

Tax coordination and tax harmonisation within the regional economic communities in Africa¹

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4 May 2018*

Question

How do the regional economic communities in Africa engage with tax matters and what regional governance exists on tax matters? How do they differ (also with regional economic communities outside Africa) and what has their impact been?

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¹ This K4D Helpdesk report is the second part in a series of two reports on regional tax issues. The first report focusses on tax competition and its implications for LMICs, while this second report has a focus on regional coordination efforts in sub-Saharan Africa to tackle harmful tax competition.

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1. Overview

Compared to other trade blocs the West African Economic and Monetary Union's (WAEMU) tax coordination process is one of the most advanced in the world. However, it is ineffective in many areas. Its framework has, to some extent, succeeded in converging tax systems, particularly statutory tax rates. It has also led to some convergence of countries' tax systems, and in turn to positive revenue effects in WAEMU member states. However, the literature also shows that there are large gaps between *de jure* and *de facto* coordination, as WAEMU has failed to provide its regional institutions with the necessary resources to undertake effective surveillance. This has led to ineffective enforcement and undermined the credibility of coordination. In fact, the framework allows for unfettered tax competition as long as this is done outside the countries' main tax laws. This has made their tax systems opaque, increased complexity and contributed to a culture of tax negotiation (Mansour & Rota-Graziosi, 2013; Tax Justice Network & ActionAid, 2015; Diakité et al., 2017).

Because of the advanced tax coordination process and the existence of a tax coordination framework in the WAEMU, this report focusses in particular on the West African region. In the same region the Economic Community of West African States (ECOWAS), although more recently, is also in the process of adopting WAEMU experiences and framework for its own circumstances, in particular for indirect taxation. Furthermore, this report also looks at the tax coordination and harmonisation efforts of the East African Community (EAC), Southern African Development Community (SADC) and the Common Market for Eastern and Southern Africa (COMESA).

Overall, this report concludes that member countries have pushed for coordination and harmonisation, mainly in the area of indirect taxation (VAT and excises). Only the WAEMU has legislations in place to coordinate direct taxation, in particular on corporate income taxation (CIT), however, with limitations on tax incentives, as already expressed above. EAC has made some progress on coordinating direct taxation and limiting harmful tax competition.

Tax harmonisation highlights difficult political economy issues, including the lack of commitment on behalf of member states to coordinate their tax policies effectively and lack of building, maintaining and financing the necessary institutions. This cannot only be observed in the African context, but can be observed in other regional economic communities all over the world.

Due to the lack of literature on tax harmonisation and tax harmonisation in the context of regional economic integration in Africa, this report has been based on a mix of sources that include some academic research and papers from financial organisations such as the International Monetary Fund (IMF), combined with many internet sources from local newspapers and local institutions, which are mentioned in footnotes.

2. Tax coordination and regional economic integration

The literature shows that within the context of a regional economic community that embodies the establishment of a customs union, a common market and a monetary union, a lack of a certain level of harmonisation of the national tax systems and a lack of harmonised tax policy could compromise integration as a whole (e.g. IMF, 2015b, p.30). Therefore, as member states enter the phase of a common market, they also aim to harmonise their tax policies with a view of removing tax distortions and increase investment and economic growth. The end aim of this

being to ensure a more efficient allocation of resources within the community (Diakit  et al., 2017, p.4).

The general conclusion of empirical studies that have assessed the performance of regional blocs in Africa is that member countries have failed to achieve their objectives of increasing intra-regional trade significantly, in particular, and fostering general policy coordination (Nyanzi, 2016, p.939). As such, in the debate about the contribution of regional economic integration to revenue mobilisation, one of the objectives (at least for the long term), is still open-ended, depending on the quality of their institutions, the level of policy harmonisation and how homogeneous or heterogeneous the partner countries are (Nyanzi, 2016, p.935).

The EU is seen in many parts of the world as the benchmark for economic integration, and consequently as an example of tax coordination among sovereign states. The coordination framework approach in regional economic communities in Africa is broadly based on the EU model of coordination. However, it differs from it in many ways due to the limited powers and resources of regional institutions (Diakit  et al., 2017; Mansour & Rota-Graziosi, 2013).

There are three ways to tackle harmful tax competition (Mansour & Rota-Graziosi, 2013, p.7):

- **Tax harmonisation** eliminates interactions between countries. Three elements describe tax harmonisation: an equalisation of tax rates, a common definition of national tax bases, and a uniform application of agreed rules. The latter is particularly important since tax competition can take the form of lax application of tax rules, such as low audit rates.
- **Tax coordination** is used when the set of countries which coordinate is given, and in which the coordination concerns only some tax policy instruments.
- **Tax cooperation** is used when the set of countries is endogenously determined and is designates on situations where only some countries cooperate on tax policy and issues.

This report focusses on tax coordination and tax harmonisation as they are more explicit in their efforts to tackle harmful tax competition between countries² as an effort to reduce the risks of distorting trade and investment and the erosion of national tax bases. It does this by:³

- establishing and regularly maintaining an online tax database that provides comprehensive information about countries national tax structures;
- collaborating on tax incentives that encourage investment, rather than those that reduce transparency or purely act as a vehicle for tax minimisation;
- creating a clear and transparent system of taxation that harmonises policies to prevent investment barriers and to avoid double taxation;
- developing expertise of tax officials with support for training programmes and seminars on tax design, policy, and best practices;
- discouraging the spread of tax havens and harmful preferential tax regimes and encouraging those countries which presently engage in harmful tax practices to review their existing measures;

² See K4D Helpdesk report no. 324 about the impact of tax competition between countries.

³ Presentation for the International Tax Justice Academy 2014 by Cephas Makunike. Retrieved from <http://slideplayer.com/slide/6576005/>

- helping countries move towards the “level playing field” which is so essential to the continued expansion of regional and continental economic growth, and;
- developing regional tax guidelines/directives and commentaries which shape good and common tax designs and systems.

3. West Africa and tax coordination

WAEMU versus ECOWAS

In the West African region two regional economic entities have been involved in regional tax coordination and harmonisation both on tax rates and tax policy. The **West African Economic and Monetary Union (WAEMU)** has had a long history of tax coordination and harmonisation efforts since 1994. Its member countries⁴ share a single currency - the CFA Franc (*Franc de la Communauté Financière Africaine*) -, form a customs union, and have had extensive tax coordination and harmonisation experience in domestic taxation.⁵ Over 80% of member countries’ tax (including tariff) revenues are derived from taxes that are subject to regional directives or regulations (Mansour & Rota-Graziosi, 2013, p.3). Following the devaluation of the CFA in 1994, member states signed the WAEMU Treaty; by August 1994 they had all ratified it. The formation of the customs union with a common external tariff (CET) was completed by 2000; directives on value-added tax (VAT) and excises were introduced in 1998; and, by 2009, the region completed a set of directives in relation to capital income taxation.⁶

In tax policy, the WAEMU Treaty goes farther than the EU; in addition to coordinating the setting of tax rates and bases for the major taxes through regional directives, it mandates the convergence of the tax revenue-to-GDP ratio to at least 17%, and the convergence of tax revenue structures (Mansour & Rota-Graziosi, 2013, p.4).⁷ The tax revenue structure is part of the so-called “*transition fiscale*” (tax transition), under which WAEMU countries must adopt tax and tariff policies that, over time, enable them to shift their revenue structure from trade to domestic taxes.⁸ Article 4 of the Treaty explicitly calls for harmonisation of member states’ tax legislation.

⁴ The original member countries are Benin, Burkina Faso, Côte d’Ivoire, Mali, Niger, Senegal, and Togo. Guinea-Bissau became the 8th member of the Union on 2 May 1997.

⁵ The Central African Economic and Monetary Union is another region similar to WAEMU, but with less experience in domestic tax coordination.

⁶ The tax coordination in WAEMU is based on five decisions, which led to the elaboration of Directives: Decision N°01/98/CM/UEMOA concerns the harmonisation of Domestic Indirect Taxation; Decision N°10/2006/CM/UEMOA defines the tax transition Programme of the Union; Decision N°16/2006/CM/UEMOA concerns the implementation of the Direct taxation coordination; Decision N°34/2009/CM/UEMOA fixes the tax transition indicators and Decision N°35/2009/CM/UEMOA establishes the follow-up actions of the tax transition Programme.

⁷ The EU convergence criteria are often defined in terms of tax policy design (e.g., minimum excise tax rates), and not in terms of revenue results.

⁸ The Decision N°34/2009/CM/UEMOA proposed criteria and indicators for the tax transition. Firstly, principal criteria, namely the ratio of trade tax to overall tax which must be equal to or below 45%; the ratio of domestic tax to overall tax which must be equal to or above 55% and the ratio of domestic tax to trade tax which must be equal to or above 1.5. It proposed also additional criteria such as the ratio VAT plus excises to overall tax. Secondly, performance indicators (allowing to measure the impact of the tax transition on tax revenue mobilisation) and

The second regional economic entity is the **Economic Community of West African States (ECOWAS)** of which all WAEMU countries are members together with the English speaking countries in the region.⁹ ECOWAS has had less of a history of tax coordination and harmonisation and does not explicitly mention it in its revised treaty (reprinted in 2010).¹⁰ However, in recent years there has been a shift in efforts towards tax coordination and tax harmonisation by making use of the experiences of WAEMU countries and with the aim to mobilise tax revenue, create a better investment climate in the region, and to tackle harmful tax competition, in particular in indirect consumption taxation (e.g. VAT, excises).

Tax coordination for indirect taxation

Trade duties coordination:

In 2000 the WAEMU member states agreed a CET with four rates: 0% on essential and social goods; 5% on primary goods; 10% on capital and intermediate goods; and 20% on final consumption goods. Member-countries can request safeguarding measures at the WAEMU Commission. Since January 2015 the CET of the 15 member countries of the ECOWAS, of which WAEMU is part, became effective; liberalising trade within ECOWAS and nullifying the common legislation on the CET of the WAEMU countries.¹¹

The ECOWAS framework is the same as the WAEMU; it is an enlargement of their CET framework, with the same four tariff bands. Therefore, and because WAEMU member countries have limited intra-regional trade within the non-WAEMU ECOWAS members, it has had very limited impact on tax revenue. However, the ECOWAS CET increased tariff protection for WAEMU countries with the introduction of a new 35% tariff band for specific goods, and the possibility to deviate from the CET for 3% of their tariff lines for several years (IMF, 2016, p.22).

VAT coordination:

The Value-Added Tax (VAT) directive in the WAEMU was introduced in 1998. One primary objective of the VAT directive was to assist countries in compensating the revenue loss induced by the reduction of tariff rates on trade with a more efficient tax than cascading sales taxes - which pre-dated the VATs in several WAEMU countries. The food and energy price crisis of 2006–2008 led to pressure to narrow the base of VAT to respond to social unrests in the region. In 2009, the WAEMU Council of Ministers approved Directive 02/2009/CM/UEMOA, which accomplished this narrowing (Mansour & Rota-Graziosi, 2013, p.11).

monitoring indicators (allowing to appreciate the extent to which the specific objectives are delivered). Moreover, the Decision N°35/2009/CM/UEMOA adopted the monitoring system of the tax transition program. It is composed of a regional steering committee ensuring the implementation of the program and a national monitoring committee supervising its implementation (Diakité et al., 2017, p.7).

⁹ ECOWAS was established in 1999 and includes the following countries: Benin, Burkina Faso, Cabo Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo. (Mauritania left ECOWAS in 2002.)

¹⁰ Retrieved from the ECOWAS website: <http://www.ecowas.int/wp-content/uploads/2015/01/Revised-treaty.pdf>

¹¹ Retrieved from ICTSD (International Centre for Trade and Sustainable Development) website: <https://www.ictsd.org/bridges-news/bridges-africa/news/west-africa-starts-implementing-the-common-external-tariff>

- In 1998 it introduced a single positive tax rate that member states can set between 15 and 20%; expanded with the introduction of a lower positive VAT rate in 2009 between 5 and 10% for a limited list of items, which include: bottled and powder milk, sugar, all types of pasta, flour, rice, wheat, and other grains; agricultural equipment (including rental and maintenance services); food for livestock and poultry; computers; solar energy equipment; and tourism-related services, including restaurants.
- In 1998 a list of mandatory exemptions for VAT was introduced, including: health services and medications; education services, books, newspapers, magazines, and other periodicals; banking, insurance and re-insurance services. In 2009 natural gas for domestic use was added to the list of exempt items.
- In 1998 it set a VAT registration threshold for all member states between CFA Franc 30 and 50 million for the supply of goods and between 15 and 25 million for the supply of services. In 2009 the upper bound of the registration threshold was increased to CFA Franc 100 million for goods, and to 50 million for services.
- Other regulations, like VAT on inputs is generally deductible from VAT on taxable outputs, except for: meals and entertainment expenses, motor vehicles (excluding leasing companies) and fuel expenses. Importantly, member states can extend these exclusions to other inputs as the VAT directive does not impose any limits on such exclusions.

In 2010, all the WAEMU member states had implemented the VAT Directive except from Bissau Guinea which was the only country in the Union that had not adopted a VAT regime. However, none of the members refunded any VAT credits according to the Community legislation (Diakité et al., 2017, p.7).

The ECOWAS has a VAT framework and aims for harmonisation, but there is no common legislative in place.¹² Hence, member states have a variety of VAT from 5% (Nigeria) to 10% (Liberia) to 18% (Togo).¹³ ECOWAS member states are working on the harmonisation of VAT exemptions on basic food items in their raw states, medicaments and pharmaceutical products to ensure equal treatment of all economic operators in the community.¹⁴

Excise taxes coordination:

The excise tax directive in WAEMU was also introduced in 1998. The excise rates are set with broad ranges. Three amendments were made to the directive in 2009: minimum and maximum rates on alcohol and tobacco were increased by 5% (alcoholic beverages have an excise tax between 15 and 50%, and tobacco products between 15 and 45% after 2009); five items were added to the optional list; and member states were limited to excise only six items from the optional list. The main argument in favour of coordinating the setting of excise taxes in a common

¹² See for example the 1996 ECOWAS protocol A/P2/7/96 on establishing VAT in ECOWAS member states: http://documentation.ecowas.int/download/en/legal_documents/protocols/Protocol%20Establishing%20Value%20Added%20Tax%20in%20ECOWAS%20Member%20States.pdf

¹³ Retrieved from the ThomsonReuters blog (12 February 2016): <https://tax.thomsonreuters.com/blog/onesource/vat-gst-management/vat-increase-nigeria/>

¹⁴ Retrieved from the website of The Premium Times website in Nigeria: <https://www.premiumtimesng.com/foreign/west-africa-foreign/250508-ecowas-increase-duties-tobacco-unhealthy-products.html>

market with fiscal borders is to minimise intra-community cross-border shopping and smuggling. In this regard, while there is a good case to coordinate excise tax setting in the WAEMU, its geography poses difficult challenges; the region is surrounded by large countries with very porous borders (neighbouring Mauritania, Nigeria, and Ghana in particular) and, in some cases, applying relatively low excise taxes (Mansour & Rota-Graziosi, 2013, p.14).

A separate Directive issued in 2001 covers excises and other taxes on petroleum products (namely aviation gasoline, premium fuel, regular gasoline, kerosene, gas oil, fuel oil, and butane) with the aim of harmonising prices, ensuring more transparency and creating a business-friendly environment.¹⁵ It mandated a *specific* excise (per litre or kilo) but did not impose any constraint on the tax rate: it set the lower bound at 0%, and imposed no upper bound. Its main purpose was first and foremost the elimination of subsidies, which weighed heavily on member states' fiscal performance, and the consolidation of a plethora of specific taxes (Diakité et al., 2017, p.8).

ECOWAS is set to harmonise excise duties on tobacco and other unhealthy products to increase revenue and reduce consumption of these products in the sub-region. The decision was part of the aims of the meeting of the ECOWAS Financial Council of Ministers in Abuja in November 2017.¹⁶ Member states had begun work on draft directive to harmonise excise duties on tobacco products and include legislative and regulatory provisions of member states in tracking and tracing mechanisms related to tobacco products. The draft document considers the establishment of an ECOWAS Customs Code aimed at harmonising customs legislations in the sub-region, in line with international requirements. Member states had developed a draft institutional framework for monitoring and steering of the ECOWAS Fiscal Transition Programme.¹⁷

Tax coordination for direct taxation

Corporate income tax coordination:

Two 2008 directives in WAEMU cover corporate income tax coordination (CIT): Directive 01/2008/CM/UEMOA defines a common corporate tax base; and Directive 08/2008/CM/UEMOA specifies the range for a single rate between 25 and 30%. The harmonisation of the tax rates and tax base have been implemented in all countries, however, there are many exemptions.¹⁸ For example, a holding company regime was introduced in 2011 exempting from corporate income tax the profits of holding companies, their dividends distribution (from tax at the individual level),

¹⁵ Source: Article 3, Directive N-01/2007/CM/UEMOA.

¹⁶ Retrieved from the website of The Premium Times website in Nigeria: <https://www.premiumtimesng.com/foreign/west-africa-foreign/250508-ecowas-increase-duties-tobacco-unhealthy-products.html>

¹⁷ The programme was designed to facilitate mobilisation of domestic resources for development, monitor the fiscal coordination of domestic taxes and eliminate double taxation.

¹⁸ Member states should exempt from the tax base the following income sources: capital gains on business assets if the taxpayer intends, within three years, to reinvest the total proceeds from selling the assets in a WAEMU member state; inter-corporate dividends to the extent that the holding company has a controlling interest (defined as at least 10% of the shares) in the payer company, and that both companies are WAEMU residents in all other cases, and at least 40% of inter-corporate dividends should be taxable (Diakité et al., 2017, p.8).

and capital gains realised on the sale of their shares. The regime is targeted to venture capital companies.

Also, a mining regulation was introduced in 2003. It provides that firms are subject to the general tax laws of member states, and to a royalty, whose base and rates will be determined later by application rules. The regulation was provided for stability of the tax regime, both for taxes imposed at the national level (insuring against increases in taxes but allowing taxpayers to benefit from reductions) and the royalty that was to be fixed regionally. In terms of tax incentives, the regulation provided for the exemption of virtually all taxes and fees during the exploration phase. The main incentives provided during the production phase are accelerated depreciation, and a three-year tax holiday from profit and payroll taxes; the modalities for the coverage and calculation of accelerated depreciation have not been issued (Mansour & Rota-Graziosi, 2013, p.16).

The most important elements of directive on tax base competition include: flexibility in setting tax depreciation rules; and flexibility in designing transfer pricing and thin capitalisation rules. But the most important source of tax competition among WAEMU countries remain the derogatory regimes provided in non-tax legislations, such as Investment Codes, Free Zone Codes, and other sectoral codes, which are explicitly permitted under Article 8 of the corporate income tax directive (Diakité et al., 2017, p.10).

ECOWAS' focus is yet on indirect tax coordination and harmonisation and has not yet made significant progress on direct taxation.

Portfolio income coordination:

Directive 02/2010/CM/UEMOA in WAEMU specifies the types and tax rate intervals that member countries should apply to various portfolio incomes. While one objective of the WAEMU Treaty, and the various directives, is to promote investment in the region, dividends are taxed at higher rates than interest, and interest income on corporate bonds is taxed at higher rates than interest income on government bonds (Mansour & Rota-Graziosi, 2013, p.16).

About income from bonds issued by government, public entities and their dismemberments, they are taxed to 3% if the term of the bond range from 5 years to 10 years. The rate tax is 0% for the long-term bonds (with a duration higher than 10 years). Gains on the assignment of bonds cannot be taxed at a rate exceeding 5% of the amount. Incomes distributed by the Undertakings for Collective Investment in Transferable Securities and other collective investment funds are exempted, besides the gains on the assignments of such institutions.

Multilateral tax treaty:

The multilateral tax treaty (MTT) in WEAMU was adopted by Directive 08/2008/CM/UEMOA; application rules were issued in 2010 (005/COM/2010/UEMOA). It distributes the taxing rights of WAEMU states in respect of intra-community investment. The MTT covers taxes on income and inheritance, and registration fees and stamp duties, including those collected by the central governments on behalf of sub-central governments. The MTT also covers issues of information exchange and mutual assistance in tax collection; it has a non-discrimination clause, and provides for a dispute resolution mechanism (Mansour & Rota-Graziosi, 2013, p.19).

The creation of an information exchange platform was advocated and those of a steering committee and a management committee ensuring the management of the platform. The

steering committee should be in charge of preparing and supervising the implementation of the platform. The management committee should be in charge of the administrative management and monitoring the proper functioning of the platform. At last, the member states should cooperate with the Commission of WAEMU for its inception and operationalisation (Diakité et al., 2017, p.10).

ECOWAS also drafted a Supplementary Act adopting community rules on the taxation of income, capital and inheritance and the rules for their application within ECOWAS to eliminate double taxation, remove barriers to cross-border trade and investments, combat tax evasion, capital flight and facilitate revenue mobilisation. The draft Regulation of Exchange of Information to counter tax evasion, improve voluntary tax compliance and stimulate resource mobilisation is very much needed as six ECOWAS member states have not committed to any information exchange instrument.¹⁹

Impact of tax coordination

Econometric analysis of WAEMU partner countries shows that tariff and tax coordination, in particular related to indirect taxation, have improved revenue mobilisation in member states (Diakité et al., 2017; Mansour & Rota-Graziosi, 2013).²⁰ There is a structural break in the tax-to-GDP ratio for the whole Union in 2000, the year the CET was fully phased in and less than two years after the VAT and excise directives (Mansour & Rota-Graziosi, 2013, p.31). In general, member countries seem to follow the most visible parameters of the WAEMU directives: tax rates, with a shift from customs duties and corporate income tax towards VAT and excises. Development in the corporate income tax rate shows a slow decline over 1990–2005, and then a steep one that coincided with the introduction of the corporate income tax rate and base directives in 2008. It is interesting that the corporate income tax interval prescribed by the rate directive imposed a minimum rate of 25%, 10 points below the rates practiced by WAEMU countries in 2008.

Impact of VAT coordination in WAEMU shows that a relatively good revenue performance of VATs in member states. For example, Brun and Diakité (2016) found a high value-added tax effort in WAEMU comparatively to some other developing areas. In 2010, VAT revenue productivity, the yield of one point of the VAT rate expressed in percentage of GDP, was 0.2 in Côte d'Ivoire, around 0.3 in Burkina Faso, Mali and Niger, 0.35 in Togo, and around 0.4 in Benin

¹⁹ Retrieved from the West African Tax Administration Forum (WATAF) website: <http://wataf-tax.org/wp-content/uploads/2018/04/ECOWAS-AEOI.pdf>

²⁰ One study of Diakité et al. (2017) found: The domestic indirect taxes revenue mobilisation in a large number of WAEMU member states (as for the whole Union) has been affected by the reforms and the effects are positive in general for the first years following the 1998 reforms. A study of Mansour & Rota-Graziosi (2015) found that in terms of tax levels Burkina Faso, Guinea-Bissau and Togo are well below the convergence criteria of 17% of GDP and that their revenue effort improved only marginally since 2000. Mali and Niger have mobilised significant revenue since 1995, but mostly from the mining sector. The revenue increase in Niger is especially impressive over 2005–2010, a period of significant increase in commodity prices. Benin has capitalised on its strategic geographical location with respect to Nigeria to improve its tariff revenue through re-exports. It is the only country where this source of revenue increased significantly since 1995 in tandem with an increase in VAT revenue; in other countries, VAT revenue has substituted for tariff revenue. Senegal's revenue performance is impressive and almost entirely linked to the VAT and excises, which account for over 50 percent of tax revenue. Senegal, and to a lesser extent Burkina Faso, seem to have progressed best in transiting from tariff to domestic tax revenue.

and Senegal (Mansour, 2013, p.12). The low rate in Côte d'Ivoire is partly due to its high export share in GDP (oil, Cocoa and coffee). However, investors complain about the VAT directive as they observe limitations on deductibility/refundability, which has given an extra incentive for member states' investment codes to offer VAT tax holidays. Under these holidays, the input of an investment project is often exempted from VAT, typically during the investment development phase and future significant expansions (Mansour & Rota-Graziosi, 2013, p.12; Tax Justice Network, 2015; IBFD, 2013).

The direct taxes coordination in WAEMU started in the year 2008 defining a common corporate tax base. It does not seem to have affected the revenue mobilisation. This is not surprising, given that the direct taxes' Directives have not resolved the crucial problem of the tax exemptions granted by countries to attract the foreign direct investments (Diakité et al., 2017, p.18). Non-tax laws, primarily investment codes, are used in WAEMU states to circumvent the constraints imposed by regional tax directives. This behaviour is even allowed by the same directives that are supposed to harmonise or coordinate national tax policies. There are no directives or regulations at the regional level dealing with the provision of special tax regimes in member states. Generally, each directive provides for exemptions or rate reductions that are either compulsory or optional. These special regimes can be found in sectoral laws (e.g., investment laws; mining and petroleum laws; free zone laws; etc.), or they can be discretionary - provided by presidential or ministerial decrees, and generally without Parliament's consent (Mansour & Rota-Graziosi, 2013; Tax Justice Network, 2015; IBFD, 2013).

In terms of impact on intra-community trade, progress is hard to detect, and is certainly far less than policy-makers had expected. The share of intra-community trade (relative to total WAEMU trade) has not increased since the early 1990s, but trade patterns have changed. In particular, exports of Senegal and Togo to the rest of the WAEMU have increased, at the expense of those of Côte d'Ivoire, as have imports from the rest of the community to Burkina Faso and Guinea-Bissau (Mansour & Rota-Graziosi, 2013, p.9). Egoume and Nayo (2011) attribute these shifts in trade patterns largely to two factors: the relative size of Côte d'Ivoire and the high intra-WAEMU transportation costs relative to international costs. These two factors tended to reinforce one another during the Ivoirian crisis of 2010-2011.

The lack of intra-trade growth can be explained. Physical borders and control of intracommunity trade remain to a large extent as they were before the establishment of the CET. And tariff revenue, unlike in the EU, accrues to the country of final destination, which remains ultimately responsible for collecting its own revenue from the application of the CET. This provides opportunities for member states to protect their markets and for customs officials to seek rent through the enforcement of the CET (Mansour & Rota-Graziosi, 2013, p.10).

In ECOWAS tax coordination and harmonisation has been started more recently and no studies could be found on the impact of the measures for example on revenues.

Lessons learned from WAEMU

- Tax coordination framework may have had the unintended effect of contributing to the fragmentation of policies at the national level by providing countries with the incentive to

enact special tax regimes outside their tax laws.²¹ This is particularly the case of investment incentives, where the framework allows unfettered tax competition as long as it is done outside countries' main tax laws. This, in turn, has made tax systems opaque, increased their complexity, and contributed to a culture of "tax negotiation" (Mansour & Rota-Graziosi, 2013).

- The coordination framework has allowed some convergence of countries' tax systems (notably statutory tax rates), which in turn may have contributed to the positive revenue performance observed in WAEMU member states since 2000. This is particularly the case of VAT and excises on tobacco products and alcoholic beverages. However, the future of the CIT (other than on resource activities) is uncertain in the region, as there is little evidence that the 2008 CIT directives have had any impact on corporate tax competition (Mansour & Rota-Graziosi, 2013).
- That it should be better to take a top-down approach to coordination instead of a softer approach of sharing best practices and limiting certain types of harmful tax competition. Institutions help ensure government accountability and prevent leakage of public funds. They also increase efficiency of scarce public resources and improve the chance of maintaining fiscal stability and meeting social development needs (Kireyev, 2016). However, as the credibility of the coordination framework depends in large part on the credibility of its regional institutions, the WAEMU has yet to provide its regional institutions with the necessary resources to undertake effective surveillance (IMF, 2016).
- Increasing domestic revenue should be a foremost policy priority of tax coordination. WAEMU countries have significant room to improve domestic tax collection (including income tax) by 0.8 up to 2% of GDP, by broadening the tax base and strengthening tax administration. In particular, eliminating the exemptions for VAT not included in the WAEMU code and increasing the excise tax rate for products, such as tobacco and luxury goods, in line with WAEMU directives would be beneficial. (IMF, 2016).
- Political leaders in the WAEMU underestimated the difficulties and challenges of tariff and tax coordination. This is most obviously clear in the gaps that exist between the objectives of economic integration as set out in the WAEMU Treaty of 1994, and the effectiveness of the tax directives and regulations that were produced in order to meet these objectives (Mansour & Rota-Graziosi, 2013).
- Policymakers did not take sufficiently into account the implementation and enforcement implications at the regional level, particularly the need for effective surveillance. This

²¹ Article 4 allow for various, and possibly conflicting, interpretations of the role of tax coordination. For example, Paragraph A states that one objective of the Treaty is to reinforce the economic competitiveness of member countries, but does not clarify whether this objective is to make the region competitive vis-à-vis the rest of the world (ROW), or to give individual countries latitude in providing their own tax incentives—which implies some degree of competition among them as well as with the ROW. The former case is compatible with coordinating the taxation of capital within the region; the second may not be. This lack of clarity is probably the main reason behind the failure to harmonize investment codes (ICs); member states tend to see the competition game as one played as much among them as with the ROW. An initiative to agree on a regional IC has been ongoing for over a decade, but has not yielded any tangible results. Paragraph D, which calls for the implementation of common policies in a number of economic sectors, including mining, even though there is little trade among member countries in minerals. Paragraph d) is partly at the origin of the 2001 regional mining regulation, which contains tax provisions for mining activities (e.g., tax holidays, and minimum free equity participation of the state).

partly explains the gaps between the *de jure* and *de facto* coordination (Mansour & Rota-Graziosi, 2013).

4. Other African economic communities and tax coordination

East African Community

The East African Community (EAC)²² has a strong legal basis for tax coordination and harmonisation. The EAC Treaty Article 80 provides for the harmonisation and the rationalisation of investment incentives including relating to taxation of industries. The avoidance of double taxation is also explicitly stated. Under the provisions of Article 82, with respect to a monetary and financial cooperation, the EAC Treaty calls for fiscal cooperation, harmonised macro-economic policies within taxation, adjustment of fiscal policies to ensure monetary stability, and harmonisation of taxation of capital market transactions. Article 83 mentions that partner states shall harmonise their tax policies to remove tax distortions. Also the Common Market Protocol is explicit on tax harmonisation. Article 32 is derived from Article 83 of the Treaty by mentioning that progressively harmonise tax policies, laws and administration are needed to remove distortions in order to facilitate free movement of goods, trade taxes and consumption taxes such VAT and Excise Duties.²³

The scope of the tax harmonisation and co-operation is not restricted to indirect taxation. This broader approach allows a more extensive tax harmonisation and integration between the different tax systems which are involved since all fields of taxation seems potentially concerned. However, the implementation of tax coordination and harmonisation measures is far away from what the treaty and protocol prescribe.

To remove distortions created by tax differences, the EAC member states adopted the East African Community Customs and Management Act (EACCMA) in 2005. The Act provides for uniform application of customs treatment of movement of goods into and within the community with a **common external tariff**. Under the Customs Union Protocol importation of raw materials, capital goods, agricultural inputs and some medical equipment into the EAC attracts zero duty. Importers of intermediary goods and other essential industrial inputs pay a tax of 10%, while finished products attract 25% duty, as well as a Sensitive Items list with exceptions to the three-band rule for specified commodities attracting high rates of duty (all above 30%). The implementation of EACCMA has been one of the successes of regional integration in the EAC – many literature focus on trade liberalisation in EAC. It can be concluded that the result has been a coordinated development of customs policy within the region offering certainty to investors as well as going a long way in securing the freedom of movement of goods within the EAC. However, still different customs procedures are put in place for goods in intracommunity trade,

²² The five EAC member states are Burundi, Kenya, Rwanda, Tanzania, and Uganda.

²³ From the IFC and World Bank presentation (September 2013) in Nairobi on the Investment Climate in the East African Community. Retrieved from the Tax Compact website: https://www.taxcompact.net/documents/seminar-nairobi/Tax-Harmonisation-in-the-EAC_IFC-WBG.pdf

resulting that goods are still required to go through the same customs procedures as other goods imported from outside the community.

Recently, it became clear that the EAC member states struggle to agree on how to harmonise their **domestic taxes**, in particular related to **VAT**. The option for a single VAT rate is off the table and instead a gradual review with a focus on adopting a range of VAT rates is now mentioned in a draft policy.²⁴ During a meeting of the EAC tax policy and tax administration subcommittee held in Nairobi in December 2017, the option of harmonising the region's domestic taxes through a gradual process beginning with excise duty, followed by the VAT and finally income tax was put forward for consideration and that the focus needed to be on harmonising legislation and not rates. Talks about harmonising domestic taxes were first emphasised in May 2012 at the EAC's Sectoral Council on Finance and Economic Affairs. But the EAC countries have made little progress in the harmonisation of domestic taxes, with member countries worried about the potential loss of revenues. As it stands, each of the EAC member states applies the destination based model of levying VAT. The destination based model requires that VAT is levied on goods and services where they are consumed. To avoid smuggling, policing of the borders becomes necessary and this adds to the administrative burden on each member state and also increases the amount of time that goods from other member states take to arrive.²⁵

In the area of **excise**, a lack of coordination in the policy governing application and levying of excise duty hamper results in member states adopting different ways of levying the tax as well as different rates.²⁶ In particular Uganda and Rwanda and Burundi levying the tax at ad valorem rate while Kenya and Tanzania opt to apply specific rates in relation to certain goods. The lack of coordination means that goods coming in from another member state must be subjected to excise duty and therefore subject to long waits at the border points as the goods are verified and customs duty imposed.²⁷

For tax coordination on **direct taxation**, there has been efforts to reduce harmful tax competition. To promote the EAC as a single investment area, the Treaty provides that there should be a harmonisation of investment incentives. The members of the EAC have made progress towards coordination of their tax incentive regime through the use of a '**Code of Conduct**'. This aims to formalise an existing arrangement under which each year the EAC finance ministers meet before their budget speeches are made and discuss their budget proposals. This provides the opportunity for Finance Ministers to dissuade other members if they propose any new tax incentive that puts other countries at a disadvantage (IMF, 2015b). Although there is a shift

²⁴ Retrieved from The East African news website: <http://www.theeastafrican.co.ke/business/EAC-talks-on-single-tax-rate-hit-deadlock/2560-4539122-format-xhtml-pmxhduz/index.html>

²⁵ Paper written by Anapaula Trindade Marinho and Catherine Ngina Mutava, titled: "Tax integration within the East African Community: A partial model for regional integration in Africa". Retrieved from the African Development Bank website: https://www.afdb.org/uploads/tx_lafdbpapers/DEF_-_EAC_PAPER_-_A._Trindade_and_C._Ngina_Mutava.pdf

²⁶ See also on EAC website: https://customs.eac.int/index.php?option=com_content&view=article&id=141&Itemid=172

²⁷ Paper written by Anapaula Trindade Marinho and Catherine Ngina Mutava, titled: "Tax integration within the East African Community: A partial model for regional integration in Africa". Retrieved from the African Development Bank website: https://www.afdb.org/uploads/tx_lafdbpapers/DEF_-_EAC_PAPER_-_A._Trindade_and_C._Ngina_Mutava.pdf

toward tax policy coordination for direct taxation, investment incentives are still offered with respect to different industries and there is no harmonisation of corporate income rates.²⁸

EAC partner countries have moved closer to implementing the Double Taxation Agreement by adopting the **EAC Tax Treaty Policy** and the **EAC Model Tax Treaty**. The EAC Tax Policy sets out the recommended policy positions that should be pursued in tax treaties negotiated by EAC with non-EAC countries.²⁹ These policy positions reflect EAC countries' current economic status as developing countries and net importers of capital as well as the need to protect their revenue bases without deterring foreign investment. The EAC ministers during their meeting in December 2017 proposed that partner states should use the UN tax convention as the starting point with the aim of guiding countries in designing double taxation treaties, as well as in applying and interpreting them. The EAC tax policy identifies the international tax norms that the EAC should follow with respect to scope, distributive rules, elimination of double taxation, non-discrimination, mutual agreement procedures, and exchange of information. In terms of the scope, the policy suggests that EAC treaties should only cover income taxes as none of EAC partner states imposes taxes on capital. The policy makes specific proposals on distribution rules, including income from immovable property, business profits, international transport, dividends, interests and royalties, income from service, capital gains and directors' fee, entertainers. The tax treaty on the other hand seeks to eliminate double taxation among the states by imposing an obligation on the resident state to give credit for the source state tax against the resident state tax on income or exempt the income from tax.

SADC

The Southern African Development Community (SADC)³⁰ aims to reduce and ultimately to eliminate tax competition that damages the region's revenue mobilisation efforts. The SADC Protocol on Finance and Investment provides for cooperation and coordination on tax incentives in the region. The "Guidelines for the application and treatment of tax incentives in the SADC region" and the "Memorandum of Understanding on Cooperation in Taxation and Related Matters" seek endeavours by the Member States to avoid harmful tax competition or introducing tax legislation that prejudices another Member State's economic policies or activities (IMF, 2015b).

However, due to the existence of diverse VAT regimes and different tariff structures in the tax systems of Member States, as well as the fact that these Member States are also members of other trade blocs (e.g. COMESA, SACU and EAC), the process of formulating and harmonising fiscal policies in SADC is very complex.³¹ All the SADC countries (except Angola) have VAT

²⁸ Paper written by Anapaula Trindade Marinho and Catherine Ngina Mutava, titled: "Tax integration within the East African Community: A partial model for regional integration in Africa". Retrieved from the African Development Bank website: https://www.afdb.org/uploads/tx_lafdbpapers/DEF_-_EAC_PAPER_-_A_Trindade_and_C_Ngina_Mutava.pdf

²⁹ Retrieved from The East African news website: <http://www.theeastafrican.co.ke/business/EAC-countries-to-harmonise-tax-regimes---/2560-4221812-format-xhtml-eauu3nz/index.html>

³⁰ Member states are: Angola, Botswana, Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe.

³¹ Blog post (5 January 2017) of Marcos Miguel, Senior Officer at the Mozambique Revenue Authority. Retrieved from the website of the International Tax and Investment Centre: <https://iticnet.blog/2017/01/05/the-basis-for-the-harmonization-of-vat-and-excise-taxes-in-sadc/>

systems, all except the Seychelles have payroll taxes and all have corporate taxes on profits. However, the definitions of the tax bases are extremely heterogeneous. Enhanced there is more cooperation in tax matters than tax coordination in the SADC in the form of mutual and multilateral assistance in tax matters, tax treaties and double tax agreements (Deloitte, 2015). This fits in the overall struggle of SADC to fully become a common market as it still struggles with implementations of the Customs Union.³²

The SADC VAT and Excises guidelines were published in November 2016 by the SADC VAT and Excise Committee, after being approved by SADC Finance Ministers. These guidelines cover the design, administration and exchange of information, as well as mutual assistance in the field of VAT and Excise. Studies have found that the existence of differences in rates of VAT and Excise has been a key cause of the smuggling of beverages and cigarettes from countries with low tax rates to countries where rates are higher. The general objective of these guidelines is to establish an overview of the region's fiscal policy, including:³³

- Harmonisation of VAT and Excise rates across SADC countries;
- Harmonisation of administrative aspects, including definitions, incidence, exemptions, coordination, labelling, and quality standards, and;
- A ban on production of goods for export to another Member State that do not comply with the standards required in that Member State.

The detailed guidelines make effective the provisions of the SADC Finance and Investment Protocol with respect to the harmonisation of indirect taxes and will gradually replace international trade revenues on trade in goods and services by extending the tax base of indirect taxes. It will also promote the adoption of ad valorem taxes on goods and services subject to excise taxation with alternative to the application of multiple rates of VAT. Furthermore, it creates conditions for SADC member countries to sign bilateral agreements with each other, based on the SADC Model Tax Agreements, in order to agree on the exchange of information on VAT and excise, sales and provision of mutual assistance on the collection of revenues. However, although various reports showed the importance of tax coordination.³⁴ Letete (2012) highlighted that the harmonisation process is vital in so far as it aims at ensuring that equal conditions for competitors are not distorted by discriminatory tax systems and would also mitigate the demerits

³² Retrieved from the SADC website: <http://www.sadc.int/about-sadc/integration-milestones/common-market/>

³³ Blog post (5 January 2017) of Marcos Miguel, Senior Officer at the Mozambique Revenue Authority. Retrieved from the website of the International Tax and Investment Centre: <https://iticnet.blog/2017/01/05/the-basis-for-the-harmonization-of-vat-and-excise-taxes-in-sadc/>

³⁴ The analysis of Ade et al. (2017) shows some important policy implications for the SADC (given its heterogeneous nature), aimed at enhancing the process of regional tax harmonisation. First, there is a need for the SADC to develop policies aimed at collectively expanding corporate tax base in order to accommodate the relatively low optimum CIT rates, particularly because the adoption of lower optimum CIT rates may lead to a reduction in tax revenue. Second, the adoption of an optimum VAT rate by all SADC member countries will reduce the usage of different politically motivated VAT rates by individual member states as instruments to gain voters' confidence. Third, the overlapping membership of regional groupings of the SADC countries could stifle further tax harmonisation initiatives in the SADC, warranting relevant policy intervention. Fourth, given that there is already a protocol on taxation in the SADC, some further policy considerations towards enhanced harmonisation and tax revenue could include developing a benchmarking process with other regional economic groupings. These include economic groupings in pursuit of tax harmonisation such as the EU and the EAC.

of tax competition in the SADC - it is the implementation of the guidelines and the protocol that is lacking behind.

There is no significant progress on tax coordination on direct taxation and investment incentives.

COMESA

The member states of the largest regional economic community in Africa, the Common Market for Eastern and Southern Africa (COMESA),³⁵ are very heterogeneous. Tax coordination is only a matter for trade duties (it has a common external tariff that is equal to the EAC), without explicit directives or other legislations for tax coordination and harmonisation for other revenue sources. In its 2016 and 2017 Key Issues in Regional Integration reports, the COMESA emphasised the importance of revenue mobilisation and to tackle harmful tax competition, however, it does not push the topic further like in the ECOWAS and EAC.

One development that the International Bureau of Fiscal Documentation report (IBFD, 2013, p.18) mentioned regarding COMESA is that COMESA Court of Justice made an important decision in the case of *Polytol Paints & Adhesives Manufacturers Co. Ltd v. the Republic of Mauritius* (Case Reference Number 1 of 2012) which was delivered on 31 August 2013. It concluded that the bilateral agreement between Egypt and Mauritius could not justify the breach of Article 46 of the COMESA Treaty. Until then, infringements to and non-implementation of the COMESA Treaty, Protocols and Secondary Regulations went un-penalised, rendering these instruments ineffective.³⁶

Other African economic communities

There is very little literature on the progress of tax coordination and harmonisation in other regional economic communities in Africa. The lack of literature on tax coordination combined with some information on the instalment of integration processes in regional economic communities, it can be concluded that there is no significant developments to be reported on the topic, for

³⁵ Member countries are: Burundi, Comoros, D.R. Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia, and Zimbabwe.

³⁶ The dispute arose over a 40% customs duty imposed in Mauritius on specific products imported by the company from Egypt, one year after the elimination of customs duties on products originating from another COMESA member state. Both Egypt and Mauritius are member states of COMESA. The applicant, a company incorporated in Mauritius, first appealed to the Supreme Court of Mauritius. The Court rejected the company's claim for a refund of the duty based on the reasoning that the provisions of the COMESA Treaty could only be applied in Mauritius if they had been domesticated. Since Mauritius did not follow the COMESA legal notice instructing member states to issue legal or statutory instruments to put into effect the requirements of article 46 of the COMESA Treaty, the Court reasoned it had no legal basis to accept the application. Dissatisfied with the decision of the Supreme Court, the company brought the case before the CCJ, which ruled: X that COMESA citizens have no right to refer to the Court issues relating to non-fulfilment of Treaty obligations by a member state as this is a prerogative of other member states and the Secretary General of COMESA. However, COMESA citizens may appeal against the enactment of laws which breach the COMESA Treaty; X that imposing customs duty was an infringement to the Treaty. The CCJ reasoned that article 46 of the Treaty required member states to eliminate duties on goods from other member states (by the year 2000), and that once Mauritius joined the Free Trade Area (FTA) in November 2000, it could not selectively apply article 46 and impose duties on products from some member states in the FTA; and X that a bilateral agreement concluded between two member states, such as Mauritius and Egypt, which includes a provision that derogates from the obligation of eliminating customs duties is incompatible with the object and purpose of the FTA (IBFD, 2013, p).

example in the African Maghreb Union (AMU), the Economic Community of Central African States (ECCAS), and the Community of Sahel-Saharan States (CEN-SAD).

5. How Africa compares with other regions?

A quick comparison between the African trade blocs and their counterparts outside the continent, shows that the efforts of African regional economic communities are not behind, or in case of the WAEMU and EAC some kind of frontrunners, compared to that of others, like ASEAN (Banderlipe, 2015; Jogarajan, 2013),³⁷ MERCOSUR or Andean Community.

In Central America, coordination of tax incentives has some history (IMF, 2015b, p.31). Between 1962 and 1984, four countries (Costa Rica, El Salvador, Guatemala and Nicaragua) were parties to a convention on tax incentives, which mandated uniform tax incentives and prohibited the introduction of new ones. In 2012, the Committee of Ministers of Finance of Central America, Panama, and the Dominican Republic (COSEFIN) discussed the adoption of a “Declaration of Good Practices” for investment tax incentives, which was preceded by a wide-ranging exercise to quantify the cost of existing tax incentives to make a stronger case for their removal. Discussions on a mandatory code of good practices remain ongoing (IMF, 2015b, p.31).

Overall, there is a lack of literature that makes good comparisons of tax coordination and tax harmonisation between different regional economic communities.

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³⁷ See also Nikkei Asian Review (14 July 2017) “IMF: ASEAN incentives risk 'race to the bottom' on tax revenue”. <https://asia.nikkei.com/Economy/IMF-ASEAN-incentives-risk-race-to-the-bottom-on-tax-revenue>.

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Suggested citation

Quak, E. (2018). *Tax coordination and tax harmonisation within the regional economic communities in Africa*. K4D Helpdesk Report. Brighton, UK: Institute of Development Studies.

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