. In particular, the undated COMESA documents such as the Memorandum of Understanding between Members of the ARTC, the Policy Guidelines on Equipment Type Approval and Standards, and the Policy Guidelines on Pricing have not been considered.

1 Comparative study

1.1 Harmonization method (Table 1)

Please note that definitions distinguishing (i) legal, (ii) regulatory and (iii) policy are highly relative. Definitions are per se always of an arbitrary nature particularly in a context when they are designed for explanation and understanding in order to inform the main differences and commonalities so that they emerge easily.

First a distinction has been made according to the entity which has issued the initiative in question, namely: regional (associations of) regulators as opposed to regional organizations (we could call this 'principle of origin'): the initiatives taken by the former being ranked in regulatory initiatives, the initiatives taken by the latter being ranked either policy or legal depending on their rather orienting nature or binding nature.

However, looking closer, an instrument may be in reality of a hybrid nature or considered to be policy even if adopted by a regulator such as SADC guidelines.

It is to be noted that national view of legal versus regulatory where the former is issued by the Parliament and the other by governmental agencies or independent public authorities are clearly not operational at a regional level.

EU community law is not helping either to adopt an unchallengeable stance on the definition, since directives (which tend to give more room of manoeuvre to Member States as to the

part 2

common orientation to consider) are implemented through Parliament and turn out to be laws applicable under their national form with the same binding force as regulations.

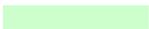
Further, the division and distinction is susceptible to alteration as a result of a change of the treaty or other related instruments, and such definitions shall therefore be construed with caution for the future.

Hence, for the purpose of this report:

- **Policy** shall refer to any document adopted by regional organizations' institutions and/or entities thereof that guides actions in the ICT and telecommunications sectors toward those that are most likely to achieve a desired outcome. It generally leaves ample room of manoeuvre to those to whom it is intended. Policy document does not have a binding effect per se unless decided otherwise.
- **Legal** shall refer to any instrument adopted by regional organizations institutions and/or entities thereof that has a binding effect per se.
- **Regulatory** shall mean any document adopted by regional regulators.

Regional organisations to which documents in the following table are related can be identified with the following colour code.

Colour code

	COMESA
	UEMOA
	SADC
	ECOWAS

part 2

Nature Time	Policy	Legal	Regulatory
1992-1994		The revised ECOWAS Treaty (1993). COMESA Treaty (1993) The Convention Governing the UEAC (1994).	
1995-1997		SADC Protocol on Transport, Communications and Meteorology (1997).	Constitution of the TRASA (4 December 1997), SADC.
1998-2000	SADC Chart of Accounts and Cost Allocation Manual (September 1999). SADC Regional Frequency Allocation plan for 20-3 100 MHz (November 2000).		Telecommunications Policies for SADC (June 1998). Telecommunications Bill Model for SADC (June 1998). Guidelines on Interconnection for SADC Countries (May 2000). SADC Policy Guidelines on Tariff for Telecommunications Services (November 2000).
2001-2003	EAC 2 nd Development Strategy (2001-2005). SADC ICT Declaration (2001). Yaoundé Declaration (2002).	NEPAD document (October 2001). SADC Regional Indicative Strategic Development Plan (RIDSP) (2001).	Constitution of WATRA (2002). Policy Guidelines on Licensing for SADC Countries (February 2002). Policy Guidelines on Universal Access/Service for SADC (February 2002). Wholesale Pricing Guidelines for the ICT Sector for SADC (September 2002). Guidelines on Numbering Harmonization for SADC Countries (November 2002 and January 2003). Constitution of the ARICEA (24 January 2003). ICT Policy for COMESA (2003). Model Legislation for COMESA (2003).

part 2

Nature Time	Policy	Legal	Regulatory
2004-2006	<p>Strategic Plan for WATRA (2005-2008).</p> <p>e-CEMAC 2010 Strategy (2005).</p> <p>EAC Final Development Strategy (2006-2010).</p> <p>Decision document of the ministers responsible for ICTs and/or Telecommunications on the policy, legal and regulatory aspects of the NEPAD ICT Broadband infrastructure Network for Eastern and Southern Africa (June 2006).</p> <p>EAC Private Sector Development Strategy (2006).</p> <p>EAC Regional E-Government Framework (2006).</p>	<p>Protocol on Policy and Regulatory Framework for NEPAD CT Broadband Infrastructure for Eastern and Southern Africa (2006).</p> <p>Protocol A/SP.1/06/06 amending the revised ECOWAS Treaty.</p> <p>Directive No. 01/2006/CM/UEMOA relating to harmonization of policies regulating telecoms.</p> <p>Directive No. 02/2006/CM/UEMOA relating to network operators and service suppliers.</p> <p>Directive No. 03/2006/CM/UEMOA relating to interconnection of networks and telecom services.</p> <p>Directive No. 04/2006/CM/UEMOA relating to universal service and obligations of performance of the network.</p> <p>Directive No. 05/2006/CM/UEMOA relating to harmonization of telecom tariffs.</p> <p>Directive No. 06/2006/CM/UEMOA relating to cooperation among national telecom regulators.</p> <p>Decision No. 09/2006/CM/UEMOA of 23 March 2006 establishing the Committee of National Telecommunications regulations of Member States of WAEMU.</p>	<p>COMESA Policy Guidelines on Universal Service/Access (2004).</p> <p>COMESA Regulatory Guidelines on Interconnection (2004).</p> <p>COMESA Regulatory Guidelines on Universal Service (2004).</p> <p>COMESA Regulatory Guidelines on Licensing (2004).</p> <p>SADC Consumer Protection Guidelines (April 2004).</p> <p>SADC Guidelines on Human Resource Development and Management (2004).</p> <p>CRASA Wireless Technologies Policy and Regulations (September 2004/2006).</p> <p>SADC Guidelines on Standards and Equipment Type Approval (January 2006).</p>

part 2

Nature Time	Policy	Legal	Regulatory
2007-2009	<p>Strategic Roadmap for WATRA (2007-2010).</p> <p>Catalogue of East African Standards (2007).</p> <p>Draft RICTSP Implementation Strategy (2007).</p> <p>IGAD RICTSP Workshop Report (2007).</p> <p>AU's Reference Framework for Harmonization of Telecommunication and ICT Policies and Regulation in Africa (May 2008).</p> <p>Study on harmonization of telecommunication, ICT policies and regulation in Africa - Executive Summary and Draft Report (May 2008).</p> <p>Report on the Conference of ministers of telecommunications and posts (Cairo Declaration annexed) (May 2008).</p> <p>UA Implementation Plan of the Decision EX.CL/434 (XIII) from the Executive Council relative to the second Conference of telecommunications and ICT African ministers (May 2008).</p> <p>Yamoussoukro Plan on Cybersecurity (November 2008).</p> <p>Draft EAC Legal Framework for Cyberlaws (November 2008).</p> <p>Roadmap for E-readiness Assessment and Information Society Measurement in ESA (2008).</p> <p>COMESA Report of the Working Group 1 meeting (2008).</p> <p>Organizational and Data Issues for E-Readiness Measurement in ESA (2008).</p> <p>Harmonized ICT Indicators</p>	<p>The EAC Amended Treaty (2007).</p> <p>Executive Council Decision EX.CL/434 (XIII).</p> <p>Supplementary Act A/SA.5/01/07 on the management of the radio-frequency spectrum.</p> <p>Supplementary Act A/SA.2/01/07 on access and interconnection in respect of ICT sector networks and services.</p> <p>Supplementary Act A/SA.4/01/07 on numbering plan management.</p> <p>Supplementary Act A/SA.1/01/07 on the harmonization of policies and of the regulatory framework for the ICT sector.</p> <p>Supplementary Act A/SA.3/01/07 on the legal regime applicable to network operators and service providers.</p> <p>Supplementary Act A/SA.6/01/07 on universal access/service.</p> <p>Draft Supplementary Act A/SA/12/08 on Digital Transactions.</p> <p>Draft Directive D/12/09 on Guidelines on Cyber Crime within ECOWAS (Reviewed October 2008).</p> <p>Draft Supplementary Act A/SA/12/09 on Guidelines on Personal Data Protection within ECOWAS as modified by the Draft Directive D/CM/.../2008 on Guidelines on Personal Data Protection within ECOWAS.</p> <p>Directive No. 09/08-UEAC-133-CM-18 harmonizing establishment and control modalities of electronic communications tariffs in the CEMAC space (November 2008).</p> <p>Directive No. 10/08-UEAC-133-CM-18 harmonizing legal frameworks of activities related to electronic communications in the CEMAC member states (November 2008).</p> <p>Directive No. 08/08-UEAC-133-</p>	<p>Constitution of the CRASA (21 February 2006).</p> <p>SADC Policy Guidelines on Gender Equality and Empowerment of Disadvantaged People (March 2007).</p> <p>COMESA Policy Guidelines on Consumer Protection (2007).</p> <p>Draft SADC ICT Consumer Rights and Protection Regulatory Guidelines (2009).</p>

part 2

Nature Time	Policy	Legal	Regulatory
	<p>and Indices for ESA (2008).</p> <p>EAC Regional E-Government Framework (2008).</p> <p>Regional ICT Development Policy for Central Africa (June 2009).</p> <p>ECCAS Framework for harmonization of national policies and regulations (June 2009).</p> <p>Regional Strategy Paper and Regional Indicative Program between the EU, the COMESA, the EAC, the IGAD and the IOC (2008-2013).</p>	<p>CM-18 relative to interconnection and access to electronic communications networks and services in the CEMAC member states.</p> <p>Directive No. 07/08-UEAC-133-CM-18 establishing a legal framework for electronic communications networks and services users rights in the CEMAC space (November 2008).</p> <p>Directive No. 06/08-UEAC-133-CM-18 relative to universal service in the sector of electronic communications in the CEMAC member states (November 2008).</p> <p>Regulation No. 21/08-UEAC-133-CM-18 relative to the harmonization of regulations and policies for electronic communications in the CEMAC member states.</p> <p>Decision No. 45/08-UEAC-133-CM-18 creating the Regulatory Technical Committee for electronic communications in the CEMAC member states (November 2008).</p>	

1.2 Harmonized content (Table 2)

This table lists the harmonization initiatives according to their contents. Six (6) types of contents have been retained for the purpose of the present analysis, namely:

- Licensing
- Universal Service and Access
- Frequency management
- Numbering
- Interconnection
- Cybersecurity

Initiatives which do not aim at harmonizing in their contents any of the above mentioned issues have not been listed in Table 2. In particular, documents which have been deemed non-legal are excluded.

Licensing shall refer to the definitions, principles and mechanisms set with a view to granting access to the telecommunications market to service provider(s) and/or network provider(s).

Universal access/service shall refer to the definitions, principles and mechanisms set with a view to providing a telecommunications service or access to a defined population.

Frequency management shall refer to the definitions, principles and mechanisms set with a view to granting frequencies resources and to governing their use.

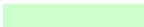
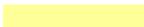
Numbering shall refer to the definitions, principles and mechanisms set with a view to granting numbering resources and to governing their use.

Interconnection shall refer to the definitions, principles and mechanisms set with a view to governing network interconnections.

Cybersecurity shall refer to the definitions, principles and mechanisms set with a view to adapting or implementing legislation to ICT contents including e-commerce, copyright, data protection and users rights.

Regional organisations to which documents in the following table are related can be identified with the following colour code.

Colour code

	COMESA
	UEMOA
	SADC
	ECOWAS

HIPSSA – ICT Regulatory Harmonization: A Comparative Study of Regional Initiatives

Subjects Time	Licensing	Universal Service and Access	Frequency Management	Numbering	Interconnection	Cybersecurity
1992-1994	Revised ECOWAS Treaty, Article 45 (1993).				Revised ECOWAS Treaty, Article 33 (1993).	
1995-1997		SADC Protocol on Transport, Communications and Meteorology, Article 10.3. (1996).				
1998-2000	Telecommunications Bill Model for SADC, part V (June 1998).	Telecommunications Policies for SADC, Article 3.1 (June 1998). Telecommunications Bill Model for SADC, part VI Article 49 (June 1998). Guidelines on Interconnection for SADC Countries, Section 3.10 (May 2000).	Telecommunications Policies for SADC, Article 3.4 (June 1998). Telecommunications Bill Model for SADC, part VIII (June 1998). SADC Regional Frequency Allocation plan for 20-3 100 MHz (November 2000).	Telecommunications Policies for SADC, Article 3.5 (June 1998). Guidelines on Interconnection for SADC Countries, Section 3.3 (May 2000).	Telecommunications Policies for SADC, Article 3.3 (June 1998). SADC Chart of Accounts and Cost Allocation Manual (September 1999) Guidelines on Interconnection for SADC Countries (May 2000).	
2001-2003	Policy Guidelines on Licensing for SADC Countries (February 2002). Model Legislation for COMESA (2003).	NEPAD document (October 2001). SADC Regional Indicative Strategic Development Plan (2001). Policy Guidelines on Universal Access/Service for SADC (February 2002). Policy Guidelines on Licensing for SADC Countries (February 2002). Model Legislation for COMESA (2003).	ICT Policy for COMESA (2003). Model Legislation for COMESA (2003). Policy Guidelines on Licensing for SADC Countries (February 2002).	Guidelines on Numbering Harmonization for SADC Countries (November 2002 and January 2003). EAC 2nd Development Strategy (2001-2005). ICT Policy for COMESA (Part 3.6) (2003). Model Legislation for COMESA (2003). Policy Guidelines on Licensing for SADC Countries (February 2002).	EAC 2nd Development Strategy (2001-2005). ICT Policy for COMESA (2003). Model Legislation for COMESA (2003). Policy Guidelines on Licensing for SADC Countries (February 2002). Policy Guidelines on Universal Wholesale Pricing Guidelines for the ICT Sector for SADC (September 2002). Policy Guidelines on Universal Access/Service for SADC (February 2002).	ICT Policy for COMESA (2003). NEPAD document (October 2001). SADC Regional Indicative Strategic Development Plan (2001).

HIPSSA – ICT Regulatory Harmonization: A Comparative Study of Regional Initiatives

Subjects Time	Licensing	Universal Service and Access	Frequency Management	Numbering	Interconnection	Cybersecurity
2004-2006	<p>Regulatory Guidelines on Licensing (2004).</p> <p>Protocol on Policy and Regulatory Framework for the NEPAD Broadband ICT Infrastructure (Article 12 and followings) (2006).</p> <p>Decision document of the ministers responsible for ICTs and/or Telecommunications on the policy, legal and regulatory aspects of the NEPAD ICT Broadband infrastructure Network for Eastern and Southern Africa (Article 8.5) (June 2006).</p> <p>Directive No. 01/2006/CM/UEMOA relating to harmonization of policies regulating telecoms (Articles 1, 7, 8, 9 et 12).</p> <p>Directive No. 02/2006/CM/UEMOA relating to network operators and service suppliers (Articles 1, 2, 3, 4, 5, 6, 8, 9 and 14).</p> <p>Directive No. 04/2006/CM/UEMOA relating to universal service and obligations of performance of the network (Article 5).</p> <p>Amended Treaty for the Establishment of EAC (2006-2007).</p>	<p>COMESA Regulatory Guidelines on Universal Service (2004).</p> <p>COMESA Regulatory Guidelines on Licensing (2004).</p> <p>COMESA Regulatory Guidelines on Interconnection (2004).</p> <p>Directive No. 01/2006/CM/UEMOA relating to harmonization of policies regulating telecoms (Articles 3, 7 and 12).</p> <p>Directive No. 02/2006/CM/UEMOA relating to network operators and service suppliers (Articles 9 and 13).</p> <p>Directive No. 04/2006/CM/UEMOA relating to universal service and obligations of performance of the network.</p> <p>Protocol A/SP.1/06/06 amending the Revised ECOWAS Treaty establishing the ECOWAS.</p> <p>EAC Regional E-Government Framework (2006).</p>	<p>SADC Guidelines on Human Resource Development and Management (2004).</p> <p>CRASA Wireless Technologies Policy and Regulations (September 2004/2006).</p> <p>COMESA Regulatory Guidelines on Licensing (2004).</p> <p>Directive No. 01/2006/CM/UEMOA relating to harmonization of policies regulating telecoms (Article 7).</p> <p>Directive No. 02/2006/CM/UEMOA relating to network operators and service suppliers (Articles 4, 8 et 9, Addendum).</p> <p>Directive No. 06/2006/CM/UEMOA relating to cooperation among national telecom regulators (Articles 1 and 3).</p> <p>Amended Treaty for the Establishment of EAC (2006-2007).</p>	<p>COMESA Regulatory Guidelines on Licensing (2004).</p> <p>COMESA Regulatory Guidelines on Interconnection (2004).</p> <p>Directive No. 01/2006/CM/UEMOA relating to harmonization of policies regulating telecoms (Article 7).</p> <p>Directive No. 02/2006/CM/UEMOA relating to network operators and service suppliers (Articles 4, Appendix).</p> <p>Directive No. 06/2006/CM/UEMOA relating to cooperation among national telecom regulators (Articles 1 and 4).</p>	<p>COMESA Regulatory Guidelines on Interconnection (2004).</p> <p>COMESA Regulatory Guidelines on Licensing (2004).</p> <p>COMESA Regulatory Guidelines on Universal Service (2004).</p> <p>The Protocol on Policy and Regulatory Framework for the NEPAD Broadband ICT Infrastructure, Article 12 and followings, Article 15 (2006).</p> <p>Directive No. 03/2006/CM/UEMOA relating to interconnection of networks and telecom services.</p>	<p>Directive No. 01/2006/CM/UEMOA relating to harmonization of policies regulating telecoms (Article 3).</p> <p>EAC Regional E-Government Framework (2006).</p>

HIPSSA – ICT Regulatory Harmonization: A Comparative Study of Regional Initiatives

Subjects Time	Licensing	Universal Service and Access	Frequency Management	Numbering	Interconnection	Cybersecurity
2007-2009	<p>Supplementary Act A/SA.3/01/07 on the legal regime applicable to network operators and service providers.</p> <p>Study on harmonization of telecommunication, ICT policies and regulation in Africa - Executive Summary and Draft Report (May 2008).</p> <p>Report on the Conference of ministers of telecommunications and posts (Cairo Declaration annexed) (May 2008).</p> <p>Directive No. 08/08-UEAC-133-CM-18 relative to Interconnection and access to electronic communications networks and services in the CEMAC Member States (November 2008).</p> <p>Directive o. 06/08-UEAC-133-CM-18 relative to universal service in the sector of electronic communications in the CEMAC member states (November 2008).</p> <p>Regulation No. 21/08-UEAC-133-CM-18 relative to the harmonization of regulations and policies for electronic communications in the CEMAC member states (November 2008).</p> <p>Directive No. 09/08-</p>	<p>AU Implementation Plan of the Decision EX.CL/434 (XIII) of the Executive Council (second Conference of telecommunication and ICT African ministers) Appendix 2 (May 2008).</p> <p>Supplementary Act A/SA.1/01/07 on the harmonization of policies and of the regulatory framework for the ICT sector.</p> <p>Supplementary Act A/SA.6/01/07 on universal access/service.</p> <p>Directive o. 06/08-UEAC-133-CM-18 relative to universal service in the sector of electronic communications in the CEMAC member states (November 2008).</p> <p>Directive No. 21/08-UEAC-133-CM-18 relative to the harmonization of regulations and policies for electronic communications in the CEMAC Member States (November 2008).</p> <p>Regulation No. 21/08-UEAC-133-CM-18 relative to the harmonization of regulations and policies for electronic communications in the CEMAC member states (November 2008).</p> <p>ECCAS Framework for national policies and regulations harmonization (June 2009).</p>	<p>SADC Policy Guidelines on Gender Equality and Empowerment of Disadvantaged People (March 2007).</p> <p>COMESA Policy Guidelines on Consumer Protection (2007).</p> <p>Supplementary Act A/SA.5/01/07 on the management of the radio-frequency spectrum.</p> <p>Directive No. 09/08-UEAC-133-CM-18 harmonizing establishing and control modalities of electronic communications tariffs in the CEMAC space (November 2008).</p> <p>Regulation No. 21/08-UEAC-133-CM-18 relative to the harmonization of regulations and policies for electronic communications in the CEMAC member states (November 2008).</p> <p>Regional ICT Development Policy for Central Africa (June 2009).</p> <p>ECCAS Framework for national policies and regulations harmonization - (June 2009).</p> <p>Draft SADC ICT Consumer Rights and Protection Regulatory Guidelines (2009).</p>	<p>Supplementary Act A/SA.4/01/07 on numbering plan management.</p> <p>Directive No. 09/08-UEAC-133-CM-18 harmonizing establishment and control modalities of electronic communications tariffs in the CEMAC space (November 2008).</p> <p>Regulation No. 21/08-UEAC-133-CM-18 relative to the harmonization of regulations and policies for electronic communications in the CEMAC member states (November 2008).</p> <p>ECCAS Framework for harmonization of national policies and regulations (June 2009).</p>	<p>Supplementary Act A/SA.2/01/07 on access and interconnection in respect of ICT sector networks and services.</p> <p>Catalogue of East African Standards (2007).</p> <p>Regional Strategy Paper and Regional Indicative Program between the EU, the COMESA, the EAC, the IGAD and the IOC (2008-2013).</p> <p>Directive o. 08/08-UEAC-133-CM-18 Relative to Interconnection and access to electronic communications networks and services in the CEMAC space (November 2008).</p> <p>Regulation No. 21/08-UEAC-133-CM-18 relative to the harmonization of regulations and policies for electronic communications in the CEMAC member states (November 2008).</p> <p>Regional ICT Development Policy for Central Africa (June 2009).</p>	<p>Implementation Plan of the Decision EX.CL/434 (XIII) of the Executive Council (second Conference of telecommunication and ICT African ministers) Appendix 2 (May 2008).</p> <p>Draft Supplementary Act A/SA/12/08 on Digital Transactions.</p> <p>Draft Directive D/12/09 on Guidelines on Cyber Crime within ECOWAS (Reviewed October 2008).</p> <p>Draft Supplementary Act A/SA/12/09 on Guidelines on Personal Data Protection within ECOWAS (Reviewed October 2008).</p> <p>Draft EAC Legal Framework for Cyberlaws (November 2008).</p> <p>ECCAS Framework for national policies and regulations harmonization (June 2009).</p> <p>Directive No. 07/08-UEAC-133-CM-18 establishing a legal framework for electronic communications networks and services users rights in the CEMAC space (November 2008).</p>

HIPSSA – ICT Regulatory Harmonization: A Comparative Study of Regional Initiatives

Subjects Time	Licensing	Universal Service and Access	Frequency Management	Numbering	Interconnection	Cybersecurity
	<p>UEAC-133-CM-18 harmonizing establishing and control modalities of electronic communications tariffs in the CEMAC space (November 2008).</p> <p>ECCAS Regional ICT Development Policy for Central Africa (June 2009).</p> <p>ECCAS Framework for national policies and regulations harmonization (June 2009).</p>					

2 Gap analysis

2.1 Harmonization method

2.1.1 Repartition of methods across regional organizations

With a pure quantitative view, legal approach as defined above seems to be slightly favoured but this is however not a clear cut issue as shown by the weak lead in terms of quantity. Indeed, Table 1 (Harmonization method) shows that there are almost as many legal initiatives (about 33) as policy initiatives (29) in the field of ICT/Telecommunications.

Although there are fewer regulatory initiatives (about 25) the gap between policy initiatives and regulatory initiatives is very thin, especially if we have regard to the fact that they are not as many regional regulators as regional organizations. However, it is to be mentioned that most of regulatory initiatives have been issued for the purpose of the same region, that is: the SADC (about 16 of the whole amount of initiatives). This clearly favoured regulatory approach in the SADC seems to be followed, although at a much fewer rhythm -twice fewer- by the COMESA which ranks second in terms of quantity of regulatory initiatives with about 7.

In contrast, the SADC has only issued one legal initiative, whereas the ECOWAS which has only issued one regulatory initiative has adopted the majority of legal initiatives (about 11). In the same way, the CEMAC and the UEMOA which are rather absent in the regulatory initiatives ranking are dominant in the legal initiatives ranking as well, following closely the ECOWAS with about 8 initiatives each.

Regarding policy initiatives, most of regional organizations have issued one or many policy initiatives and the repartition between regional organizations is rather scattered (between 1 up to about 7). There are no clearly dominant regional organizations in terms of quantity even if we can note that the EAC and the AU have issued most of them (about 7 each). However, there are no significant differences in quantity between those that have recourse essentially to policy initiatives such as EAC as opposed to those that has clearly favoured a legal or a regulatory approach such as respectively the ECOWAS and the SADC.

2.1.2 Repartition of methods across the time

Table 1 clearly shows that most of initiatives regardless of methods have been adopted in the last two periods: 2004-2006 and 2007-2009. At the opposite, very few initiatives have been adopted in the first two periods: 1992-1994 and 1995-1997.

In the very last period 2007-2009, policy and legal initiatives have been dominant (about 18 each as opposed to 4 regulatory initiatives), whereas regulatory initiatives have been dominant in 2001-2003 (about 8 as opposed to 2 legal initiatives and 3 policy initiatives). In the mid period that is to say, the period 2004-2006 the repartition was about the same between policy (about 6), regulatory initiatives (about 8) and legal initiatives (about 9).

Further, it is to be noted that the adoption of telecommunications packages is concentrated on the last two periods 2004-2006 (UEMOA) and 2007-2009 (CEMAC and ECOWAS). If this package approach is confirmed in the coming years, the trend will favour the legal approach. However, we have to bear in mind that while containing many initiatives a package could be considered as a single initiative covering various issues, especially if adopted at the same date. If retained, such consideration will however not distort our view of the general trend as it would also lead us to consider other policy initiatives and/or regulatory initiatives as being part of a single package (such as the COMESA guidelines dated 2004 or SADC guidelines dated 2002 which could be considered respectively as a guideline package).

It is also to be noted that in the starting period which is 1992-1994, the legal approach was the first and unique approach. Other approaches have started to emerge and overcome the

legal approach in some regions in the following years but the legal approach could be considered as the “historic approach”.

2.2 Harmonization contents

2.2.1 Repartition of contents across the regional organizations

In terms of contents covering **licensing**, the CEMAC has adopted most of the initiatives covering this issue (about 6) followed by the AU. However, whereas the AU has been issuing initiatives on the subject matter on a regular basis across the time, the CEMAC's initiatives are concentrated on the last period (2007-2009). It is to be noted that some regional organizations have issued no initiative regardless of methods on licensing such as CEN-SAD, IOC and UMA.

With respect to **universal access/service**, the SADC has been the more active at issuing initiatives (about 6 initiatives covering the subject matter), followed by the COMESA (about 5) and the CEMAC (about 4). However, it is to be mentioned that the initiatives of the SADC are not really recent, mainly concentrated in two periods which are 1998-2000 and 2001-2003, as opposed to the CEMAC which have been more involved in the last period (2007-2009), the COMESA's initiatives being more scattered across time. Again, it is to be noted that some regional organizations have issued no initiative regardless of methods on Universal access/service such as CEN-SAD, EAC, IOC and UMA.

Regarding **frequency management**, the SADC has been the more active at issuing initiatives as well with about 7 initiatives, followed by the COMESA (about 5) as compared to 3 in average for other ranked regional organizations. This time the involvement of SADC quantitatively speaking, is quite regular across the time including initiatives in the last period. Some regional organizations have issued no initiative regardless of methods on frequency management such as CEN-SAD, EAC, IOC and UMA.

Concerning **numbering**, the SADC and the COMESA have been the more active at issuing initiatives with about 4 each which represent half of the initiatives on the subject matter (the total being 16 initiatives). However, some of the SADC initiatives could be outdated as most of them trace back to the periods 1998-2000 and 2001-2003. By contrast, the COMESA initiatives are going up to 2006, and the CEMAC initiatives although being half of those issued by the COMESA and the SADC are the most recent (2007-2009). Some regional organizations have issued no initiative regardless of methods on numbering such as CEN-SAD, IOC and UMA.

In terms of **interconnection**, again the SADC and the COMESA have been the more active at issuing initiatives with about 5 each which represent almost half of the initiatives on the subject matter as well (the total being about 21 initiatives). However, as already mentioned above most of the SADC's initiatives trace back to the periods 1998-2000 and 2001-2003. By contrast, the COMESA initiatives are more scattered across the time and the CEMAC initiatives although being half of those issued by the COMESA going up to the last period if we include the inter-regional initiative with the EAC, IGAD and IOC. We have to note that 5 initiatives across the time is a significant number as in average regional organization has issued only one initiative covering the subject matter (with the exception of the CEMAC with two initiatives).

Finally, with respect to **cybersecurity**, there is no significant lead among regional organizations in this area. The AU and the ECOWAS total respectively 3 initiatives as opposed to one or none for most other regional organizations. Half of the initiatives have been issued in the last period 2007-2009, the oldest one traces back to 2001-2003. Throughout the time, and in the last period particularly, it seems that a great deal of initiatives has been issued by a large number of different regional organizations and this confirms that there is no clear cut leader quantitatively speaking on the topic.

2.2.2 Repartition of contents across the time

First of all, Table 2 shows that most contents initiatives over time relates to universal access and service (about 27) closely followed by interconnection, licensing, frequency management (about 20 each). Very few initiatives relate to cybersecurity (about 12). While analysing Table 2, we have to bear in mind that some initiatives cover various contents and therefore have been mentioned as many time as necessary.

Based on this assessment, it seems that universal access and service have been considered as a priority over time. If we shall not overlook this quantitative lead, it is to be recalled that Table 2 does not make distinction between the content initiatives merely setting a desirable objective and those laying down a principle accompanied with a strong enforcement mechanism for an objective to be reached. Nor does it distinguish between binding and non binding initiatives. The quantitative lead is therefore not sufficient to affirm that universal service and access is high on the agenda of regional organizations.

More broadly, the number of initiatives covering the selected contents has been increasing significantly over time going from two (2) initiatives in the period 1993-1995 to 43 in the last period (2007-2009). Again it is to be recalled that some initiatives covering various contents have been mentioned as many time as necessary so the figures shall be considered with care. However, our methodology consisting of repeating the same initiatives as many time as necessary when they cover different selected issues has been applied for each and every period, and this therefore avoid a distortion of the overview showing a trend of increase in the number of initiatives issued. Indeed, this increase could be considered either as qualitative, that is to say that initiatives tend with the time to cover more and more contents or as quantitative, that is to say that the number of initiatives covering each and every contents has increased.

This increase has started back in the period 2001-2003 (about 23 initiatives). In 1998-2000 this number had slightly decreased as compared to the period 1996-1998 (about 5 as opposed to 8).

The period 2003-2006 (about 35 initiatives) and more particularly the period 2007-2009 (about 43 initiatives) when a peak has been reached, also correspond to the periods when the telecommunications packages of the CEMAC, ECOWAS and UEMOA which cover nearly all selected contents have been issued. This might explain in part this significant increase. If the issuance of packages is followed by other regional organization in the coming years, the initiatives covering the selected contents will keep on increasing significantly.

Table 2 shows that concerns about cybersecurity gave birth to initiatives only lately. The first initiatives appeared in the period 2001-2003 but most are concentrated in the very last period (2007-2009).

If we consider the very first period (1992-1994) priorities seemed to have been licensing and interconnection. These are generally concerns of countries where liberalisation is in progress. However, as there is only the revised ECOWAS treaty covering this two issues at the given time, this interpretation shall be taken carefully and complemented by other researches going over the legal analysis (such as economic, historic and political analysis).

3 Key differences and commonalities for harmonized contents

3.1 Licensing

Regarding the CEMAC package, we understand that in terms of licensing, services shall be submitted to one of the three following regimes: (i) an authorisation regime, (ii) a declaration regime or (iii) a regime whereby they may be exercised freely.

In particular, an authorization is required for activities such as:

part 2

- the rolling out and/or operation of public electronic communication networks;
- the rolling out and/or operation of electronic communication transport network;
- the use of scarce resources (frequencies, numbers and domain names);
- the rolling out and/or operation of independent networks;
- the provision of telephone services to the public; and
- the supply of terminal equipments when they aim at being connected to a public network.

It is to be noted however that the authorisations are granted through different proceedings for these activities and this is quite specific to the CEMAC. Another particularity is to consider domain names as scarce resources. It is really uncommon indeed to see the domain names in an authorisation scheme, they are usually granted by registries accredited by ICANN and are not ruled by national regulatory authorities.

A mere declaration is required for the provision of Internet services and the provision of value added services.

The operation or rolling out of public electronic communications network and the provision of electronic communications services which are not expressly falling under the authorization or declaration regime are free, subject to compliance with applicable national regulation.

There is also a three level regime for the ECOWAS and the UEMOA to access the telecommunications market. However, the terminology and definition vary. In particular, the latest terminology adopted in Europe namely "electronic communications" instead of "telecommunications" has not been retained by the ECOWAS and the UEMOA contrary to the CEMAC.

The ECOWAS three level regime is: (i) licence, (ii) general authorization and (iii) free entrance (subject to declaration for a given set of activities).

It requires a licence -which is sensitively equivalent to the CEMAC more constraining regime that is "authorization"- for the operation and/or rolling out of public telecommunications network and scarce resources, but contrary to the CEMAC it also includes: the provision of vocal service to the public, and gives a relatively discretion to Member States by stating that a licence may be required when Member States so decide for public policy purposes (public order, public security or public health).

Contrary to the CEMAC, the ECOWAS does not define by default the free entrance regime but list the services which may benefit from it, including internal network and low capacity radio electric appliances.

The main divergence with the CEMAC is on independent networks as it is clearly more flexible to roll out and operate such network in the ECOWAS which does not require a licence for independent network and leave this activity under a general authorization - more or less equivalent to the CEMAC declaration. The licence requirement by the CEMAC for the supply of terminal equipments is also clearly a divergence as it regulated under specific rules for the ECOWAS which provide for freedom of sale subject to the satisfaction of specific standards (same for the UEMOA).

It is also to be noted that value added services and internet services are also more controlled in the CEMAC as opposed to the ECOWAS. The declaration is not a regime per se under the ECOWAS ¹as it is required for activities included in the free entrance regime such as value added services.

The UEMOA also sets a three level regime, namely: (i) authorization, (ii) declaration and (iii) a free entrance regime. Unsurprisingly, the operation and rolling out of telecommunications network, the provision of public telecommunication services and the use of scarce resources

¹It is a kind of notification not requiring prior approval by the NRA.

are under the more constraining regime that is the authorization regime as for the CEMAC and the ECOWAS.

However, this regime also contains its own specificities as it includes leased lines and independent networks going through public thoroughfare. Value added services and internet services are submitted to a declaration and the free entrance regime is as for the CEMAC defined by default as any service or network which is not specifically regulated by other regimes.

The SADC initiatives differ more significantly both in its terminology and in the activities covered. It required (i) individual licensing in order to provide the operator access to scarce resources, (ii) class licences which set out the rights and obligations under which an operator of a telecommunications network can provide a service, without having to specifically seek permission of the regulatory authority to do so and (iii) notification (in fully liberalized market segments the national regulatory authority may impose a system of registration with a requirement to provide the National regulatory authority with limited information for statistical purposes only).

The COMESA initiatives follow the same pattern as the SADC initiatives except that it adds a fourth regime that consists in a specific licence for frequencies.

Other initiatives are rather vague on the regimes to be adopted by Member States.

3.2 *Universal service and access*

3.2.1 *Definition of universal service and access*

In the CEMAC, the ECOWAS and the UEMOA initiatives a common framework for national policies relating to universal service and the content of universal service is defined. We can notice that both the CEMAC and the UEMOA initiatives read universal service whereas the ECOWAS ones read universal access and universal service even if no further distinction is made in the provisions. The three mentioned organizations provide that Member States shall make available to their respective population, regardless of their geographic location services which are generally listed at an affordable price and without discontinuity.

They all include services such as:

- the connection to public telephone network;
- availability of public telephone;
- access to emergency services;
- possibility to use information and telephone directory services;
- and special measures for certain social groups.

The CEMAC seems apparently going further explicitly by adding "access to community telecentre" in universal service. However, the ECOWAS has implicitly the wider universal service list as it gives a wider discretion to Member States which may add services to the list according to their will.

We understand that the differences between these organizations in terms of universal service will more concern the implementation of such service than the contents as national regulators are to conduct such implementation given to their own national specificities.

It is to be noted that the SADC and the COMESA initiatives - which are mostly non binding initiatives - do carry out differences between universal service and universal access. Universal service entails the supply of affordable and equitable telecommunications services to every individual or household on demand while universal access entails availability of

affordable, good quality and efficient telecommunications services, including good quality access to the Internet.

Nevertheless, the principles governing both universal access and service are the same including affordability, quality of service, geographic access and availability.

Finally, other organizations such as the EAC very briefly mention universal access (with no reference to universal service) to telecommunications, in particular to remote areas but no framework is offered to govern such access or service.

3.2.2 Implementation

The universal access/service is carried out by the incumbent operators based mostly on a concession contract. The arrival of new players on the ICT market, made possible by liberalisation and technological breakthroughs, raised the question of the selection of one or many operator(s) to provide universal access/service on a cost-efficient basis while satisfying the quality requirements.

In this respect, it is to be noticed that most organizations consider that competitive bidding is likely to be the best process for the assignment of universal access/service obligations. For instance, the CEMAC and the UEMOA clearly impose this process to Member States. As to the COMESA, they simply present the process as the most manageable, while the SADC present it as the method that should be prioritized.

On the opposite, the ECOWAS leaves to its members the choice of the most effective and appropriate approach for ensuring the implementation of universal service. To these ends, ECOWAS Member States, where necessary, designate one or more companies to ensure the provision of universal service as defined in the related Supplementary Act. However, it is specified by the ECOWAS that where Member States designate companies to fulfil universal service obligations over all or part of the national territory, they should do so through a mechanism that is effective, objective, transparent and non discriminatory, and which does not exclude any company *a priori*. It is highly important to note that the ECOWAS by referring to "over all or part of the national territory" makes it possible to assign universal access/service to one or many undertaking(s) on a territorial basis. There is nothing as such in the other organizations.

Furthermore, it is to be noted that most organizations state that Member States shall have regard to the principles of transparency and non-discrimination while conducting the process aiming at selecting one or many operators to provide universal access/service. The CEMAC and the ECOWAS have added the necessity to comply with the principle of objectivity. However, only the ECOWAS refers to the due respect of the principle of proportionality in the assignment process.

3.2.3 Funding

A universal access/service fund is the premium tool to promote universal access/service development at national level and indemnify the universal access/service providers.

According to all organizations, the assessment of a universal service cost to indemnify the provider(s) in charge of the implementation is primarily concerned with the question of whether universal access/service represents an unjustified burden on the companies designated as provider(s). To that end all initiatives have adopted a common calculation method based on net costs corresponding to the difference between the investment and operational costs and the relevant revenues. Relevant revenues are the direct and indirect revenues generated by the universal service.

However, the funding of the universal service fund varies depending on the organization. The CEMAC, the ECOWAS and the COMESA detail the funding (contributions from various sources including government allocations, licensing fees, auctions, proceeds from

privatisation, ICT operators, sponsors from local enterprises, cooperating partners, etc.) as opposed to the SADC which only states that telecommunications operators contribute by allocating a percentage of their revenues to the universal service fund.

Other organizations add a carveout to the list of funding sources. Indeed, according to the UEMOA, contributions may not be required by the National regulatory authorities to industries the turnover of which is beneath a certain threshold.

According to the COMESA, providers may fund the universal access/service on their proper resources. This represents for them the best way of funding universal access/service initiatives, subject to the limit of levying sufficient funds to meet the needs. However, the COMESA mentions that this solution is more appropriate to industrialized countries.

Furthermore, most organizations seem willing to control the determination and provision of funding. The control is however not fully detailed and only principles are referred to such as the principles of non-discrimination, transparency, proportionality and neutrality provided for by the UEMOA and the ECOWAS. The SADC and the CEMAC only focus on the principle of transparency. However, the SADC provides additionally that the activities carried out by the fund shall have a public accountability. Indeed, such activities should be made publicly available on the website and/or on written request to any citizen.

3.2.4 Quality of service

Finally, the ECOWAS and the UEMOA pay particular attention to the quality of service. Thus, both of their initiatives grant an extensive role to the national regulatory authority which is charged with the setting of performance objectives for the company(ies) entrusted with the task of providing users with the universal service.

The authorizations for the UEMOA and the licenses for the ECOWAS, may for instance foresee duties to achieve the provision of telephone services. Moreover, failing to meet the performance objectives may be sanctioned by the National regulatory authorities. In this regard, National regulatory authorities are entitled to require an independent control of the operators' activities.

On the opposite, the SADC and the CEMAC only mention good quality service without envisaging neither the setting of performance objectives nor matter-of-factly the sanctioning of failing operators.

3.3 Scarce resources: frequencies and numbering

There is no regime for frequencies in the CEMAC. We only understand that an authorisation is required for their use as provided for in the regime governing the supply of electronic communications networks and services.

In the ECOWAS, the UEMOA and the SADC initiatives, a regime for frequency is defined and such regime insists on the necessity of Member States to cooperate in the management of frequencies at a regional level, while ensuring on at a national level a proper coordination between the civil and governmental uses of frequencies.

Regarding numbering, the CEMAC has not defined a regime either. Indeed, it only mentions numbering very briefly throughout the general attributions of the national regulatory authority which is to manage scarce resources or the authorization regime. However, the principle of efficiency is implicitly apparent as the CEMAC recommends a limitation in the number of authorisations in order to guarantee an optimal use of scarce resources or to take into account the market economic conditions.

The UEMOA goes a bit further than the CEMAC regarding numbering and as for frequencies is particular concerned with cooperation between Member States to give rise to common

prefixes and convergence of numbering plans which may pave the way towards a common regional numbering plan.

However, the ECOWAS regime is the more specific for numbering. Indeed, a detailed set of provisions has been adopted regarding numbering issues such as the development of numbering plans, principles applicable to the use of numbers, codes, and prefixes and so on. Further, the ideas of equality and non discrimination are clearly laid down as a governing rule for the granting of scarce resources.

The SADC aims at achieving a long-term harmonization with its designed guidelines to be used when the national numbering plans are revised. These initiatives recommend a day to day harmonization on the basis of roughly the same principles as the ECOWAS without, however, its binding feature.

More broadly, the SADC and COMESA consider that the national regulatory authorities shall be responsible for developing, assigning, administering and controlling national numbering plans and addressing aspects of telecommunications services where coordination at national level is required so as to ensure effective competition.

3.4 Interconnection

3.4.1 Obligation of interconnection

The CEMAC lays down in its binding package an obligation of interconnection by providing that interconnection requests from entities operating public networks or providing electronic communications services shall be satisfied transparently and on a non-discriminatory basis. This obligation of interconnection is also set as a binding rule in the ECOWAS and the UEMOA upon broadly the same conditions.

If the three below mentioned organizations tolerate refusal of interconnection in case of unreasonable requests (regarding interoperability or technical capability), only the ECOWAS and the UEMOA requires from the entity which refuses to duly motivate its decision.

In the SADC and the COMESA initiatives, the obligation of interconnection is mostly approached under the non-discrimination and transparency principles. Non-discrimination is defined as a condition by which an operator providing telecommunications services shall not apply less favourable technical and commercial conditions on any competitor than what it would apply to itself, its subsidiaries or its affiliates in supplying services.

Under the SADC initiatives discriminatory practices in interconnection are visible in respect of criteria such as time of provision, capacity, quality and prices. As a prevention measure, non-discrimination is highlighted under four aspects: any-to-any connectivity, equal access, fair and equal treatment of messages/calls, and quality of service.

3.4.2 Interconnection contracts

All organizations underline the importance of interconnection contracts as of rights. However, regional organizations detail more or less the content and the implementation of such contracts.

The CEMAC, the ECOWAS and the UEMOA do not leave much room to the parties by imposing compulsory clauses (description of expected performances, service level guaranteed, implementation conditions and rules...).

According to the COMESA, the national regulatory authority may, at any time, on its behalf or on the request of either party, set time limits within which interconnection negotiation must be completed. If agreement is not reached within the time-frame, the authority shall take steps to bring about an agreement, including imposing a rule governing delay or avoiding unreasonable charges contrary to the public interest. The ECOWAS has also given the

possibility to the National regulatory authority to set a time-frame for negotiations on its own initiative or at the request of either party. On the contrary, the CEMAC has set a three-month time frame for negotiations in the regulation and does not therefore grant discretion to the National regulatory authority to set this time-frame.

Little information is provided by the SADC initiatives with respect to interconnection contracts' contents. It is however specified that the regulatory authority may define and impose conditions in interconnection agreements in order to ensure interoperability of services, including conditions designed to ensure satisfactory end-to-end quality. Such conditions may include implementation of specific technical standards, or specifications, or codes of conduct agreed by the market players

Regarding the implementation of interconnection contracts, the CEMAC, the ECOWAS and the UEMOA go more into details than other organizations mentioning interconnection contracts. Thus, for the CEMAC, interconnection contracts shall be communicated within 30 days from their signature to the National regulatory authority, as opposed to the ECOWAS and the UEMOA which require an immediate communication. The SADC and the COMESA do not require any delay for that purpose.

All organizations mention the possibility for the national regulatory authorities to require amendments to interconnection contracts already entered into, where such amendments are justified to ensure competition and/or interoperability of services for users. However, this possibility is governed by strict delays for the ECOWAS, the CEMAC and the UEMOA, where substantial modifications are not allowed more than respectively three, four and six months after the signature of the agreement. Where the case be, according to the CEMAC, the ECOWAS and the UEMOA, the parties must modify the agreement within one month of the request of the National regulatory authority. Where the National regulatory authority finds it urgent to preserve competition and protect consumer's interests, it can require immediate interconnection between the networks concerned before the signing of the agreement.

3.4.3 Interconnection tariffs

According to all organizations, the National regulatory authorities shall cooperate and coordinate in order to define a complete and harmonized methodology for the calculation of interconnection tariffs. Dominant operators shall respect the principle of relevant cost-orientation.

In addition, the CEMAC, the SADC and the COMESA find it important to keep separate accounts. Thus, operators owning and operating various public network services (e.g. fixed, and mobile internet services) should keep separate accounts for the related interconnection networks and interconnection services. In the same way SADC has underlined that national regulatory authorities will only be in position to act in interconnection related matters where precise information on the current and future breakdown of costs is available in regard to the different services and network elements. To this end, all providers of networks and services shall implement a system of cost accounting which distinguishes separate accounts for underlying services, supplemented by adequate cost accounting systems to facilitate the attribution of relevant costs to the interconnection service in question.

The control of interconnection tariffs by the national regulatory authority is put forward by all organizations. Broadly, operators shall provide financial information to the national regulatory authority promptly on request of the latter and to the level of detail required. Where necessary, operators may be requested by the national regulatory authority to submit their financial reports to an independent audit in order to ensure that the information provided is accurate and complete.

3.5 Cybersecurity

Regarding the protection of user's rights, the CEMAC initiatives seem to be the more advanced as it establishes a legal framework regarding the protection of users' rights and such framework contain provisions which aim at protecting users as to their right to privacy, the quality and continuity of the network, their right to be informed, their right to personal data protection and protection against crimes.

The COMESA initiatives promote the importance of having an adequate cyberlaw in order to struggle against cybercriminality. However, nothing has been adopted for the time being.

The EAC has a work document entirely dedicated to cyberlaw defining various terms such as computer crime or electronic transactions. This document also provides a list of recommendations in order to improve data protection.

The ECCAS initiatives simply propose basic definitions of cybersecurity and cybercriminality without offering any framework.

While there is no protection of user rights in the UEMOA, the ECOWAS has devoted an important number of its initiatives to the development of cybersecurity. First, each Member State shall establish a legal framework for personal data protection (collection, processing, transmission, storage, and use of personal data and an authority ensuring personal data protection) without prejudice to the general interest of the State. Further, the ECOWAS initiatives aim at establishing a harmonized framework for the regulation of digital transactions within the ECOWAS space. Finally, the ECOWAS is desirous to adapt the substantive penal law and the criminal procedure of ECOWAS Member States to fight cybercrime.

3.6 Consumer's protection

The SADC has elaborated an important number of guidelines on consumer protection.

The organization's desire is to make sure that consumers are empowered to make informed choices and feel that they are protected from market abuses and unfair trade practices. To that end, an effort was initiated in 2001 to identify a core set of consumer protections, through the establishment of a Code of Conduct or a Consumer Bill of Rights, and to develop a set of proposed regional implementing guidelines that would result in greater consumer involvement, empowerment and confidence.

According to the SADC, consumers shall have the right to select their providers and services, where multiple options exist. A change in carriers or services rendered shall be acknowledged on the bill and be verifiable by affirmative evidence from the customer.

No initiatives as such have been elaborated by other organizations.

3.7 Competition

It is to be noted that the CEMAC, the ECOWAS and the UEMOA in particular devote an important number of initiatives to the safeguard of competition.

The EAC in particular has elaborated a private sector development strategy. The idea is that public institutions shall collect and facilitate access to information about market conditions, determine and enforce property rights and influence competition in markets. However, the SADC notes that the existing institutions in the region are not effective to achieve that purpose, due to the lack of complementary institutions and deficiencies in existing institutions regarding the means available and orientation powers.

The CEMAC and the COMESA have simply alluded to the necessity for the National regulatory authorities to control the operators' practices in order to make sure that competition is neither restricted nor distorted.

3.8 Pre-selection, sharing of infrastructures and roaming

For the ECOWAS², Member States must ensure that the carrier selection is introduced in the call by call form, as a minimum, from the very beginning of competition in order to establish effective competition and allow consumers to choose their local loop operator freely and have access to the services of an alternative operator. This selection possibility must be offered by all dominant operators.

The COMESA has just mentioned that "the number system provided to any operator shall facilitate carrier pre-selection".

As to the SADC it has been specified that the number system provided to any operator shall facilitate carrier pre-selection.

There is nothing much relating to pre-selection in other regional organizations' initiatives.

Regarding the sharing of facilities, the Member States of the ECOWAS must make sure that the national regulatory authorities encourage the sharing of passive and active facilities. The authorities have to make sure this sharing is made according to the principles of non-discrimination and equality access. Also, the national regulatory authorities need to conduct market studies in order to evaluate the consumer's needs of portability.

For the UEMOA, Member States shall make it possible for aggrieved operators to refer a refusal of renting of infrastructure to the National Regulator. CEMAC has also decided that Member States may impose infrastructure sharing³.

SADC goes further than other regional organizations by stating that to foster the development of competition and to improve over the economic usage of national resources, sharing of infrastructure and facilities, needed to supply telecommunications services, shall apply⁴.

² Supplementary Act A/SA 2/01/07 relating to interconnection and access.

³ Directive No 08/08-UEAC-133-CM-18 relating to interconnection and access.

⁴ In particular following these principles:

(a) Sharing of facilities and/or property with other operators shall take place where a telecommunications operator has the right under national legislation to install facilities on, over or under public or private land and where physical, technical and economic constraints deprive other operators of access to viable alternatives.

(b) Any operator shall provide access to the poles, towers, ducts, conduit, land and building as part of his rights-of-way to any other operator for such reasons associated with, but not limited to, town-planning, environmental, technical and economic reasons.

(c) Infrastructure, facility and property sharing, and access to rights-of-way shall be a matter for commercial and technical negotiation and agreement between the parties concerned. The national regulatory authority shall intervene to resolve dispute.

(d) In conducting the negotiation, an operator shall unbundle the elements of his infrastructure, facilities or property so to reach commercial agreement on the element or elements that is or are required by the other party in the negotiation.

(e) In effect, any operator has the duty to provide non-discriminatory access to network elements on an unbundled basis to any requesting operator at any technically feasible point on rates, terms, and conditions that are just, reasonable, and non-discriminatory for the provision of a telecommunications service. An operator shall provide such unbundled network elements in a manner that allow requesting carriers to combine such elements in order to provide such telecommunications service.

(f) The minimum unbundled elements include rooms in buildings; network interface device; main distribution frame; towers; local loops; local and tandem switches, including switch-based features; cable and radio-based transmission systems; signaling and call-related database facilities [...]; operations and support systems functions; operator services and directory assistance facilities.

(Guidelines on interconnection for SADC countries)

part 2

With respect to roaming, the ECOWAS has stated that national regulatory authorities shall ensure that all operators are able to offer national and international roaming services to all demanding operators at reasonable tariffs.

> **SWOT ANALYSIS AND INTERNATIONAL COMPARISONS**

1 Strengths, weaknesses, opportunities and threats analysis

1.1 African Union (AU)

<p style="text-align: center;">STRENGTHS</p> <ul style="list-style-type: none"> > Heavily involved in infrastructure development (with the NEPAD). > Regional economic communities are African Union Commission pillars for implementation of policies and regulations > Wide scope of influence (continental level). > Opportunities to address Heads of State and Government twice a year. > Permanent dialogue with other regional organizations and principle of subsidiarity. > Possibility to gather Ministers of ICT whenever needed. > In a good position to observe good practices of regional organizations with a view to spreading them across the continent. > Has a memorandum of understanding and partnerships with several international organizations (EU, ITU, World Bank, Microsoft, etc.) 	<p style="text-align: center;">WEAKNESSES</p> <ul style="list-style-type: none"> > The variety of countries covered may be an obstacle to adopt common rules satisfying each and every Member State. > No binding rules in ICT/telecommunications. > Member States are generally part of one or many other regional organizations and this may lead to two consequences: <ul style="list-style-type: none"> – overlapping of rules and risk of legal uncertainty; and – risk of a <i>minima</i> harmonization. > Late on issues such as cybercriminality.
<p style="text-align: center;">OPPORTUNITIES</p> <ul style="list-style-type: none"> > Taking advantage of its size to promote harmonization and dialogue between Member States belonging to different regional organizations. > Orientations on cybercriminality may boost the issue across the continent. 	<p style="text-align: center;">THREATS</p> <ul style="list-style-type: none"> > A lack of consensus regarding the way to harmonize and the contents to be covered by harmonization may hinder the harmonization process. > The large size of the African Union may be an obstacle to implement harmonization on a flexible basis. > There is a risk of being inaudible where many initiatives are taken at different level (international, regional, national, local), and where ICT and telecommunications are only a short field of intervention. > There is a risk of being reduced to the role of policy-maker definitely assigning to other organizations the role to take more binding rules.

1.2 Arab Maghreb Union (AMU)

<p style="text-align: center;">STRENGTHS</p> <ul style="list-style-type: none"> > Cooperates with the UNECA (cooperation defined in a memorandum of understanding dated January 2008) 	<p style="text-align: center;">WEAKNESSES</p> <ul style="list-style-type: none"> > Poorly involved in telecommunications and ICT. > Low level of cooperation with the African Union.
<p style="text-align: center;">OPPORTUNITIES</p> <ul style="list-style-type: none"> > May take advantage of the experience of other regional organizations in the future. > Study the possibility to set an observatory of regional integration⁵. 	<p style="text-align: center;">THREATS</p> <ul style="list-style-type: none"> > UMA will lack visibility (i.e. won't have a voice for future international or interregional negotiations), legitimacy in telecommunications and ICT.

1.3 Economic Community Of West African States (ECOWAS)

<p style="text-align: center;">STRENGTHS</p> <ul style="list-style-type: none"> > Its telecommunication initiatives cover the main issues and are binding. > The "package" strategy allows clarity and legal certainty. 	<p style="text-align: center;">WEAKNESSES</p> <ul style="list-style-type: none"> > So far, few Member States have implemented the legal framework in telecommunications (UEMOA).
<p style="text-align: center;">OPPORTUNITIES</p> <ul style="list-style-type: none"> > Electronic transaction, data protection and cybercriminality projects are currently discussed. 	<p style="text-align: center;">THREATS</p> <ul style="list-style-type: none"> > Overlapping and growing risk of conflicts of rules (including conflict of jurisdictions) with the UEMOA⁶.

1.4 West African Economic and Monetary Union (UEMOA)

<p style="text-align: center;">STRENGTHS</p> <ul style="list-style-type: none"> > The "package" strategy allows clarity and legal certainty. > Its telecommunications initiatives cover the main issues and are binding. 	<p style="text-align: center;">WEAKNESSES</p> <ul style="list-style-type: none"> > So far, few Member States have implemented the legal framework in telecommunications. > No cyberlaws have been adopted yet.
<p style="text-align: center;">OPPORTUNITIES</p> <ul style="list-style-type: none"> > Strengthen partnership with the ECOWAS to avoid marginalization. 	<p style="text-align: center;">THREATS</p> <ul style="list-style-type: none"> > Overlapping and growing risk of conflicts of rules (including conflict of jurisdictions) with the ECOWAS. > Its package may be considered as having less binding force than the ECOWAS package (directives as opposed to supplementary acts to the treaty, the ECOWAS package is more recent, the ECOWAS totals more Member States).

⁵ See addendum of the Memorandum of Understanding under the title "ICT, sciences and techniques servicing the development".

⁶ E.g. Both the ECOWAS and the UEMOA propose a three-level entry for telecommunications services and/or network providers. However, the definition and the scope of what is included in the different regime vary).

1.5 Economic Community of Central African States (ECCAS)

<p style="text-align: center;">STRENGTHS</p> <ul style="list-style-type: none"> > The proximity with the CEMAC and the COMESA spaces may create incentives. 	<p style="text-align: center;">WEAKNESSES</p> <ul style="list-style-type: none"> > No binding rules (the Treaty has not defined legal instruments enabling harmonization of Member States' national laws). > Young regional regulator. > Has just adopted a reference framework.
<p style="text-align: center;">OPPORTUNITIES</p> <ul style="list-style-type: none"> > The ECCAS may take advantage of other regional experiences and be a good follower. > Model laws are to be issued. 	<p style="text-align: center;">THREATS</p> <ul style="list-style-type: none"> > Its being late at issuing major initiatives in ICT and telecommunications may lead members having overlapping memberships with the CEMAC or the COMESA to grant more importance to their respective initiatives.

1.6 Economic and Monetary Community of Central Africa (CEMAC)

<p style="text-align: center;">STRENGTHS</p> <ul style="list-style-type: none"> > A clear strategy (e-CEMAC 2010 dated 2005) to implement > Up to date initiatives (most of the initiatives are recent) > The package strategy allows clarity and legal certainty. 	<p style="text-align: center;">WEAKNESSES</p> <ul style="list-style-type: none"> > Delay in strategy implementation (second phase started but there are 6 of them). > No initiative taken regarding scarce resources (frequencies and numbering) > Lack of legislation on cybercriminality (missing technical skills) > Few enforcement mechanisms (sanctions and penalties) > Financial needs for monitoring and evaluation of implementation.
<p style="text-align: center;">OPPORTUNITIES</p> <ul style="list-style-type: none"> > The Council of ministers has requested to the Commission initiatives for electronic transaction and cybercriminality (waiting for UNECA support). > Currently focusing more on infrastructure development (Central African Backbone - CAB). 	<p style="text-align: center;">THREATS</p> <ul style="list-style-type: none"> > Lack of follow-up and enforcement mechanisms will render the binding force of the package illusory and this will hinder the harmonization process.

1.7 Common Market for Eastern and Southern Africa (COMESA)

<p style="text-align: center;">STRENGTHS</p> <ul style="list-style-type: none"> > A quite complete set of initiatives both in telecommunications and ICT. > A policy and regulatory approach which offer room of manoeuvre and flexibility for Member States. 	<p style="text-align: center;">WEAKNESSEES</p> <ul style="list-style-type: none"> > A too large room of manoeuvre may make it difficult to harmonize. > Overlapping memberships make it difficult to harmonize.
<p style="text-align: center;">OPPORTUNITIES</p> <ul style="list-style-type: none"> > Initiatives relating to cyberlaws might be issued. 	<p style="text-align: center;">THREATS</p> <ul style="list-style-type: none"> > The pure guidelines approach may be considered too soft for harmonization at a continental level and therefore may not be retained. > Some members may grant more importance to more binding rules issued by the other regional organizations to which they are also members and this will hinder the COMESA harmonization process.

1.8 East African Community (EAC)

<p style="text-align: center;">STRENGTHS</p> <ul style="list-style-type: none"> > Multi-regional partnership (RICTSP). > Strategies regularly updated. > Policy approach which allows flexibility. > Involved on cyberlaws. 	<p style="text-align: center;">WEAKNESSES</p> <ul style="list-style-type: none"> > Few initiatives in telecommunications. > Few binding rules. > Overlapping membership with the SADC, COMESA and the IGAD
<p style="text-align: center;">OPPORTUNITIES</p> <ul style="list-style-type: none"> > Multi-partnership may lead to a transfer of skills in policy regulation and law making process 	<p style="text-align: center;">THREATS</p> <ul style="list-style-type: none"> > Having in part reduced its role to framework maker, the EAC may find it difficult to adopt in the future more specific rules of a binding nature.

1.9 Intergovernmental Authority for Development (IGAD)

<p style="text-align: center;">STRENGTHS</p> <ul style="list-style-type: none"> > Multi-partnership (RICTSP) 	<p style="text-align: center;">WEAKNESSEES</p> <ul style="list-style-type: none"> > No binding rules > Few initiatives in ICT and telecommunications. > Very young experience in the ICT and telecommunications sectors.
<p style="text-align: center;">OPPORTUNITIES</p> <ul style="list-style-type: none"> > A relatively clear strategy to follow until 2013 (based on RICTSP). 	<p style="text-align: center;">THREATS</p> <ul style="list-style-type: none"> > Members having also memberships with the COMESA will favour COMESA's initiatives in the ICT and telecommunications sectors. > If IGAD is not accelerating to catch other regional organizations, it may lack visibility and legitimacy in harmonizing these sectors in the future.

1.10 Indian Ocean Commission (IOC)

<p style="text-align: center;">STRENGTHS</p> <ul style="list-style-type: none"> > Involved in multi-partnership (coordination with the COMESA, RICTSP). > Involved in infrastructure (SEGANET project). 	<p style="text-align: center;">WEAKNESSEES</p> <ul style="list-style-type: none"> > IOC totals few member states and as such does not enjoy economy of scale (lack of financial support, lack of expertise etc.). > Few initiatives has been taken in ICT and telecommunications, and where taken they are merely strategic programs.
<p style="text-align: center;">OPPORTUNITIES</p> <ul style="list-style-type: none"> > The SEGANET project suggests harmonizing legislation where necessary to implement the project. 	<p style="text-align: center;">THREATS</p> <ul style="list-style-type: none"> > The SEGANET project lacks finances and human resources. > The COMESA is so influential in the area in terms of size and ICT and telecommunications initiatives that IOC may lack visibility and legitimacy in this field in the future, especially if we have regard to the fact that most of its members are also part of the COMESA.

1.11 Southern African Development Community (SADC)

<p style="text-align: center;">STRENGTHS</p> <ul style="list-style-type: none">> Quite complete set of regulation (including consumer protection).> Guidelines approach allows room of manoeuvre to Member States and be adapted to their specific environment.> Long experience.> Good coordination with the agencies (SADC & CRASA).	<p style="text-align: center;">WEAKNESSES</p> <ul style="list-style-type: none">> A too large room of manoeuvre may make it difficult to harmonize.> Numerous rules all set in different documents (some are clearly outdated) and this may lead to a lack of legal certainty.
<p style="text-align: center;">OPPORTUNITIES</p> <ul style="list-style-type: none">> Broadcasting Model Bill.> Possible three parties' agreement with the EAC and the COMESA.	<p style="text-align: center;">THREATS</p> <ul style="list-style-type: none">> The pure guidelines approach may be considered too soft for harmonization at a continental level and therefore may not be retained.> Some members may grant more importance to more binding rules issued by the other regional organizations to which they are also members and this will hinder the SADC harmonization process.

2 Comparing African telecommunications harmonization initiatives with European Union and United States respective harmonization process

2.1 Comparison with the European Union (EU)

Historically, telecommunications markets in Europe were considered as natural monopolies. In the 1980s the issue of the compatibility of these monopolies with the EC Treaties was raised and the reform of the sector was finally launched.

The EU telecommunications legal and regulatory reforms can be divided into two phases: The first phase going from 1987 to 2001 was to regulate the transition from a monopoly to full competition. The liberalization initiatives which aimed to open up telecommunications markets to full competition were therefore adopted. The core concept of these directives⁷ was to allow an unrestricted use of and access to telecommunications networks and services.

The second phase has begun in 2002 when the EU has issued a new package of directives to regulate the fully liberalized telecommunications market. In this phase the harmonization initiatives aimed at introducing a common approach to telecommunications regulations across the EU. However, even if the market was fully opened to competition and the set of EU directives ("Framework", "Authorization", "Access", "Universal Service" and "Privacy and Electronic communications" directives) wanted primarily to harmonize, it has in the meantime also improved market freedom.

It is hard to distinguish such phases amongst African regional organisations initiatives. Most initiatives tend to mix liberalization oriented provisions with harmonization oriented provisions even if it is to be noted that the latter are more dominant than the former. The latest African packages are therefore generally closer to the second set of EU directives, in particular the packages of the CEMAC, the ECOWAS and the UEMOA which also cover subject such as the framework, the authorisation and the Universal service. We may note that African initiatives tend to focus more on harmonization.

This might be explained by the fact that Member States have mostly preceded regional organisations in terms of liberalisation initiatives. It seems that a lot of them did reform individually on their own initiative. However, Member States of African regional organizations are not all progressing at the same rhythm (same as in the EU but in a more contrasted way), for example national regulatory authorities (NRAs) in the ECOWAS have been implemented between 1995 for the earliest and 2009 for the latest.

Further, if the CEMAC, the ECOWAS and the UEMOA tend to have a harmonization oriented framework, the SADC policy guidelines seems to be more liberalization focused. As an example some recommendations are still urging Member State to establish national regulators (such as some SADC guidelines).

Few African regional organisations initiatives may however be compared to the EU packages. Indeed, the legal package approach (which means proposing in one shot a set of legislation composed of many directives and/or regulations ruling over different contents) is not really common in Africa and only three regional organisations have engaged so far in such way. In Africa, the legal approach as defined in Part 2 seems to compete with other approaches such as policy and regulatory approaches rather than complementing them. In

⁷ Directive 88/301/EEC of 16 May 1988 on competition in the markets in telecommunications terminal equipment, Directive 90/388/EEC of 28 June 1990 on competition in the markets for telecommunications services, Directive 94/46/EC of 13 October 1994 amending Directive 88/301/EEC and Directive 90/388/EEC in particular with regard to satellite communications, Directive 96/2/EC of 16 January 1996 amending Directive 90/388/EEC with regard to mobile and personal communications, Directive 96/19/EC of 13 March 1996 amending Directive 90/388/EEC with regard to the implementation of full competition in telecommunications markets and Directive 95/51/EC of 18 October 1995 amending Directive 90/388/EEC with regard to the abolition of the restrictions on the use of cable television networks for the provision of already liberalized telecommunications services.

terms of harmonization the legal approach has been dominant in the EU but it is far from being the single one.

Indeed, harmonization has led to greater complexity and detailed regulatory interventions than required for liberalization of national market in the EU. In order to facilitate it, the European Commission issued for instance a list of eighteen product markets in guidelines. National regulatory authorities (NRAs) are to give "utmost account" to these guidelines while analysing their respective national markets. It is to be noted that NRAs are playing a key role in the harmonization process in the EU. However, the NRAs' residual discretion has generated new areas of divergence within the Member States.

We understand that the new EU regime has attempted to address the worst of the variabilities and inconsistencies including its case law. However, issues of subsidiarity and Member States political manoeuvring also prevented this process from going as far as initially wished by the European Commission in the harmonization process.

African organisations may face the same difficulties if they only offer a regulatory or policy approach (as defined in Part 2) with few binding rules. Indeed if a big discretion is left to NRAs - which are not really politically independent- they may pursue national interests instead of a common regional interest and such behaviour is likely to be critical to reach harmonization. Binding rules may limit this risk, subject to the residual discretion they leave.

Further, in response to the convergence of technologies, the current EU framework covers all electronic communications networks and services and is technologically neutral. Few African regional organisations (such as the ECOWAS⁸ or the UEMOA⁹) have laid down technology neutrality in their guiding principles.

The major difficulty that a pan-African harmonization has to face is that harmonization will need to be done on three levels: pan-African level, regional level and national level. In the EU it was only a two level harmonization: regional and national.

Another important difficulty that a pan-African harmonization has to face as compared to the EU is that there are as many legal sources as regional organisations. These sources provide for different harmonisation mechanisms having also different effects.

The last but not the least, a pan-African harmonization will struggle to make move forward at the same rhythm regional organisations and jurisdictions having decision making process of a different length without imposing a binding reasonable time frame for each and every entity.

Interviews with regional organisations also showed that the follow-up of the implementation of regional rules at a national level, even when such rules are binding is difficult to achieve for some African regional organisations, especially if we have regard to their limited enforcement powers.

2.2 Comparison with the United States (US)

While the United States is not a regional organisation, it has also being struggling to harmonize intra states regulations¹⁰ from a federal level, and therefore they may be an interesting point of comparison.

⁸ Article 5(3) of the Supplementary Act A/SA.3/01/07 on the legal regime applicable to network operators and service providers.

⁹ See guiding principles in the Directive No.01/2006/CM/WAEMU relating to harmonization of policies regulating telecoms.

¹⁰ At the state level, each of the states and the District of Columbia has a public utility commission (PUC) responsible for all telecommunications issues, including policy, licensing and enforcement arising within its jurisdiction.

We have to note that the harmonization process has not been an easy task in the US due to the complexity caused by the federal nature of the US system and a tradition of deference to state utility regulators.

In the same way, a pan-African harmonization will need to be conducted on three levels: on a pan-African level, regional level and national level with regard to a principle of subsidiarity. However, regional organisations are institutionally very different from US state utility regulators and far from looking to one another, both in their involvement in ICT and telecommunications matters and in their governance.

The US Communication Act dated 1934 is the basis for modern federal communications regulation in the US. The latter established the first telecommunications regulatory body: the FCC¹¹. This Act confers to the FCC broad authority to act on the basis of "public interest, convenience and necessity".

For several decades, the FCC allowed AT&T (which has always been a private-owned company unlike European or African incumbents) to retain its monopoly on telecommunications. Over time, the view that the provision of telecommunications services was a natural monopoly was challenged by the FCC, the courts and Congress. Judicial and legislative initiatives led to the gradual introduction of full competition in some services markets.

There is no such a thing as a single incumbent having monopoly on the whole African continent, nor a judicial power having jurisdiction on the whole continent.

Under the Tenth Amendment of the US Constitution, all powers not expressly given to the Federal Government are reserved to states. However, in the telecommunications sector, the Supreme Court has found that many seemingly intrastate activities directly and/or indirectly affect interstate commerce and, thus, fall within the ambit of the FCC.

On this basis, the US telecommunications legal and regulatory framework has been progressively outlined by the FCC decisions comforted by the DC Circuit Court, in turn sometimes confirmed where necessary, statutorily. As an example, regarding interconnection, in its Specialized Common Carrier decision of 1971, the FCC has ruled that carriers such as AT&T had to provide interconnection services on reasonable terms and conditions to new entrants. The DC Circuit Court confirmed in 1978 that new entrants were legally entitled to interconnection¹².

In parallel, the FCC imposed to AT&T to rebalance tariffs in line with costs of the charges interstates common carriers paid to local exchange operators to terminate long-distance calls. In 1979 FCC granted a licence to another operator at a federal level.

At first glance, the US seems to be closer to a regulatory approach as defined in Part 2 (except that it is a Federal regulator and not a regional one which made decisions) which has been complemented by a supporting case-law¹³ while also basing itself on statutory laws. Therefore, we could consider the US model as hybrid.

It has already been mentioned that African initiatives were rarely setting rules by reinforcing each other with complementary methods: legal, regulatory and policy but were usually opting

¹¹ The FCC is responsible for all interstate and foreign communications issues and certain intrastate issues. The work of the FCC is complement by that of the National Telecommunications and Information Administration, the Department of Justice and the Federal Trade Commission.

¹² The hierarchical court system is as followed: Supreme Court, Courts of Appeal and lower level trial courts, Federal District Courts. The federal courts have the judicial responsibility to rule on the constitutionality of federal laws, to interpret and to apply the laws to resolve disputes. The federal courts have limited jurisdiction in that they can only decide certain types of cases as determined by Congress or defined in the Constitution. That means the federal courts decide cases interpreting the Constitution, all federal laws, federal regulations and rules, and controversies between states or between the United States and foreign governments (legislative history notations of the US Code).

¹³ Please note that case law is binding inferior courts in the Common law.

for one single method for a given issue. This might be a problem where a given rule fails to be abided by or lack clarity.

It is to be noted that the FCC has broad and powerful enforcement powers: it may enforce the provisions of the 1934 Telecommunications Act directly, or request the Federal Court to initiate enforcement proceedings. The sanction may be: fines, revocation of the authorization, obligation to take the necessary steps to remedy the breach. The FCC may also require the operators to produce relevant information.

Such strategy cannot be pursued by regional organisations in Africa. Indeed, African regional regulators are not entitled to grant regional licences. In the same way, no courts have regional jurisdiction to settle out disputes in telecommunications. Some have jurisdiction over the constituting treaty and the acts of the community institutions but only have consultative powers; others do not have success because the access to the court is restricted to some petitioners such as Member States or staff of the Institutions. Usually, National regulators are the primary arbitrator in dispute where they are vested with quasi-judicial powers. The ECOWAS Commission and the UEMOA Regulators' Committee have jurisdiction only when national regulator fail to react or coordinate their actions (in case of trans-national disputes within the region). Therefore, little regional case law if any is likely to emerge.

Another specificity of the US model is its massive recourse to competition law. In terms of antitrust, the Department of Justice has jurisdiction. For instance, in 1974 the Department of Justice brought a suit against AT&T to contest its monopoly. Eight years later, the judge ordered AT&T to divest itself its 22 Regional Operating Bell Companies (RBOCs), which resulted in the separation local and long-distance markets.

With the growing emphasis on competition in the late 1980's, the FCC initiated a series of proceedings examining how best to adapt the regulatory framework to promote competition among common carriers. These studies put forward the fact that a great deal of obligations was imposed to new entrants which made market entry less desirable. Consequently, the FCC decided to minimize the regulatory burden.

African organisations have very rarely recourse to competition law to intervene in telecommunications and ICT. More importantly, there is no such a thing as the Department of Justice (or EU Commission) that might take action against service or network providers in case of infringement to general competition rules.

The US 1996 Act marked the first time Congress established policy objectives for the telecommunications sector since the adoption of the 1934 Act. It declares invalid all state regulation that prohibits or restricts the entry of competitors into intrastate telecommunications services. The Act imposes a general duty on all telecommunication carriers to interconnect "directly or indirectly" with the facilities of other carriers, therefore confirming statutorily the earlier FCC decision and following related case-law.

The Telecommunications Act of 1996 further augmented the scope of the FCC's jurisdiction. The Act enables the FCC to pre-empt any state legislation that contravenes the purpose of local competition. In addition, the FCC may pre-empt any state regulation that may prohibit the ability of any entity to provide interstate and intrastate telecommunications service.

The originality of the US model is clearly its patchwork approach mixing regulator and courts decisions with Congress support to regulate the market with a maximum flexibility.

How much seducing the US model is, it is deeply rooted in the common law tradition (The COMESA and the SADC are for instance also strongly influenced by the common law, but this is not the case of the ECOWAS, the CEMAC and the UEMOA) and deeply rely on competition law. Therefore, it does not satisfy the requirements of transferability and clarity necessary to pave the way towards a pan-African harmonization, especially in regard to the fact that the competition law is burgeoning on the African continent.

> **EIGHT FORWARD LOOKING RECOMMENDATIONS**

1 Adopting an overall strategy

The general idea is to reach a common set of rules and principles for all organizations based on all existing frameworks with view of rendering them binding for all Member States of the AU through a common instrument. It will be a *a minima* pedestal from which to start harmonization at a pan-African level.

2 Setting common principles in a pan-African binding instrument

Such as: objectivity, transparency, proportionality, non-discrimination, technological neutrality with regard to convergence, minimizing barriers to market entry, minimizing regulatory burdens, implementing a two-tier regulation: more stringent regulation of operators with significant market power:

This is an ultimate objective for substantive law harmonization which can be reached by consultation as detailed below.

3 Organizing consultation and consensus-building at all levels (pan-African level, regional and national level)

To avoid regionalisms i.e. that each regional organisation decides that its view shall be extended to all others we recommend that a harmonization bureau shall be instituted by the African Union. It could be composed in a balance way and be vested to decide region by region whether the rules or principles regionally adopted shall be considered as a common basis at a pan-African level.

A rule considered to be non extendible, may be later considered as so where a change in the circumstances justify it. This will not preclude the rules or principles in question to be applicable at the regional level where it has been issued.

4 Setting common streamlined processes for each and every regional organizations

A harmonization bureau as mentioned above for substantive law may also be instituted for procedural law.

5 Setting an independent pan-African regulatory agency with enforcing powers together with a pan-African appeal mechanism

The EU has failed to create a regional regulator for telecommunications purposes, notably because of a lack of support from National Regulators which are eager to keep their prerogatives including quasi-jurisdictional power.

As African national regulatory authorities are more recent and enjoy more limited prerogatives, the context may make it easier - although not less intricate and complicated- to create a pan-African regulator having jurisdiction for pan-African telecommunications issues.

In order to influence national legislation the pan-African regulator could be consulted prior to the implementation of rulings mechanisms by national regulatory authorities where necessary.

Its role could be restricted to the common rules adopted at a pan-African level. It could also be a simple appeal authority for regional courts that will gain progressively jurisdiction while the common rules progressively extend.

6 Reducing level of regulatory discretion at national and regional level

Through more objective rules, a more transparent implementation, decisions based on merit and duly motivated, thanks to a more harmonized mode of functioning. Appeal shall be possible before the Pan-African Regulation Authority.

7 Increasing clarity and transparency with more detailed and binding rules

Thus, some organizations have established elaborated rules, but as they are not binding, they remain optional. Decisions or agreements making these rules binding could be adopted.

8 Developing pan-African competition law

Telecommunications and ICT are submitted to sector-specific rules and normally non-specific competition issues are generally submitted to general competition law. Both complement each other. In Africa, specific rules generally lack the support of general competition law since the latter is burgeoning on the continent.

Annexes

> ANNEX 1 : LIST OF REGIONAL INITIATIVES FOR HARMONIZATION OF THE LEGAL AND REGULATORY FRAMEWORK FOR ICT IN AFRICA

1 International Telecommunication Union (ITU)

The African Green Paper, Telecommunication Policies for Africa (May 1996)

2 African Union (AU)

- NEPAD document (October 2001) ;
- Decision document of the ministers responsible for ICTs and/or Telecommunications on the policy, legal and regulatory aspects of the NEPAD ICT Broadband infrastructure Network for Eastern and Southern Africa (June 2006) ;
- Resolution of the first inter-governmental assembly (IGA) ministerial meeting on implementing the Kigali Protocol (October 2007)
- Report on licensing and interconnection framework for the NEPAD Broadband ICT infrastructure network for Eastern and Southern Africa (October 2007)
- Protocol on Policy and Regulatory Framework for NEPAD Broadband ICT Infrastructure for Eastern and Southern Africa (2006)
- The African Union's Reference Framework for Harmonization of Telecommunication and ICT Policies and Regulation in Africa (adopted in May 2008):
 - Study on the harmonization of telecommunications/ICT policies and regulations in Africa - Executive summary.
 - Study on the harmonization of telecommunications/ICT policies and regulations in Africa - Draft report.
 - Report of the Second Session of the Conference of African Union Ministers in charge of Communication and Information Technologies (ICT) (Cairo Declaration annexed).
 - Decision EX.CL/434 (XIII) of the Second Session of the Conference of African Ministers in charge of Communication and Information Technologies (ICT).
 - Plan for the implementation of Decision EX.CL/434 (XIII) of the Executive Council on the Second Session of the Conference of African Ministers in charge of Communication and Information Technologies (ICT).
- Yamoussoukro Cybersecurity Plan (18-20 November 2008).

3 Arab Maghreb Union (AMU)

- Convention on the exchange of trainers between postal and communication administrations of the countries of the Arab Maghreb Union (04/02/1994) (*)
- Agreement on the exchange of experts and specialists between postal and communication administrations of the countries of the Arab Maghreb Union (04/02/1994) (*)

- Memorandum of understanding between the General Secretariat of the Arab Maghreb Union and the North Africa Office of the United Nations Economic Mission for Africa (ECA-NA), 16 January 2008.

4 Economic Community of West African States (ECOWAS)

- Revised Treaty establishing ECOWAS (1993) and Supplementary Protocol A/SP.1/06/06 amending the Revised Treaty.
- Constitution of WATRA (2002):
 - Strategic plan (2005-2008).
 - Strategic road map for WATRA (2007-2010).
- Supplementary Act A/SA 5/01/07 on the management of the radio frequency spectrum.
- Supplementary Act A/SA 2/01/07 on access and interconnection in respect of ICT sector networks and services.
- Supplementary Act A/SA 4/01/07 on numbering plan management.
- Supplementary Act A/SA 1/01/07 on the harmonization of policies and of the regulatory framework for the ICT sector.
- Supplementary Act A/SA 3/01/07 on the legal regime applicable to network operators and service operators.
- Supplementary Act A/SA 6/01/07 on universal access/service.
- Draft Supplementary Act A/SA /12/08 on electronic transactions.
- Draft Directive D /12/09 on combating cybercrime in ECOWAS modified in 2008 by Supplementary Act A/SA /12/08 on guidelines on cybercrime in ECOWAS.
- Draft Supplementary Act A/SA /12/09 on guidelines for the protection of personal data in ECOWAS modified in 2008 by Directive D /CM/2008 on guidelines for the protection of personal data in ECOWAS.¹⁴

5 West African Economic and Monetary Union (UEMOA)

- *Directive N° 01/2006/CM/UEMOA relative à l'harmonisation des politiques de contrôle et de régulation du secteur des télécommunications* - Directive No 01/2006/CM/UEMOA relating to harmonization of policies for the control and regulation of the telecommunication sector
- *Directive N° 02/2006/CM/UEMOA relative à l'harmonisation des régimes applicables aux opérateurs de réseaux et fournisseurs de services.*- Directive No 02/2006/CM/UEMOA relating to the harmonization of regimes applicable to network operators and service providers
- *Directive N° 03/2006/CM/UEMOA relative à l'interconnexion des réseaux et services de télécommunication.*- Directive No 03/2006/CM/UEMOA relating to the interconnection of telecommunication networks and services

¹⁴ The initial version of these drafts were reviewed and validated by the 7th meeting of ECOWAS Telecom/ICT Ministers in Praia in October 2008. Since then they were reexamined by preparatory experts meetings and have evolved. They were validated by the 8th Ministers meeting in Dakar in October 2009 in order to be later adopted by the Council of Ministers.

- *Directive N° 04/2006/CM/UEMOA relative au service universel et aux obligations de performance du réseau* - Directive No 04/2006/CM/UEMOA relating to universal service and network performance obligations
- *Directive N° 05/2006/CM/UEMOA relative à l'harmonisation de la tarification des services de télécommunication* - Directive No 05/2006/CM/UEMOA relating to harmonization of telecommunication tariffs
- *Directive No 06/2006/CM/UEMOA organisant le cadre général de coopération entre les autorités nationales de régulation en matière de télécommunications* - Directive No 06/2006/CM/UEMOA organizing the general framework for cooperation between national telecommunication regulators.
- *Decision No 09/2006/CM/UEMOA portant création du Comité des Régulateurs nationaux de télécommunication des Etats membres de l'UEMOA* - Decision No 09/2006/CM/UEMOA establishing the Committee of National Telecommunication Regulators of the Member States of WAEMU

6 Economic Community of Central African States (ECCAS)

- *Statuts de l'ARTAC* - Constitution of the ARTAC (2004) ;
- *Politique régionale de développement des TIC pour l'Afrique centrale* - Regional ICT development policy for Central Africa (June 2009).
- *Cadre de référence pour l'harmonisation des politiques et réglementations nationales - Recommandations* - Reference framework for the harmonization of national policies and regulations - Recommendations (June 2009)¹⁵.

7 Economic and Monetary Community of Central Africa (CEMAC)

- *Convention régissant l'UEAC* - Convention governing UEAC (annexed to the treaty establishing CEMAC) (1994)
- *Déclaration de Yaoundé* - Yaoundé Declaration (2002)
- *Stratégie e-CEMAC 2010* - CEMAC 2010 Strategy (2005)
- *Décision N° 45/08-UEAC-133-CM-18 Portant création du Comité technique de régulation des communications électroniques des Etats membres de la CEMAC* - Decision No. 45/08-UEAC-133-CM-18 establishing the Technical Committee for the regulation of electronic communications of CEMAC Member States (November 2008)
- *Directive N° 10/08-UEAC-133-CM-18 Harmonisant les modalités d'établissement et de contrôle des tarifs de services de communications électroniques au sein de la CEMAC* - Directive No. 10/08-UEAC-133-CM-18 Harmonizing the modalities for setting and controlling tariffs for e communication services within CEMAC (November 2008)
- *Directive N° 09/08-UEAC-133-CM-18 Harmonisant les régimes juridiques des activités de communications électroniques dans les Etats membres de la CEMAC* Directive No. 09/08-UEAC-133-CM-18 Harmonizing the legal regimes for electronic communication activities in CEMAC Member States (November 2008)
- *Directive N° 08/08-UEAC-133-CM-18 Relative à l'interconnexion et à l'accès des réseaux et des services de communications électroniques dans les pays membres de la CEMAC* -

¹⁵ These guidelines set out by experts at a workshop of ECCAS in March 2009, must be considered and adopted by the Specialized Technical Committee for Telecommunications, by Advisory Commission of Experts, the Council of Ministers and Heads of State ECCAS

Directive No. 08/08-UEAC-133-CM-18 on interconnection and access for electronic communication networks and services in CEMAC member countries (November 2008)

- *Directive N° 07/08-UEAC-133-CM-18 Fixant le cadre juridique de la protection des droits des utilisateurs de réseaux et de services de communications électroniques au sein de la CEMAC* - Directive No. 07/08-UEAC-133-CM-18 Establishing the legal framework for the protection of the rights of users of e communication networks and services within CEMAC (November 2008)
- *Directive N° 06/08-UEAC-133-CM-18 Fixant le régime du service universel dans le secteur des communications électroniques au sein des Etats membres de la CEMAC* - Directive No. 06/08-UEAC-133-CM-18 Establishing the regime for universal service in the e communication sector within the Member States of CEMAC (November 2008)
- *Règlement N° 21/08-UEAC-133-CM-18 relatif à l'harmonisation des réglementations et des politiques de régulation des communications électroniques au sein des Etats membres de la CEMAC* - Regulation No. 21/08-UEAC-133-CM-18 on the harmonization of regulations and regulatory policies for electronic communications within CEMAC Member States (November 2008)¹⁶

8 Common Market for Eastern and Southern Africa (COMESA)

- COMESA Treaty (1993) ;
- Constitution of the ARICEA (24 January 2003) ;
- ICT Policy for COMESA (2003) ;
- Model Legislation for COMESA (2003) ;
- Policy Guidelines on Universal Service/Access (2004) ;
- Regulatory Guidelines on Interconnection (2004);
- Regulatory Guidelines on Universal Service (2004) ;
- Regulatory Guidelines on Licensing (2004) ;
- Policy Guidelines on Consumer Protection (2007) ;
- Regional ICT Support Program (RICTSP) including COMESA, EAC, IGAD and IOC under the 9th EDF (2005-2009) (*);
- Draft RICTSP Implementation Strategy (2007) ;
- Roadmap for E-readiness Assessment and Information Society Measurement in ESA (2008) ;
- Report of the Working Group 1 meeting (2008) ;
- Organizational and Data Issues for E-Readiness Measurement in ESA (2008);
- Harmonized ICT Indicators and Indices for ESA (2008);
- Regional Strategy Paper and Regional Indicative Program between UE and COMESA, EAC, IGAD and IOC under the 10th EDF (2008-2013) ;
- Memorandum of Understanding Between Members of The ARTC

¹⁶ The texts cited were approved by the ministers responsible for telecommunications in Brazzaville in November 2008 and by the heads of State and government at N'Djamena in 2009. CEMAC has also been instructed to develop several other directives on cybersecurity - possibly with assistance from ECA -, international interconnection, etc..

- Policy Guidelines on Equipment Type Approval and Standards
- Policy Guidelines on Pricing
- Guidelines on Satellite and Other Wireless Services Regulation (*);
- Spectrum Management Policy Framework for ARICEA Member States;
- COMESA regional reference framework for « e-government » (2008) (under process)
- Draft Guidelines on Cybercriminality (under process) (*).

9 East African Community (EAC)

- 1st Development Strategy (1997-2000) (*);
- Constitution of the EARPTO (2000) (*);
- 2nd Development Strategy (2001-2005) ;
- Final Development Strategy (2006-2010) ;
- EAC Private Sector Development Strategy (2006) ;
- EAC Amended Treaty (2006-2007) ;
- EAC Regional E-Government Framework (2006) ;
- Catalogue of East African Standards (2007) ;
- Regional ICT Support Program (RICTSP) including la COMESA, EAC, IGAD and IOC under the 9th EDF (2005-2009) (*);
- Regional Strategy Paper and Regional Indicative Program between EU and COMESA, EAC, IGAD and IOC under the au 10th EDF (2008-2013);
- Draft EAC Legal Framework for Cyberlaws (November 2008).
- Constitution of the EACO (2009) (*);

10 InterGovernmental Authority on Development (IGAD)

- Regional ICT Support Program (RICTSP) including COMESA, EAC, IGAD and IOC under the 9th EDF (2005-2009) (*);
- IGAD RICTSP Workshop Report (2007).
- Regional Strategy Paper and Regional Indicative Program between UE and COMESA, EAC, IGAD and IOC under the 10th EDF (2008-2013) ;

11 Indian Ocean Commission (IOC)

- Regional ICT Support Program (RICTSP) including COMESA, EAC, IGAD and IOC under the 9th EDF (2005-2009) (*);
- Detailed feasibility study for the implementation of a submarine Cable System for the IOC member countries (5 November 2007).
- Regional Strategy Paper and Regional Indicative Program between UE and COMESA, EAC, IGAD and IOC under the 10th EDF (2008-2013) ;
- *Protocole d'accord relatif à la mise en œuvre du projet SEGANET en date du 16 décembre 2008* – Protocol on SEGANET implementation (16 December 2008).

12 Southern Africa Development Community (SADC)

- SADC Protocol on Transport, Communications and Meteorology (1996) ;
- Constitution of the TRASA (4 December 1997) ;
- Telecommunications Policies for SADC (June 1998) ;
- Telecommunications Bill Model for SADC (June 1998) ;
- Chart of Accounts and Cost Allocation Manual (September 1999) ;
- Guidelines on Interconnection for SADC Countries (May 2000) ;
- Policy Guidelines on Tariff for Telecommunications Services (November 2000) ;
- SADC Regional Frequency Allocation plan for 20-3100 MHz (November 2000) ;
- SADC ICT Declaration (2001) ;
- Regional Indicative Strategic Development Plan (RISDP) (2001) ;
- Policy Guidelines on Licensing for SADC Countries (February 2002) ;
- Policy Guidelines on Universal Access/Service for SADC (February 2002) ;
- Wholesale Pricing Guidelines for the ICT Sector for SADC (September 2002) ;
- Guidelines on Numbering Harmonization for SADC Countries (November 2002 and January 2003) ;
- Consumer Protection Guidelines (April 2004) ;
- Guidelines on Human Resource Development and Management (2004) ;
- Constitution of the CRASA (21 February 2006) ;
- CRASA Wireless Technologies Policy and Regulations (September 2004 / 2006) ;
- Guidelines on Standards and Equipment Type Approval (January 2006) ;
- Policy Guidelines on Gender Equality and Empowerment of Disadvantaged People (Mars 2007) ;
- Draft SADC ICT Consumer Rights and Protection Regulatory Guidelines (2009) ;
- "e-SADC" Strategy in collaboration with UNECA.

> **ANNEX 2 : LIST OF INITIALS AND ACRONYMS**

ACP	Africa, Caribbean and Pacific Group of States
@CP-ICT	ACP-Information and Communication Technologies
AMU	Arab Maghreb Union (see UMA)
ARICEA	Association of Regulators of Information and Communications for Eastern and Southern Africa
ARTAC	<i>Association des régulateurs de télécommunications de l'Afrique centrale</i> - Telecommunication Regulators' Association of Central Africa
ARTC	Annual Regional Telecommunications Conference
AU	African Union
CEMAC	<i>Communauté économique et monétaire de l'Afrique centrale</i> – Economic and Monetary Community of Central Africa
COMESA	Common Market for Eastern and Southern Africa
CRASA	Communications Regulators' Association of Southern Africa
CTR	<i>Comité technique de la régulation</i> - Technical Committee for Regulation of CEMAC
CRTEL	<i>Comité (national) des régulateurs (de télécommunications)</i> - Technical Committee of (national telecommunication) regulators of UMEOA
EAC	East African Community
EACO	East African Communications Organisation
EARPTO	East Africa Regulatory, Postal and Telecommunications Organization
EDF	European Development Fund
ESA	Eastern and Southern Africa
EU	European Union
ICT	Information and Communication technology
IOC	Indian Ocean Commission
IGAD	InterGovernmental Authority for Development
NEPAD	New Partnership for African Development
RICTSP	Regional ICT Support Program
RISDP	Regional Indicative Strategic Development Plan
SADC	Southern African Development Community
SWOT	Strength, Weakness, Opportunities and Threats
TRASA	Telecommunications Regulator's Association of Southern Africa
UEAC	<i>Union économique d'Afrique centrale</i> - Economic Union of Central Africa

UEMOA	<i>Union économique et monétaire ouest-africaine</i> - West African Economic and Monetary Union (See WAEMU)
UMA	<i>Union du Maghreb arabe</i> - Arab Maghreb Union (See AMU)
UNECA	<i>United Nations Economic Commission for Africa</i>
WAEMU	West African Economic and Monetary Union (see UEMOA)
WATRA	West Africa Telecommunications Regulators Assembly\

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