# CONTINENTAL WORKSHOP

# ICT harmonization in Africa - How to monitor and evaluate it? - What are the next steps to better adapt to the challenges of digital transformation?

2-6 September 2019

Addis Ababa, Ethiopia

| Agenda | Day 1 - Context |
|---|---|
| 07h30 - 08h30 | **Registration** |
| | **Opening Ceremony** (FR and EN) |
| 08h30 – 10h00 | 1 **Welcome Note**: |
| | Ms. Souhila Amazouz, Senior Policy Officer, AUC |
| | 2 **Keynote Address**: |
| | Mr. Moctar Yedaly, Head of Information Society Division, AUC |
| | Mr. Thomas Huyghebaert, Team Leader, EU Delegation to the AUC |
| | **3 Practical Information** |
| | **4 Group Picture** |
| 30 min | Coffee Break |
| | **Session 1: Context** |
| | **Moderator:** Souhila Amazouz, Senior Policy Officer, AUC |
| 10h30 – 11h00 | **Context of harmonization in Africa** |
| | Mr. Moctar Yedaly, Head of Information Society Division, AUC |
| 11h00 – 12h30 | **The Digital Economy in Africa** |
| | Presentation by: Dr. Enrico Calandro, Research ICT Africa (RIA) |
| | 5 Part 1.: Connectivity |
| | Part.2.: Digital transformation |
| 12h30-13h00 | **What Digital Strategy for Africa?** |
| | 6 Mr. Moctar Yedaly, Head of Information Society Division, AUC |
| | 7 Mr. Stepfan Fox, Programme Manager, EU Delegation to the AUC |
| | **8** Ms. Lana Zutelija, Adviser Digital Policies, EU Delegation to the AUC |
| 90min | Lunch Break |
| | **Digital Economy in Africa (con't)** |
| 14h30 – 15h15 | 9 Part. 3.: Measurement |
| 15h15 – 16h00 | **Session 2: Workshop context** |
| | **Moderator:** Mr. Moctar Yedaly, Head of Information Society Division, AUC |
| | Presentation by Ms. Katia Duhamel, PRIDA Expert |
| | **10** Approach and expected outcomes of the workshop |
| 30 min | Coffee Break – (*Rapporteur Drafting*) |
| | **Session 2: Workshop context (con't)** |
| 16h30 – 17h30 | 11 Ensuring a Common Understanding: definitions |

| Agenda | Day 2 – Assessment |
|---|---|
| Session Chair: M. Eric Armel Ndoumba, Conseiller aux Télécommunications auprès du Ministre<br>Rapporteur: Ms. Hilda Mutseyekwa, Director Economics Tariffs and Competition, NRA<br>PRIDA Expert, Ms. Katia Duhamel | |
| 09h00 – 11h00 | **Session 3: Regional Economic Communities (RECs)**<br>1 Past experience and common continental trends<br>*(Presentation and Discussion)* |
| 30 min | Coffee Break |
| 11h30 – 13h00 | **Session 3: (Con't) Regional Association of Regulators**<br>2 Past experience and common continental trends<br>*(Presentation and Discussion)* |
| 90min | Lunch Break |
| 14h30 – 16h00 | **Session 3: (Con't) African Union Commission (AUC)**<br>3 Past experience and common trends<br>*(Presentation and Discussion)* |
| 60 min | Coffee Break (*Rapporteur Drafting*) |
| 17h00 – 18h00 | **Draft Conclusions by Rapporteur**<br>4 Discussions<br>5 Adoption |

| Agenda | Day 3 – Methodology |
|---|---|
| Session Chair: Eng Vincent Otieno Adul – ICT Expert, National Communication Secretariat<br>Rapporteur: Mr. Mohammed Chubado Babajika: Director Policy Competition and Economic Analysis, NCC<br>PRIDA Expert, Ms. Katia Duhamel | |
| 09h00 – 11h00 | **Session 4: Lessons learned**<br>6 Derived from assessment |
| 30 min | Coffee Break (*Rapporteur Drafting*) |
| 11h30 – 13h00 | **Session 5: Methodology - Policy Legislation**<br>7 Presentation of Options<br>8 Selection |
| 90 min | Lunch Break. |
| 14h30 – 16h00 | **Session 5: Methodology – Regulation**<br>9 Presentation of Options<br>10 Selection |
| 60 min | Coffee Break (*Rapporteur Drafting*) |
| 17h00 – 18h00 | **Draft Conclusions by Rapporteur**<br>11 Discussions<br>12 Adoption |

| Agenda | Day 4 – Priority Areas |
|---|---|
| Session Chair: Mr. Kwame Baah – Acheamfuor - Deputy Director National Communication Authority<br>Rapporteur: Ms. Irene Kaggwa Sewankambo – Director Engineering and Communications Infrastructure<br>PRIDA Expert, Ms. Katia Duhamel | |
| 09h00 – 11h00 | **Session 6: Priority Areas**<br>**1** Presentations<br>**2** Discussion |
| 30 min | Coffee Break |
| 11h30 – 13h00 | **Session 6: (Con't) Priority Areas** |
| 90 min | Lunch Break |
| 14h30 – 16h00 | **Session 6: (Con't) Priority Areas** |
| 60 min | Coffee Break (*Rapporteur Drafting*) |
| 17h00 – 18h00 | **Draft Conclusions by Rapporteur**<br>3 Discussions<br>4 Adoption |

| Agenda | Day 5 – Roadmap and Implementation Plan |
|---|---|
| Moderator: Ms. Souhila Amazouz Senior Policy Officer, AUC | |
| 09h00 – 11h00 | **Session 7: Roadmap and implementation Plan**<br>5 2 years' roadmap and implementation plan<br>**6** Discussions in parallel sessions for Legislation/Regulations |
| 30 min | Coffee Break |
| 11h30 – 13h00 | **Session 7: (Con't) Roadmap and implementation Plan** |
| 90 min | Lunch Break |
| 14h30 – 15h30 | **Final Report of the meeting**<br>7 Discussions<br>8 Adoption |
| 15h30 – 16h00 | **Final Remarks & Closing of the Meeting**<br>9 Mr. Moctar Yedaly, Head of Information Society Division, AUC<br>10 Representative of the EU Delegation to the AUC |

# Agenda
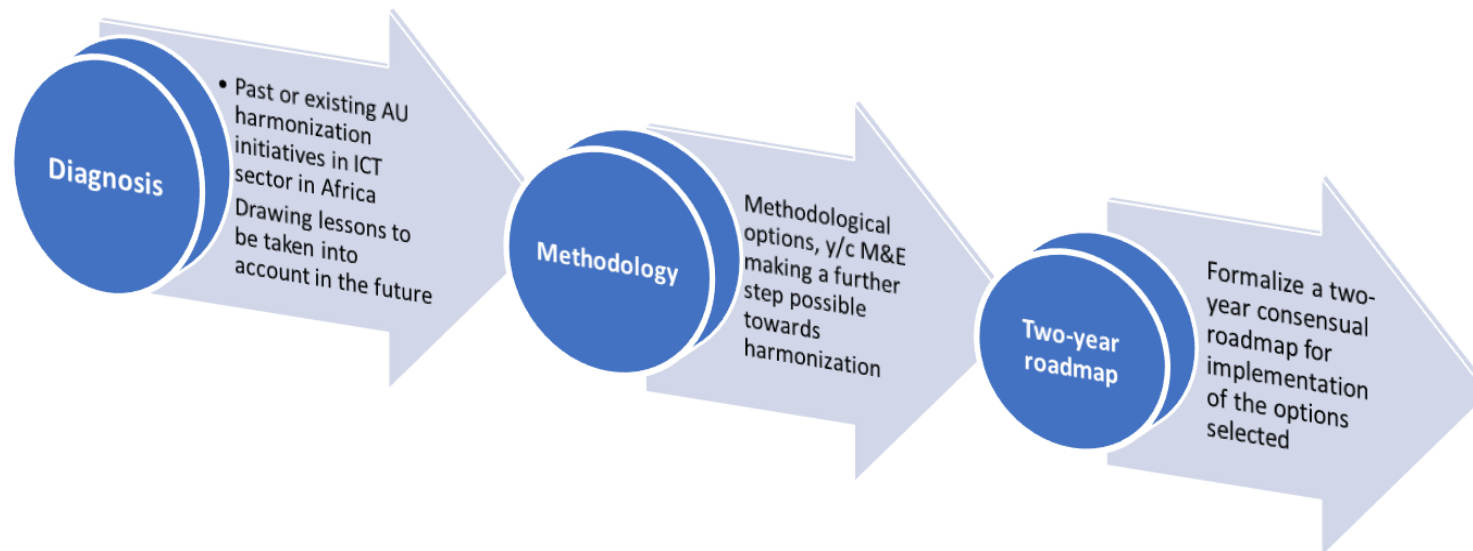
# APPROACH AND EXPECTED RESULTS OF THE WORKSHOP

Both the workshop and the working document which serves as its basis are organized according to 4 different stages in order to aid the participants to mutually decide on the best ways and means to bring about progress in harmonization of policies, legislative frameworks and regulation practice in telecommunications/ ICT on the African continent, as well as evaluation of their impact.

### 1&2. Diagnosis :

1. Reiterating past or current initiatives within the African Union promoting harmonization of the telecommunications/ICT sector in Africa, and of

2. Drawing the appropriate conclusions as lessons to be taken into account in the future.

### 3 . Methodology

On the basis of this prior diagnosis, suggesting methodological options, in particular in terms of Monitoring and Evaluation, making a further step possible towards harmonization and evaluation of policies, legislation and regulation of the sector on the Continent.

### 4 . Two-year roadmap

A fourth and final stage should make it possible, at the end of the September workshop in Addis Ababa, to formalize a two-year consensual roadmap for implementation of the options selected.

# African Union Commission Mandate & Organization

**Agenda Session 2**

# Foundations

The African Union has :

- 17 objectives (Art.3 of the Constitutive Act of the AU) and,
- 18 principles with the view to achieve the said objectives (Art. 4)

Generally speaking, the objectives of the African Union are aimed at bringing political, economic and social integration between member African countries and making the continent a better place for life

Foundations for harmonizing regional policies are in article 3 and 4 of the Treaty Establishing the African Regional Economic Communities (Abuja Treaty)

| Abuja Treaty / Art. 3 - Principles | Abuja Treaty / Art. 4 - Objectives |
|---|---|
| a) The equality and interdependence of the Member States; <br> c) Inter-state cooperation, harmonization of policies and integration of programmes; <br> d) Promotion of a harmonious development of economic activities among Member States; | 1. (d) To coordinate and harmonize policies among existing and future economic communities in order to foster the gradual establishment of the Community <br> 2. (b) The conclusion of agreements aimed at harmonizing and coordinating policies among existing and future sub-regional and regional economic communities <br> 2. (e) The harmonization of national policies in order to promote Community activities, particularly in the fields of agriculture, industry, transport and communications, energy, natural resources, trade, money and finance, human resources, education, culture, science and technology |

# Agenda 2063

- To ensure the realization of the pan-African vision of an integrated, prosperous and peaceful Africa, the AU Conference adopted on 31 January 2015 [1] a strategic framework, the **Agenda 2063** for a sustainable and inclusive socio-economic transformation of Africa

(1)    Assembly / AU / dec.565 (XXIV)
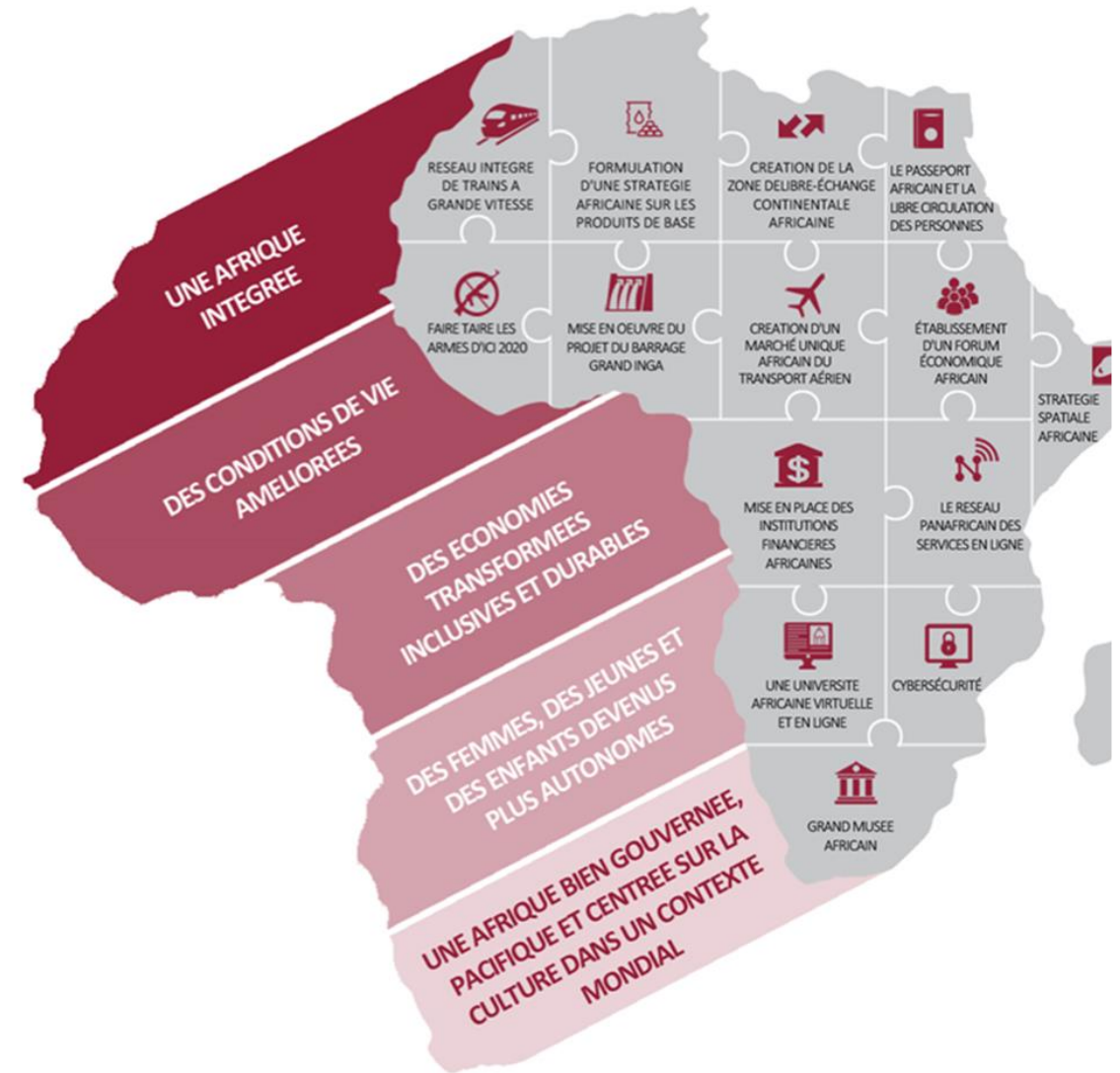
# A-2063 includes several Digital Flagship projects

Among 14 "flagship" projects to accelerate Africa's growth and economic development and promote a common identity, the Agenda 2023 identifies projects directly related to the digitization of society and the economy :

- Connecting Africa through a world-class infrastructure especially in the field of ICT
- Pan-African Virtual and Electronic University,
- African e-Passport
- Pan-African online services
- Cybersecurity and personal data protection project

# AU Telecoms / ICT Competencies

The African Union (AU) regulatory framework for ICT is composed of two categories of acts:

- **The primary acts**, signed by the States, and not by any of the institutions of the African Union, which are subject to ratification by member countries; e.g. :

  - The High-Level Policy and Regulatory Framework for High-Speed ICT Infrastructure of the New Partnership for Africa's Development ("NEPAD") for Eastern and Southern Africa 2006 ;

  - The Convention on Cybersecurity and Protection of Personal Data, known as the Malabo Convention

- **Acts of secondary law** adopted by the AU institutions (taken on the basis of a primary law act) , e.g. :
  - Decision EX.CL/434 (XIII) [1] of the Executive Council of the AU, which (i) endorses the AU Framework for Harmonization of Telecommunications and ICT Policies and Regulations in Africa and (ii) implement the Report of the Second Session of the AU Conference of Ministers of Communication and ICT, annexed to the 2008 **Cairo Declaration**.

- The starting point for AU initiatives in the telecommunications/ICT sector, in 2008, was the **Cairo Declaration**, combined with the AU Framework for Harmonization of Telecommunication and ICT Policies and Regulations in Africa

- On this basis African ministers responsible for ICT several times reiterated their commitment to pursue harmonization between 2010 and 2012 [2]

(1)     EXECUTIVE BOARD Eighth Ordinary Session June 24 - 28, 2008 Sharm-El-Sheikh, Egypt EX.CL/434(XIII)
(2)     See declarations of Abuja and Khartoum

# Institutional Framework (AU)

- Within the AUC, a structure is mainly in charge of the ICT sector: the Information Society Division which is part of the Infrastructure and Energy Department.

- The NEPAD planning and coordinating agency (transitioning to the African Union Development Agency - ADUA) could continue to implement ICT-related activities. Its mandate is being finalized.

- The African Telecommunication Union (ATU) as an AU specialized institution with 47 African member states and 37 associate members including operators and private actors in the telecommunications sector coordinates most of the activities related to ITU. It contributes in particular to the formulation and implementation of the decisions of the ITU Plenipotentiaries.

- Regional Economic Communities (RECs)[1] are considered as pillars of the AU and collaborate closely with it. The Abuja Treaty specifically provide for the establishment of these relations, which are governed - inter alia - by the 2008 Protocol on Relations between the AU and the RECs;
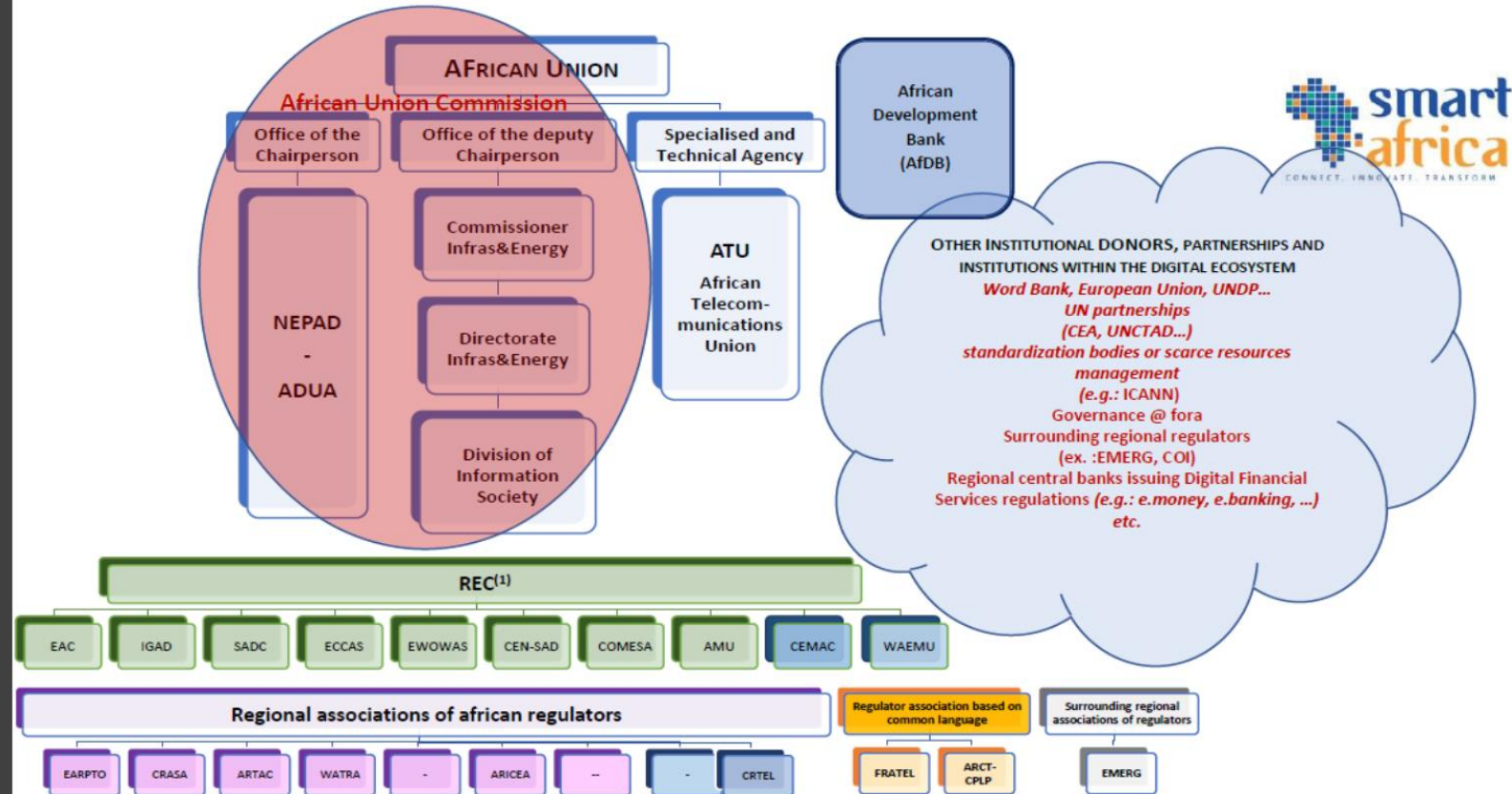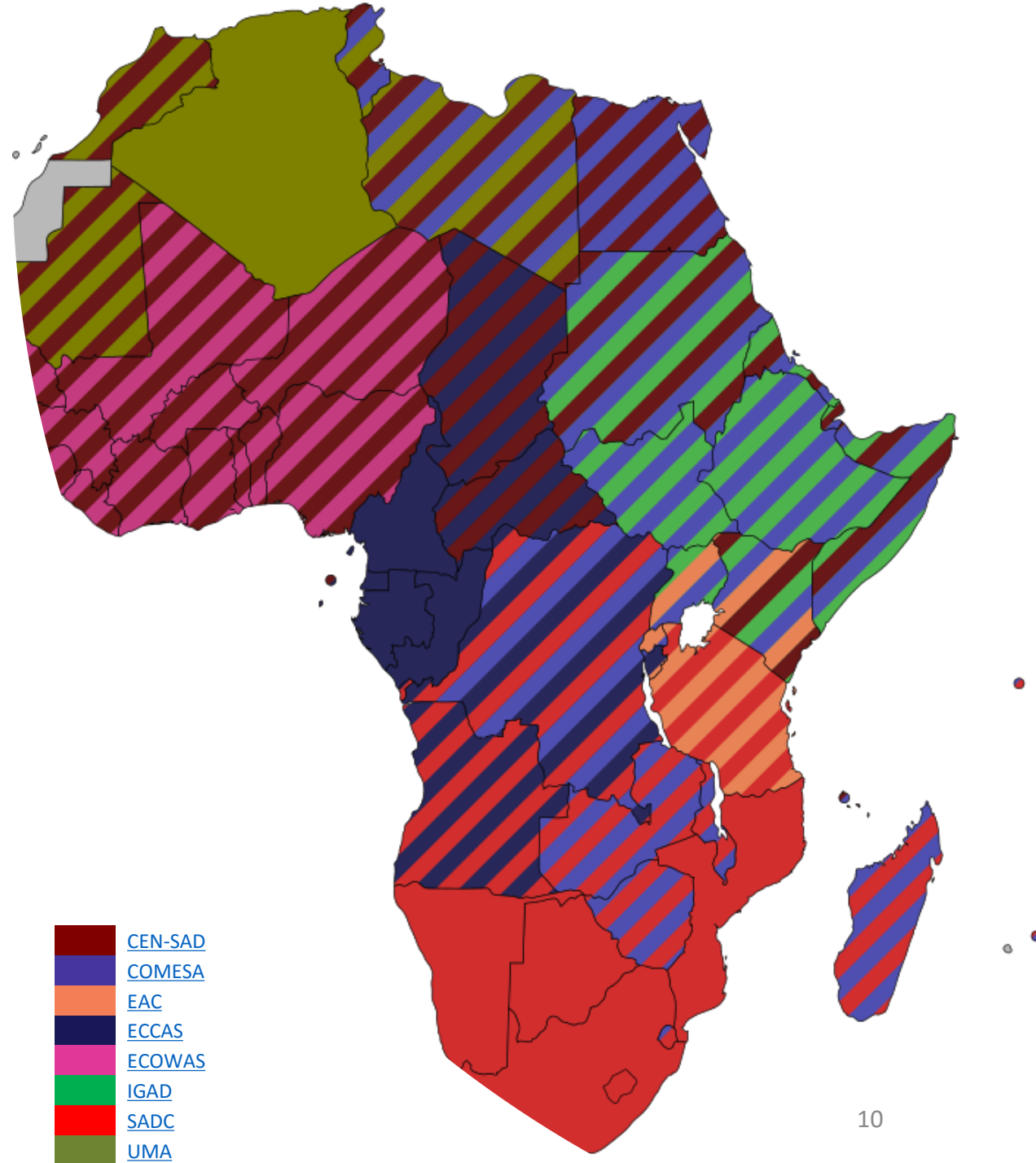


(1) The AU recognizes eight RECs (to become 7 if IGAD and EAC merge): EAC, ECCAS, ECOWAS, CEN-SAD, COMESA, IGAD, and SADC

# Institutional Framework (RECs)

- The difficulties specific to harmonization on three levels (pan-African, regional and national) these difficulties being further exacerbated by the intricate nature of the jurisdictions and geographical perimeters involved. Thus in 2013, a study on regional integration in Africa could write that of the fifty-four African Union countries at that time, twenty-seven were members of two RECs, eighteen belonged to three groupings and one country was a member of four groupings. Only eight countries were a member of only one grouping;

- Source : Cinquante ans d'intégration régionale en Afrique : un bilan global, Ochozias A. Gbaguidi in Techniques Financières et Développement 2013/2 (N° 111) :

  https://www.cairn.info/revue-techniques-financieres-et-developpement-2013-2-page-47.htm



| | |
|---|---|
| ■ | CEN-SAD |
| ■ | COMESA |
| ■ | EAC |
| ■ | ECCAS |
| ■ | ECOWAS |
| ■ | IGAD |
| ■ | SADC |
| ■ | UMA |

# Institutional regional framework goes beyond the REC pillars officially by AU as official pillars …

- Several of these pillars also contain subgroups with tighter customs and/or monetary unions of their own:

| Pillars | Subgroups |
|---|---|
| Economic Community of Central African States (ECCAS/CEEAC) | Economic and Monetary Community of Central Africa (CEMAC) |
| Economic Community of West African States (ECOWAS) | West African Economic and Monetary Union (WAEMU) |
| Southern African Development Community (SADC) | Southern African Customs Union (SACU) |

- Other African regional blocs, not participating in the AEC (their members can be part of other regional blocs which do participate), are the following.
  - Greater Arab Free Trade Area (GAFTA) (also includes most Middle Eastern states)
  - Economic Community of the Great Lakes Countries (CEPGL)
  - Indian Ocean Commission (COI)
  - Liptako-Gourma Authority (LGA)
  - Mano River Union (MRU)

# African Union Commission Initiatives (Overview)

**Agenda Session 2**

# Several different approaches for reinforcing ICT policy, legislation and regulation harmonization have been used by the AUC up to day ...

## Co-ordination of the REC's "regulatory" initiatives

- e.g.: Between 2008 and 2013, the ITU project "*Support for the harmonization of ICT policies in sub-Saharan Africa*" (**HIPSSA**) contributed to the implementation of the aims of the Cairo declaration, by assisting the REC's and the Member States, under the auspices of the AU, to adopt harmonized policies and legislative frameworks on a regional level;

## Adoption of a pan-African legislative framework

- in 2014, the AU took the initiative of a second approach by proposing that the Member States ratify the African Union Convention on Cyber Security and Personal Data Protection (**Malabo Convention**).

- This was the first initiative of a legislative type by the AU to go beyond the boundaries of regional legislative frameworks and adopt a global continental approach with the aim of supporting the development of a credible digital space in Africa
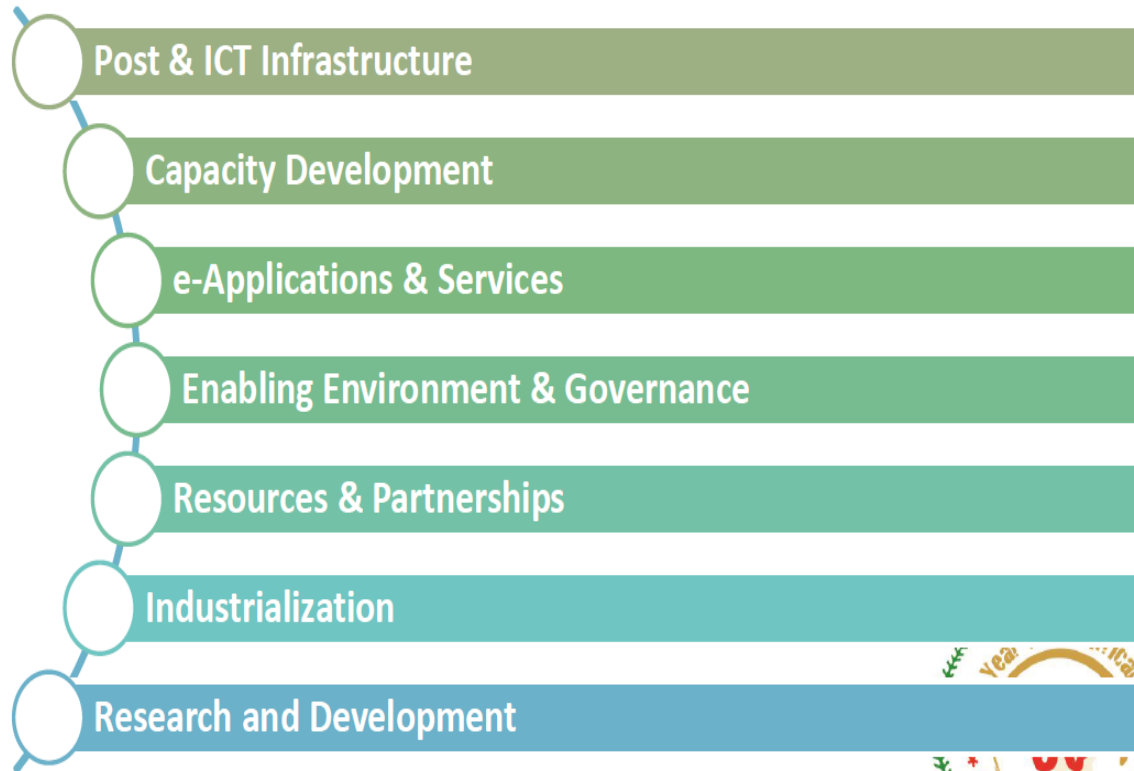
## …. with policies and programs that impact directly or indirectly the legislative and regulatory ICT framework in Africa

| PIDA PAP (1) - ICT Sector | | | | | |
|---|---|---|---|---|---|
| **Programme** | **Description** | **Cost (MUSD)** | **Country** | **RECs** | **Region** |
| 1. Enabling environment for ICT | This program improves the private sector environment for investment in broadband infrastructure | 25 | Whole continent | | |
| 2. ICT terrestrial connectivity | This program has two main components: (a) connect each country with at least two broadband infrastructures and (b) ensure access to submarine cable to all landlocked countries | 320 | Whole continent | | |
| 3. (AXIS) Internet Exchange Point Program (IXP) | The purpose of this program is to support and facilitate the establishment of appropriate Internet exchange nodes in Africa for maximum development of internet traffic | 130 | Whole continent | | |

### 2012 PIDA (Program for Infrastructure Development in Africa)

- Establish a vision, policies, strategies and program for infrastructure development at the regional and continental levels of transport, energy, water and sanitation; and telecommunications/ ICT.

- Merge all continental infrastructure initiatives

- ICT PIDA's vision is to put Africa in a position to build an integrated information society and digital economy in which every government, business or citizen will have reliable and cheap access to information, communication and technology networks, including:
  - bringing ICT contribution to GDP from 5% currently to 10% in 2015
  - meeting the lowest cost of African broadband demand while expanding access to the connection and enhancing security;
  - encouraging intra-African online commerce
  - Intensifying the physical integration of networks at the regional and continental levels

Post & ICT Infrastructure

Capacity Development

e-Applications & Services

Enabling Environment & Governance

Resources & Partnerships

Industrialization

Research and Development

The AU Commission

# AU's ICT policies and programs (continuation)

## 2014: The Comprehensive ICT Strategy for Africa (CISA)

- At the Conference held from 2 to 6 September 2012 in Khartoum (Sudan,) (informed by a lack of coordination at the continental level, the African Ministers in charge of ICT asked the AUC to develop an integrated, coherent and strategic ICT framework for Africa and to establish a coordination mechanism to harmonize programs in collaboration with NPCA, RECs, Specialized Agencies, AfDB and ECA.

- This recommendation adopted by the Executive Council of the AU gave rise to activities between 2013 and 2014 that led to a SWOT analysis of the African ICT landscape, a proposed global ICT strategy draft for the continent, a roadmap and an action plan.

- On May 16, 2014, in Addis Ababa, the 5th Meeting of Heads of ICT Units of the AUC, the NEPAD Agency, RECs and Regulator Associations adopted the Comprehensive ICT Strategy for Africa (CISA)

# African Union Commission legislative & regulatory Initiatives

**Agenda Session 2**

# Co-ordination of the REC's "regulatory" initiatives : HIPSSA project

## Objectives and Perimeter

- Between 2008 and 2013, HIPSSA project was an important tool under the supervision of ITU to implement the harmonization objectives set in Cairo Declaration sub-Saharan Africa

- But it did not cover North Africa

## Initial findings

- Geographical, political and cultural diversity of the regions
- RECs didn't advance to the same rhythm in the process of harmonization, what is also true for their States respective members

## Methodology

- Select list of common priorities that were then implemented in four sub regional programs: East Africa; Central Africa, Southern and Western Africa.

- Highly participatory and inclusive method

- Flexible approach in assisting RECs to elaborate regional policy draft legislation or regional model legislation Stakeholders discussed the advantages and disadvantages of each model before finalizing and adopting the best suited to the needs and culture of the region

- Technical assistance in countries to transpose these regional acts into national legislative and regulatory frameworks

## Field of activities

- Licenses and authorizations;
- Universal service and universal access
- Access / Interconnection
- Financial and technical audits
- Dispute Settlement
- Frequencies
- Frequency and spectrum policies
- Cybersecurity
- (...)

# Adoption of a pan-African legislative framework  Malabo Convention

## Perimeter

Malabo Convention, adopted in June 2014, addresses the following topics:

- Electronic transactions,
- Data protection
- promotion of cybersecurity and,
- Fight against cybercrime.

## Approach & Objectives

- Malabo Convention  is the first AUC initiative to go beyond the boundaries of regional frameworks and to adopt a continental and globalizing approach to support the development of a credible digital space in Africa.

- It is also a pioneering initiative by coming out of a purely normative approach to online offenses by advocating for  the implementation of a global cybersecurity policies  and strategies.

- By working on the issue of online security in parallel with the issue of personal data protection, the latter being the new petroleum of the digital revolution, the Convention aims to build confidence in the African cyberspace by covering the main areas in this field.

## Ratification

- Few countries have ratified  the convention.

-  To date, only 14 of the 55 countries in Africa have signed this convention: Benin, Chad, Comoros, Congo, Ghana, Guinea-Bissau, Mozambique, Mauritania, Rwanda, Sierra Leone, São Tomé and Príncipe, Togo, Tunisia and Zambia.

- And only five signatory countries — Ghana, May 5, 2019, Guinea July 31, 2018, Senegal, August 3, 2016, Mauritius, March 6, 2018 and Namibia, January 25, 2019- have ratified it for it to enter into force on their national territory.

- In accordance with article 36, the Malabo Convention can not enter into force until thirty (30) days after the receipt by the Chairperson of the African Union Commission of the fifteenth (15th) instrument of ratification

# Ensuring a Common Understanding: definitions

**Agenda Session 2**

# What is  harmonization ? What's the point ? How it works

**Agenda Session 2**

# Why ?

- The harmonization of policies and regulations is part of the tools for the integration of a countries community countries.

- Integration is primarily aimed at the transfer of national economic mechanisms on a wider scale:
  - ➢ creation of a free trade area (FTA) or a customs union (CU) in order to eliminate trade barriers and discriminatory measures.

- The economic component of any regional integration rests on the promise of creating a large internal market that can bring greater prosperity to member countries through:
  - ➢ increase in trade, which allows the specialization and localization of production where it is performed in the most efficient way;
  - ➢ increase in the size of the markets, which allows the realization of economies of scale, the intensification of competition (lower prices and incentives for innovation);
  - ➢ creation of a business-friendly economic environment (the reduction of exchange rate risks and the risk of protectionist policies as well as the harmonization of regulations are favourable to investment)

- However, regional integration has many other dimensions and challenges, for example: cohesion around shared values, collective autonomy for development and economic independence.

- This is particularly true in the Continent, where adherence to regionalism has its source in the pan-Africanism that has nourished independence.

- Given the crucial role ICTs play in the transformation of the African economy and society as a whole and in the development and growth of the continent, they are at the crossroads of all the preceding dimensions, economic and social.

- **As a result, decisions on the creation of an internal African ICT infrastructure and service market will also have an impact on the implementation of integrated development policies at the regional level.**

# Which Definition ?

"**Harmonization**": process of bringing together two or more legal systems of the Member states of the organization in order to reduce or eliminate certain contradictions in the areas in which the regional organizations concerned have jurisdiction;

« **Harmonisation** » : processus de rapprochement entre deux ou plusieurs systèmes juridiques des Etats membres de l'organisation afin d'en réduire ou d'en supprimer certaines contradictions dans les domaines où les organisations régionales concernés ont compétence

# How it works ?

- In practice, the concept of harmonization is not implemented homogenously as its definition might suggest.

- Depending on the case, it varies within a continuum of national autonomy and full integration.

- At one extreme, a supranational centralized authority to which each member state should abandon its national sovereignty. At the other extreme of national autonomy there is total preservation of autonomy and national independence.

# … in theory?

The characterization of various models of harmonization is based on the central criterion of the distribution of competences.

(1)     RA : Regional Authority
(2)     NA : National Authority

| Criteria | Monistic model | Subsidiarity model | Dualistic model | Soft law model |
|---|---|---|---|---|
| Competency distribution | Centralized competency at regional level | A predetermined distribution of the areas of competence attributed to the RA and NA [2], based on the effectiveness: it is a question of reserving to the RA the competences that the NA could exercise less effectively | Regional legislation and national legislation are strictly separate; | Regional legislative framework is non-binding and the RA can only recommend |
| Legal nature & application of the regional standard | The acts of the RA [1] have direct effect in the internal legal framework of the Member States; | The acts of the RA have direct effect in the internal legal framework of the Member States, subject to the powers which are attributed to it in the field of its competencies; | RAs issues directives without direct effect. In addition, their application requires transposition into the national legal framework. | RAs issues guidelines and objectives to be implemented in various fields (e.g. interconnection, licensing, right of way, infrastructure sharing, cybersecurity, etc.) |
| National scope of competency | The RAs are in charge of regulating the telecommunications sector on their territory, on the basis of supranational legislations; | The RAs are in charge of both the legislation and / or regulation practices of the telecommunications sector in their area of competence, but also responsible for the control and application of supranational regulations | The NAs are in charge of regulation and / or regulation practices of the telecommunications sector within the national territory; They decide on the transposition of the RA directives into the national legal framework; | The NAs are in charge of the regulation and / or regulation of the telecommunications sector in the national territory; |
| Need for regional jurisdiction | The creation of a supranational jurisdictional body is necessary : | The creation of a supranational jurisdictional body is necessary to judge the possible failures of the | The creation of a supranational jurisdictional body is particularly necessary to sanction any delay in the transposition of the directives | NAs have full jurisdiction over the legislation of the telecommunications sector; |

# ... and for us?

- The harmonization process of legal systems on the African continent is more based on a subsidiarity model. It includes at least three levels, which makes it particularly complex and, in some respects, heterogeneous:
    - The pan-African level of the AU;
    - The regional level with RECs that are more or less integrated and more or less integrated and overlapping. In addition, there are various trade agreements or on specific themes but different geographical scope;
    - The national level;

- African regional organizations, including the AU, have an approach of harmonization based on legal and general policy considerations, rather than based on the harmonization of regulatory practices.

- **However, the RECs are very different in terms of the means, the mode of operation; and the intrinsic harmonization model itself.**

- Some regional organizations give their member states more "legislative" leeway than others. For example, this is the case, with COMESA and SADC, unlike in ECOWAS, WAEMU or CEMAC.

- The typology of standards (treaties, additional acts, legislations, directives, and decisions) and other non-binding acts (declaration, guidelines, strategic plans, roadmap, etc.) also varies considerably between RECs.

To take into account these differences, we propose in the previous paragraph that the term harmonization be defined in the least restrictive way possible on the basis of the following assumptions:

(1) Harmonization is a process of reconciliation between two or more legal frameworks of the member states in order to reduce or eliminate certain contradictions in the areas of competence of the organization;

**(2) Harmonization may have different objectives and results in the national legal frameworks depending on the legal nature of the standard adopted at the regional level and how it is received at the national legal framework.**

For example, it may be a standard having a direct effect (eg a legislation) or a standard whose implementation at the national level requires a transposition (eg a Directive) or a rule having a "semi-direct" effect ("primary" acts signed by States which become a direct source of national legislation, however, subject to ratification).

Depending on the regional standards used, the degree of similarity of the legislative and regulatory contents, regulatory practices and policies implemented at national level may vary.

(3) In Africa, at regional level with (AU) as the sub regional (REC), all the above harmonization methods coexist with the different effects attached to them.

# Policy (s), Law and Regulation practice(s)

**Agenda Session 2**

# The 3 levels of harmonization

There are several levels of intervention for a regional harmonization initiative in a sector such as ICT

1. Public policies (sectoral ICT policies

2. Legislation.

3. Regulation practices [or regulatory practices]

These 3 regional levels are identical to those used in the Member State intervention at national level, but their definition could be different at national and regional level.

Difficulties to reach common understanding may occur in some extent due to the inaccuracies of the translation from English to French and vice versa

# Policy definition
## (Regional & Continental level)

- "**Policy**": A document or initiative issued by regional organizations, institutions or entities that guide the actions taken in the ICT sector to achieve the desired result. This type of document or initiative leaves a considerable flexibility to the Member States, it has no binding value in itself unless decided otherwise;

- « **Politique»** : document ou initiative adopté par des organisations, institutions ou entités régionales qui orientent les mesures prises dans le secteur des TIC en vue d'obtenir le résultat désiré. Ce type de document ou initiative laisse une importante marge de manœuvre aux Etats-membres, il n'a pas de valeur obligatoire en soi sauf décision contraire ;

In the digital ecosystem, this type of public intervention, commonly known as "sectoral policy" at the regional or state level, is only one of the many facets of the governance of the sector at large.

The Internet ecosystem is therefore jointly governed by stakeholders like users; policymakers (global, regional + national level); civil society actors; technical communities like the Internet Society, technical standards bodies (e.g. IETF), organizations that manage critical resources (e.g. ICANN or registries), etc.

However, the debate is simplified here by only mentioning public policy interventions meaning:

- The formulation of the strategic directions that the government of a country decides to implement to develop the use of information and communication technologies (ICT) to ensure economic and social development of the country.

# Réglementation & Régulation
# Legislation & Regulation practices
# from French to English and vice versa

The English language unlike the French only knows the term "regulation", it does not distinguish the regulation in the meaning of "elaborating binding rules " of another meaning of regulation, that is to say the application of the said rules (we could translate by "fine tuning of the market")

In French , the word "Réglementation" is used to define the rules relating to a sector, i.e. : the mandatory requirements that must be complied with; Réglementation is therefore the set of rules governing the activities of a sector of the economy

These semantic differences are deep-rooted in very different legal cultures ( common law versus continental law) which make almost impossible a fully accurate translation. So we choose to use :

1) for the process of elaborating binding rules :

- "Law "or "Legislation" in English

- "Réglementation" in French

2) For the process aiming at ensuring compliance with the rules by operators and adjusting supply and demand in different markets:

- "Regulation practices" in English

- "Regulation" in French

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# Law, Legislation Regulation Practices definitions
## (Regional & Continental level)

- "**Law" or "Legislation"** "any document issued by regional organizations, institutions or entities having a binding value in itself [on Member states];

- **"Regulation practice"** means any document or initiative issued a priori by regional regulators or, as the case may be, by other regional organizations, institutions or entities that is not binding in itself [on Member states].

- "« **Réglementation**» : tout document adopté par des organisations, institutions ou entités régionales ayant en soi une valeur obligatoire [à l'égard des Etats-membres];

- « **Régulation**» : tout document ou initiative adopté a priori par des régulateurs régionaux ou, le cas échéant, par d'autres organisations, institutions ou entités régionales n'ayant pas en soi de valeur obligatoire [à l'égard des Etats-membres].

- The above definitions are only valid at continental or regional level as they could be different at the national level.

- For example, the initiatives of the national regulator are most often translated into binding measures (market analysis decisions and obligations of Significant Market Power (SMP) operators), even if there are other parts of its activity that are not binding (e.g.: data publication or data regulation).

- In this document, the term regulation refers to an initiative that has no binding value, adopted by regional regulators or, where appropriate, by other organizations, institutions or regional entities