

Towards free, fair and safe trade in Africa

Proposal for an African continental  
technical regulatory framework (ACTReF)

Draft document for consultation

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## Acronyms

ABC	African Business Council
ACCSQ	ASEAN Consultative Committee on Standard and Quality
ACTReF	African continental technical regulatory framework
AfCFTA	African Continental Free Trade Area
AFRAC	African Accreditation Cooperation
AFRIMETS	Intra-Africa Metrology System
AHEEERR	ASEAN Harmonised Electrical and Electronic Equipment Regulatory Regime
AIDA	Accelerated Industrial Development for Africa
AMA	African Medicine Agency
AMA	African Manufacturers Association
AMRH	African Medicine Regulation Harmonization
APEC	Asia-Pacific Economic Cooperation
AQP	Africa Quality Policy
ARSO	African Organisation for Standardisation
ASEAN	Association of Southeast Asian Nations
ATIGA	ASEAN Trade in Goods Agreement
AU	African Union
AUC	African Union Commission
BIAT	Boosting Intra-African trade
CEMAC	Central African Economic and Monetary Union
CEN	European Committee for Standardization
CENELEC	European Committee for Electrotechnical Standardization
CEN-SAD	Community of Sahel-Saharan States
COMESA	Common Market for Eastern and Southern Africa
CTG	Committee on trade in goods
EABC	East African Business Council

EAC	East African Community
ECCAS	Economic Community of Central African States
ECOWAS	Economic Community for West African States
EEE	Electrical and Electronic Equipment
EU	European Union
FTA	Free trade area
GIRG	Global Indicators of Regulatory Governance
GRP	Good regulatory practice
IAF	International Accreditation Forum
IEC	International Electrotechnical Commission
IGAD	Intergovernmental Authority on Development
IGO	Inter-governmental organization
ILAC	International Laboratory Accreditation Cooperation
IRC	International Regulatory Co-operation
IRENA	International Renewable Energy Agency
ISB	International standardizing body
ISO	International Organization for Standardization
JTS	Joint Technical Secretariat
MLA	Multilateral Recognition Arrangement
MR	Mutual Recognition
MRA	Mutual Recognition Arrangement
MS	AU Member State
MTS	Multilateral Trading System
NaTReF	National Technical Regulatory Framework
NMNTB	National Monitoring Committee on NTBs
NTB	Non-Tariff Barrier
NTM	Non-tariff measure
OECD	Organisation for Economic Co-operation and Development

PAFTRAC	Pan-African Private Sector Trade and Investment Committee
PAQI	Pan-African Quality Infrastructure
PTA	Preferential trade area
PTB	Physikalisch Technische Bundesanstalt
QI	Quality Infrastructure
QP	Quality Policy
REC	Regional Economic Community
RIA	Regulatory impact assessment
RIO	Regional integration organization
RMS	Regulatory management system
RTA	Regional trade agreement
SACU	Southern African Customs Union
SADC	Southern African Development Community
SADCAS	SADC Accreditation Services
SCTBT	Sub-Committee on Technical Barriers to Trade
SOAC	West African Accreditation System
SP	State Party (to the AfCFTA)
SPS	Sanitary and Phytosanitary
SQMT	Standardisation, Quality assurance, Metrology and Testing
STC-TIM	Specialized Technical Committee on Trade, Industry and Minerals
SWOT	Strengths, weaknesses, opportunities, threats
TBT	Technical Barriers to Trade
TFTA	Tripartite Free Trade Area
TGN	Trans-governmental network
TR	Technical regulation
TRF	Technical regulatory framework
TTIP	Transatlantic Trade and Investment Partnership
UMA	Arab Maghreb Union

UNCTAD	United Nations Conference on Trade and Development
UNECA	United Nations Economic Commission for Africa
UNECE	United Nations Economic Commission for Europe
USA	United States of America
WAEMU	West African Economic and Monetary Union
WAQP	West African Quality Program
WB	World Bank
WTO	World Trade Organization

## Foreword

A key challenge for Africa as a region is to move off an economic growth path built on consumption and commodity exports onto a more sustainable developmental path based on production and trade of high-quality products and the promotion of environmental and social well-being. African countries should embrace innovation, manufacturing and trade as the main engines of growth. Market competitiveness of manufactured goods depends critically on assessing, anticipating, and fulfilling stated and implied needs of the customers, thus their compliance to standards, technical or regulatory requirements and assurance of conformance to the stated and/or implied requirements. Linked to this is the need to build a quality infrastructure (QI) that supports the provision of quality assurance based on internationally recognised standardization, metrology, technical regulation, conformity assessment and accreditation practices.

Consolidating this continent into one single market through the African Continental Free Trade Area (AfCFTA) provides great opportunities for trading enterprises, businesses and consumers across Africa. UNECA estimates that AfCFTA has the potential both to boost intra-African trade by 52 per cent by eliminating import duties, and to double this trade if non-tariff barriers (NTBs), which also include technical barriers to trade (TBT), are also reduced. On the other hand, the Pan-African Private Sector Trade and Investment Committee (PAFTRAC) released a survey of African CEOs in 2021, where the vast majority of respondents (85 %) from 44 African countries believe that the AfCFTA will have a positive impact on the regulatory environment for doing business while 82 % think of the same for achieving standards compliance.

One of the 7 main focus areas of the Africa Quality Policy (AQP), which was endorsed by the AU Summit in February 2022, is about 'setting and implementing an African continental technical regulatory framework (ACTReF)', i.e. a system that establishes how technical regulations (TRs) are developed, applied and enforced. TRs are documents that lay down product characteristics and the parameters for ensuring compliance to those requirements. Compliance with TRs is mandatory. TRs are mostly developed, applied and enforced at the national level but they can become technical barriers to international trade. One of the essential conditions for increased intra-African trade and to prevent TRs from becoming TBTs, is achieving regulatory convergence among all the parties managing technical regulations. Among the tools used to achieve regulatory convergence, one of the most prominent is the use of good regulatory practices (GRPs) which describe best practices and procedures to improve the quality of regulation, including technical regulations.

This ACTReF document lays down the principles and policies to help AU Member States (MSs) establish how technical regulations are developed and enforced in order not to create unnecessary obstacles to trade, and thus to comply with the requirements of both the WTO TBT Agreement and the AfCFTA.

The need for ACTReF arises from the observation that there are notable differences in the way the MSs and RECs develop and enforce TRs. The challenge facing the AU is to bring the different African countries and the RECs towards better regulatory convergence so that intra-African trade is enhanced durably.

The most efficient manner of implementing ACTReF would be through the AfCFTA structures since one of the objectives of the AfCFTA in its Annex 6 is to 'establish mechanisms and structures to enhance transparency in the development and implementation of standards, technical regulations, metrology, accreditation and conformity assessment procedures'. However, achieving better regulation and



implementing GRPs is not limited to the field of trade within the scope of the AfCFTA but is highly relevant in support of overall African policies in other sectors also, for example in the context of the African Medicine Regulation Harmonization (AMRH) initiative and the creation of the African Medicine Agency (AMA). Consequently, although ACTReF would apply first and foremost to the AU Member States (MSs) who are State Parties (SPs) to the AfCFTA, the principles and practices of ACTReF are for wider and general application within all other relevant AU policies targeting all MSs.

The foregoing thus implies that both the AfCFTA and the AUC have a role in the implementation of ACTReF. The AfCFTA will be responsible for ensuring that ACTReF enhances intra-African trade while the AUC will use ACTReF to work towards achieving better regulation practices on the continent.

The development of this ACTReF document was built upon two consultation documents, namely a concept paper<sup>1</sup> and a Desk study on regulatory cooperation arrangements and mechanisms in Africa<sup>2</sup>. Both these documents were discussed during a “Consultative workshop and expert roundtable on the establishment of an African technical regulatory cooperation mechanism” organized by the African Union in April 2022 in Nairobi.

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<sup>1</sup> [http://www.paqi.org/wp-content/uploads/2022/03/PAQI\\_ACTReF\\_ConceptPaper\\_final.pdf](http://www.paqi.org/wp-content/uploads/2022/03/PAQI_ACTReF_ConceptPaper_final.pdf)

<sup>2</sup> Towards free, fair and safe trade in Africa - Desk study on regulatory cooperation arrangements and mechanisms in Africa - Draft report – for consultation, March 2022

## Executive summary

In order to address the Quality Infrastructure (QI) support requirements of Africa's industrialization and trade, and for safeguarding of the health and safety of consumers as well as protecting the environment, the African Union Commission (AUC), in collaboration with PAQI and with the technical support of the Physikalisch Technische Bundesanstalt (PTB) Germany, developed an Africa Quality Policy (AQP) which was endorsed by the AU Summit in February 2022.

While consolidating Africa into one single market through the AfCFTA is set to provide great opportunities for trading enterprises, businesses and consumers across Africa, regulatory divergence among AU Member States could seriously hinder the achievement of these objectives. Both UNECA and PAFTRAC believe that the AfCFTA will boost intra-Africa trade. The expectations arising out of the AfCFTA are thus both challenging and optimistic. It is quite timely that the implementation of the AQP, in general, but more specifically its component about setting up an ACTReF, will lay down solid foundations to tackle technical barriers to trade effectively.

The ACTReF framework operates at national, regional and continental levels in a coordinated manner to enable all technical regulations adopted in Africa to fully conform to the WTO TBT and AfCFTA agreements. The overall objective of ACTReF is to contribute towards bringing regulatory convergence in matters of technical regulations among AU Member States and RECs in order to increase intra-African trade by minimizing technical barriers to trade.

While compliance with the WTO TBT and AfCFTA regulatory requirements is a necessary condition for enhancing trade, the process through which this has to be achieved must be efficient and targeted. Thus, the specific objectives of ACTReF provide a road map for AU Member States. ACTReF will support AU Member States to measure the level at which they are regulating with the aim of avoiding over-regulation and under-regulation, both of which potentially being undesirable and inefficient. ACTReF also call for the setting up of a mechanism to designate priority products for the continent for which technical regulations are considered necessary and will allocate the resources to develop such regulations in accordance with GRPs.

Implementation of good regulatory practices (GRPs) at the national level could positively contribute to improve the national regulatory management system, but it falls short of addressing regulatory issues in cross-border trade. That is why ACTReF has a specific objective to encourage AU Member States to adopt mechanisms for International Regulatory Co-operation (IRC) among themselves covering not only regulators but also non-regulators, such as conformity assessment bodies.

As its name implies, ACTReF is conceived as a system and as all systems, the various components should work as a whole and be interdependent. In matters of technical regulations, the effective development of TRs relies on a proper standards development system. Similarly, the effective enforcement of TRs relies on reliable and competent conformity assessment procedures which in turn rely on an internationally-recognized accreditation system as well as on a metrology system that has access to an internationally-traceable measurement system. Because of the inter-linkages and interdependency among so many elements, it is necessary to take a systems approach in ACTReF so as to consolidate the whole regulatory system.

Although TRs are mostly developed, applied and enforced at the national level to pursue national policy objectives, they enter into the picture as soon as cross-border trade happens. Heterogeneous trade agreements among countries in Africa could undermine the efficiency of rules under the AfCFTA. For instance, challenges related to non-tariff measures are compounded by overlapping trade schemes and heterogeneous rules, with several countries belonging to more than one Regional Economic Community (REC). The situation makes compliance with trade rules costly and has impeded trade within RECs. Besides, the limited success of regional trade agreements in Africa to date is reported to have been partly due to failures in trade governance and a lack of harmonized regulatory regimes.

It is important to emphasize that the regulatory harmonization effort under ACTReF at the continental level is an exhortative and cooperative approach with best practice recommendations, including GRP, to be applied at all levels in Africa, including at the levels of AU Member States and RECs. Although AfCFTA reaches out to the whole continent and will build upon the strengths of the AU-recognized RECs to consolidate technical harmonization, it is not vested with supranational powers. Indeed, under Article 7 on “Cooperation in Technical Regulations” of Annex 6 of the AfCFTA Protocol on Trade in Goods, the key words are cooperation and promotion.

At the national level, the best practice recommendations adopted at continental level through the ACTReF can be translated into national best practices by the adoption of National Technical Regulatory Frameworks (NaTReFs). NaTReFs would be aligned with ACTReF and would take into account the specificities of each country. AU Member States do present significant differences in how they operate their regulatory management functions. Indeed, the World Bank Global Indicators of Regulatory Governance (GIRG) results, collected between 2017 and 2018, show wide variance among the 52 African countries. The average score for Africa is lower than the scores obtained for other world regions. As for the RECs, COMESA, ECOWAS, SADC and UMA score higher than the African continent average. The variance among individual African countries shows that the path towards regulatory convergence will be an uphill battle. More detailed data on regulatory similarities or dissimilarities between countries, i.e. a measure of regulatory distance, will become available soon as UNCTAD is currently undertaking a study for a number of countries on behalf of PAQI and the AUC.

At the regional level, there is a scope for the AU-recognized RECs to internalize ACTReF policies and recommendations and lead the regional technical harmonization efforts. But this approach is also applicable to the RTA bodies that are not formally recognized by the AU at this stage. As of March 2022, African countries were participating in 43 regional trade agreements. On average, the World Bank noted that, in 2004, each African country belonged to four RTAs but this figure might be slightly higher in 2022. Not all African RTAs or AU-recognized RECs have the same ground to cover in achieving technical harmonization. Indeed, the depth of non-tariff measures (NTMs) commitments in regional agreements, particularly regarding SPS and TBT measures, depends on several factors, one of which is the prior degree of similarity between regulatory approaches, as harmonization or mutual recognition is much easier when regulations are ex ante similar. This indicates that it might be more efficient and more effective to fully involve RTA and REC management bodies in steering technical harmonization at the level of their member States as a first step towards continental regulatory convergence.

The policies governing ACTReF are as indicated in the AQP. Moreover, ACTReF will be based on the WTO TBT Committee’s principles of Good Regulatory Practice (GRP) adopted at the Sixth triennial review of the operation and implementation of the agreement on technical barriers to trade. ACTReF will also be based

on the key concepts and principles adopted by the EU Commission to implement the EU regulatory policy, also referred as 'Better regulation'.

Implementation of actions to achieve the vision and objectives of ACTReF will be based on evidence. Consolidation of data from African countries on the status of their regulatory systems is essential to draw a proper baseline of the actual situation. Once a baseline is defined, it will be possible to measure progress and impact of the policies and actions over time. There is no detailed information across the continent on current regulatory systems and their performances.

The policies for regulatory harmonization approaches for Africa will cover harmonisation of regulatory objectives, of technical regulations (TRs), of standards; mutual recognition of TRs, of conformity assessment results, of standards, of accreditation.

One of the critical aspects for the effective implementation of ACTReF concerns its institutional structure. In order to avoid duplication and overlaps in matters of technical regulations across the continent and to ensure maximum effectiveness and efficiency, it is proposed that ACTReF implementation should be under the responsibility of the Council of Ministers of the AfCFTA, through the Committee on Trade in Goods (CTG). It is proposed that ACTReF be managed by a unit under the administrative authority of the head of the AfCFTA secretariat. The technical management responsibility of the ACTReF unit would be under the AfCFTA Sub-Committee on Technical Barriers to Trade. ACTReF tasks expected to be carried out at the national level under NaTReFs could be coordinated by the National Focal Points on NTBs working under the National Monitoring Committees on NTBs (NMNTB) created under Article 6 of Annex 5 of the AfCFTA.

It is important for ACTReF's progress in achieving regulatory harmonization to be monitored and corrective actions taken in a timely manner to achieve the objectives. Two performance indicators will be used to measure the impact of ACTReF. Regulatory distance data will be used as the first indicator of regulatory convergence among African countries. The second indicator will be developed based on the OECD indicators for Regulatory management system (RMS). The OECD has led work relating to the concept of quality in regulatory management, as developed by the OECD Programme on Regulatory Reform, which fundamentally refers to the way in which regulatory management systems are organised in terms of institutions, tools and policies.

## Definitions and terminology

- I. **(Mutual) Recognition Arrangement (MRA)**, in the context of conformity assessment, is an arrangement whereby participating bodies acknowledge to others that the conformity assessment results of the other participating bodies have been produced by competently performed, equivalent procedures (*Source: ISO/IEC Guide 68:2002*);
- II. **Approximation** of law (in the context of the European Union (EU)) means the process of harmonizing of national legislation with the EU law (*Source: footnote<sup>3</sup>*);
- III. **Equivalence and mutual recognition**, in the context of regulations, range from the recognition of regulatory outcomes of different rules to the more limited recognition of conformity assessment results embodied in different agreements (*Source: Correia de Brito, Kauffmann and Pelkmans<sup>4</sup>, OECD(2016)*);
- IV. **Good regulatory practice (GRP)** describes best practices and procedures developed by governments and organizations to improve the quality of regulation (*Source: WTO TBT Committee*);
- V. **Harmonized standards** are standards on the same subject approved by different standardizing bodies that establish interchangeability of products, processes and services, or mutual understanding of test results or information provided according to these standards; (*Source: ISO/IEC Guide 2:2004*);
- VI. **International Regulatory Co-operation (IRC)** means any agreement or organisational arrangement, formal or informal, between countries to promote some form of co-operation in the design, monitoring, enforcement, or ex post management of regulation (*Source: OECD<sup>5</sup>*);
- VII. **Non-tariff measure (NTM)** are generally defined as policy measures other than ordinary customs tariffs that can potentially have an economic effect on international trade in goods, changing quantities traded, or prices or both. NTM classification comprises technical measures, such as SPS measures and TBT, as well as others traditionally used as instruments of commercial policy, e.g. quotas, price control, exports restrictions, or contingent trade protective measures, and also other behind-the-border measures, such as competition, trade-related investment measures, government procurement or distribution restrictions (*source: UNCTAD*);
- VIII. **Quality Infrastructure (QI)** is a system comprising the organizations (public and private) together with the policies, relevant legal and regulatory framework, and practices needed to support and enhance the quality, safety and environmental soundness of goods, services and processes. The Quality infrastructure is required for the effective operation of domestic markets, and its international recognition is important to enable access to foreign markets. It is a critical element in promoting and sustaining economic development, as well as environmental and social

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<sup>3</sup> Practical Guidelines for Legal Approximation of the Legislation of the Republic of Kosovo with the Legislation of the European Union, 2014

<sup>4</sup> Correia de Brito, A., C. Kauffmann and J. Pelkmans (2016), "The contribution of mutual recognition to international regulatory co-operation", OECD Regulatory Policy Working Papers, No. 2, OECD Publishing, Paris. <http://dx.doi.org/10.1787/5jm56fqsfxmx-en>

<sup>5</sup> OECD (2013), International Regulatory Co-operation: Addressing Global Challenges, OECD Publishing

wellbeing. It relies on metrology, standardization, accreditation, conformity assessment, and market surveillance (*Source: Definition adopted in June 2017 by INetQI*);

- IX. Quality policy** means a policy adopted at a national, regional or continental level to develop and sustain an efficient and effective QI system (*Note 1: This definition relates to policy making at national, regional or continental levels and differs from the definition of Quality Policy as stated in ISO 9000:2015, which applies more to organizations*);
- X. Regulation** is the diverse set of instruments by which governments set requirements on businesses, citizens and the public sector. Regulations include laws; formal and informal orders and subordinate rules issued by all levels of government; and rules issued by non-governmental or self-regulatory bodies to whom governments have delegated regulatory powers (*Source: Regulatory Governance in Developing Countries, Investment Climate Advisory Services/World Bank Group, 2010*);
- XI. Regulators** are entities authorised by statute to use legal tools to achieve policy objectives, imposing obligations or burdens through functions such as licensing, permitting, accrediting, approvals, inspection and enforcement (*Source: OECD (2014), The Governance of Regulators, OECD Best Practice Principles for Regulatory Policy*);
- XII. Regulatory alignment** means proper use of international standards in technical regulations and also the need for international standardizing bodies to strive for better international standards governance (*Source: WTO*);
- XIII. Regulatory coherence** means a focus on reform and discipline of domestic regulatory processes (*Source: HAN-WEI LIU & CHING-FU LIN<sup>6</sup>*);
- XIV. Regulatory convergence** (mainly in the context of preferential trade area (PTA) governance) means the reduction of unnecessary regulatory differences (*Source: (Lazo and Sauvé)<sup>7</sup>*);
- XV. Regulatory harmonisation** as the adoption of joint rules across two or more jurisdictions aimed at doing away with regulatory divergence between participating countries at its very root, e.g. development of Regulations and Directives in the European Union (*Source: OECD (2021)<sup>8</sup>*);
- XVI. Regulatory management system (RMS)** introduces the concept of quality in regulatory management which fundamentally refers to the way in which regulatory management systems are organised in terms of institutions, tools and policies (*Source: OECD<sup>9</sup>*);
- XVII. Regulatory system** means, for any given sector, the set of processes that include: setting regulatory requirements and voluntary standards for the production of goods and the provision

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<sup>6</sup> THE EMERGENCE OF GLOBAL REGULATORY COHERENCE: A THORNY EMBRACE FOR CHINA?, HAN-WEI LIU & CHING-FU LIN, Published by Penn Law: Legal Scholarship Repository, 2019

<sup>7</sup> The Treatment of Regulatory Convergence in Preferential Trade Agreements, RODRIGO POLANCO LAZO (World Trade Institute, University of Bern, Switzerland), PIERRE SAUVÉ (World Bank Group's Trade and Competitiveness Global Practice, Geneva, Switzerland)

<sup>8</sup> OECD (2021), International Regulatory Co-operation, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, Paris, <https://doi.org/10.1787/5b28b589-en>.

<sup>9</sup> Jacobzone, S., C. Choi and C. Miguët (2007), "Indicators of Regulatory Management Systems", OECD Working Papers on Public Governance, 2007/4, OECD Publishing

of services; drafting laws and regulations; and putting controls in place to check that products meet requirements and specifications (*Source: United Nations Economic Commission for Europe(UNECE)*);

- XVIII. Standard** is a document, established by consensus and approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for activities or their results, aimed at the achievement of the optimum degree of order in a given context (*Source: ISO/IEC Guide 2:2004*);
- XIX. Technical regulation** means a document which lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method (*Source: WTO TBT Agreement*);
- XX. Trans-governmental institutions** involve direct co-operation among individual units of government, such as regulatory agencies, which act without strong control or direction by their respective governments.

# African continental technical regulatory framework (ACTReF)

## 1. Introduction

In order to address the Quality Infrastructure (QI) support requirements of Africa's industrialization and trade, and for safeguarding of the health and safety of consumers as well as protecting the environment, the African Union Commission (AUC), in collaboration with PAQI and with the technical support of the Physikalisch Technische Bundesanstalt (PTB) Germany, developed an Africa Quality Policy (AQP) which was endorsed by the AU Summit in February 2022.

Market competitiveness of manufactured goods depends critically on their compliance to standards and other technical or regulatory requirements. Linked to this is the need to build a quality infrastructure (QI) that supports the provision of quality assurance based on internationally recognised standardization, metrology, technical regulation, conformity assessment and accreditation practices. The AQP endeavours to address the foregoing technical fields in a holistic manner to ensure that at the continental level there is an effective QI system that links and synergizes the QI systems at national, regional and continental levels.

One of the 7 main focus areas of the AQP is about 'setting and implementing an African continental technical regulatory framework (ACTReF), i.e. a system that establishes how technical regulations (TRs) are developed and enforced. TRs are documents that lay down product characteristics and the parameters for ensuring compliance to those requirements. TRs are mostly developed, applied and enforced at the national level but they can become technical barriers to international trade since compliance with TRs is mandatory among trading partners.

While consolidating Africa into one single market through the AfCFTA is set to provide great opportunities for trading enterprises, businesses and consumers across Africa, regulatory divergence among AU Member States could seriously hinder the achievement of these objectives.

The United Nations Economic Commission for Africa (UNECA) estimates that AfCFTA has the potential both to boost intra-African trade by 52 per cent by eliminating import duties, and to double this trade if non-tariff barriers are also reduced. On the other hand, the Pan-African Private Sector Trade and Investment Committee (PAFTRAC) released a survey of African CEOs in 2021, where the vast majority of respondents (87 %) from 44 African countries believe AfCFTA will increase intra-African trade, at least moderately. Besides, 85 % of the respondents believe that the AfCFTA will have a positive impact on the regulatory environment for doing business while 82 % think of the same for achieving standards compliance. Around 28 % of respondents also see the availability (or non-availability) of technical facilities for assuring compliance with standards as a main constraint when trading within the region.

The expectations arising out of the AfCFTA are thus both challenging and optimistic. It is quite timely that the implementation of the AQP, in general, but more specifically its component about setting up an ACTReF, will lay down solid foundations to tackle technical barriers to trade effectively.



## 2. Vision and objectives

### 2.1. Vision

The ACTReF operates at national, regional and continental levels in a coordinated manner to enable all technical regulations developed/adopted in Africa to fully conform to the WTO TBT and AfCFTA agreements.

### 2.2. Overall objective

To contribute towards bringing regulatory convergence in matters of technical regulations among AU Member States and RECs in order to increase intra-African trade by minimizing technical barriers to trade.

### 2.3. Specific objectives

- 2.3.1. To support AU Member States to adopt good regulatory practices (GRP) in developing and enforcing technical regulations.
- 2.3.2. To improve regional and continental integration using RECs as building blocks to bring about technical harmonization affecting trade.
- 2.3.3. To support AU Member States to measure the level at which they are regulating with the aim of avoiding over-regulation and under-regulation and subsequently to take corrective measures if needed.
- 2.3.4. To set up mechanism to designate priority products for the continent for which technical regulations are considered necessary and allocate the resources to develop such regulations in accordance with best practices, including the development of Harmonized African Standards which may be referenced in the TRs.
- 2.3.5. To enhance the capability at continental level to ensure that conformity assessment procedures for regulated goods are internationally-recognized.
- 2.3.6. To enhance market surveillance mechanisms to guard against import of sub-standard and dangerous goods with the aim of establishing an early warning system across the continent.
- 2.3.7. To develop and deploy a training and capacity building programme for regulators to apply GRP and understand the underlying technical aspects regarding conformity.
- 2.3.8. To adopt mechanisms for International Regulatory Co-operation (IRC) among AU Member States covering not only regulators but also non-regulators, such as conformity assessment bodies.

## 3. Justification for an ACTReF

### 3.1. Why a technical regulatory framework?

A technical regulatory framework is a system that establishes how technical regulations are developed and enforced. The way this is done has to conform to the requirements of the WTO TBT Agreement as it is an obligation for WTO Members. The AfCFTA Agreement, in its Annex 6 on Technical Barriers to Trade, stipulates that the *“WTO TBT Agreement shall form the basis of this Annex”* and that *“State Parties reaffirm their rights and obligations under the WTO TBT Agreement in respect of the preparation,*

*adoption, and application of standards, technical regulations, conformity assessment procedures and related activities*". The AfCFTA is thus fully aligned with the WTO TBT requirements which means that AU Member States who are State Parties to the AfCFTA or to the WTO have an obligation to conform to the WTO TBT requirements with regard to technical regulations.

As indicated above, a framework is a system and as all systems, the various components should work as a whole and be interdependent. In matters of technical regulations, the effective development of TRs relies on a proper standards development system. Similarly, the effective enforcement of TRs relies on reliable and competent conformity assessment procedures which in turn rely on an internationally-recognized accreditation system as well as on a metrology system that has access to an internationally-traceable measurement system. Because of the inter-linkages and interdependency among so many elements, it is necessary to take a systems approach through a framework-type arrangement so as to consolidate the whole regulatory system. It should be noted that the AQP will also be managed through a systems approach to cover the fields other than technical regulations.

It should be noted that it is not only the technical components of the QI, i.e. standardization, technical regulations, conformity assessment, accreditation and metrology, which need to be considered and managed as a system but also the various intervention levels, i.e. the national, regional and continental actions.

### 3.2. Why an ACTReF at continental level?

Although technical regulations are mostly developed, applied and enforced at the national level to pursue national policy objectives, they enter into the picture as soon as cross-border trade happens. The African continent has had a long history of regional cooperation through several Regional Economic Communities (RECs), 8 of which are recognized by the AU namely the Arab Maghreb Union (UMA); the Common Market for Eastern and Southern Africa (COMESA); the Community of Sahel-Saharan States (CEN-SAD); the East African Community (EAC); the Economic Community of Central African States (ECCAS); the Economic Community of West African States (ECOWAS); the Intergovernmental Authority on Development (IGAD) and the Southern African Development Community (SADC).

Despite the cooperation mentioned above, challenges still remain. Meyer et al. (2010)<sup>10</sup> reviewed 7 RTAs in sub-Saharan Africa, namely the EAC, ECOWAS, the Central African Economic and Monetary Union (CEMAC), COMESA, the Southern African Customs Union (SACU), SADC and the West African Economic and Monetary Union (WAEMU), of which 4 are AU-recognized RECs. The study found that only one RTA referred explicitly to the WTO TBT Agreement while most of the RTAs refer to the elimination of TBT-related barriers or harmonisation of legitimate measures but use broad and non-mandatory language. Few of the 7 RTAs require or encourage parties to accept as equivalent the other parties' regulations and conformance procedures. Mutual recognition is envisaged by some, but mostly as a goal and in broad terms. None of the agreements reviewed require that parties explain the reasons for non-recognition. Finally, there are no clauses prescribing transparency and no procedures for dealing with disputes over TBT matters.

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<sup>10</sup>Meyer, N. et al. (2010-06-02), "Bilateral and Regional Trade Agreements and Technical Barriers to Trade: An African Perspective", OECD Trade Policy Papers, No. 96, OECD Publishing, Paris.

Besides, heterogeneous trade agreements among countries in Africa could undermine the efficiency of rules under the AfCFTA. For instance, challenges related to non-tariff measures are compounded by overlapping trade schemes and heterogeneous rules, with several countries belonging to more than one REC<sup>11</sup>. The situation makes compliance with trade rules costly and has impeded trade within RECs<sup>12</sup>. Besides, the limited success of regional trade agreements in Africa to date has been partly due to failures in trade governance and a lack of harmonized regulatory regimes<sup>13</sup>.

Nevertheless, these RECs are the building blocks of the AfCFTA and the entry into force of this Agreement since 20 May 2019 constitutes a formidable opportunity to address some of the gaps mentioned. Article 18 of the Protocol on trade in services specifically calls on AfCFTA State Parties to develop regulatory cooperation while in its article 28 encourage Member States of the AU to develop a framework document on Regulatory Cooperation. Under the AfCFTA protocol on trade in goods at Article 2, enhanced cooperation in the areas of TBTs and SPS is pursued as objective to boost intra-African trade though the term “regulatory cooperation “ is not used anywhere. However, the preamble to the Protocol on Trade in Goods does commit to “expanding intra-African trade through the harmonisation, coordination of trade liberalisation and implementation of trade facilitation instruments across Africa, and cooperation in the area of quality infrastructure, science and technology, the development and implementation of trade related measures.”

Although efforts are being made to harmonize trade rules among RECs, for example through the tripartite free trade area (TFTA) agreement among COMESA, EAC and SADC, the AfCFTA can take these efforts to a continental level. It is now critical to work towards ensuring the convergence of trade rules and practices not only within this Agreement but also between the AfCFTA and the RECs. Concerted efforts and cooperation among States Parties and across RECs are required to reduce the complexity of the regulatory landscape with regard to regional trade, build synergies among the various trade arrangements and achieve integration. This is recognized in the various provisions of the AfCFTA that emphasize cooperation and mutual assistance.

From the foregoing, it is clear that regulatory convergence efforts at continental level would provide effectiveness and efficiency benefits to all AU Member States within the wider scope of the AQP.

### 3.3. Scope of ACTReF

#### 3.3.1. At continental level

It is important to emphasize that the regulatory harmonization effort under ACTReF at the continental level is an exhortative and cooperative approach with best practice recommendations, including GRP, to be applied at all levels in Africa, including at the levels of AU Member States and RECs. Considering that the objectives of ACTReF are to align to international best practices and that AU Member States who are members of the WTO and AfCFTA have already committed to comply with the requirements of these bodies, they should not find any issue in adopting and applying ACTReF. Since the regulatory function is the sole responsibility of AU Member States, it is expected that they will voluntarily adopt ACTReF recommendations so that the regulatory management systems across the whole continent are aligned.

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<sup>11</sup> Economic Development in Africa Report 2021: Reaping the Potential Benefits of the African Continental Free Trade Area for Inclusive Growth, UNCTAD, 2021

<sup>12</sup> (Chacha, 2014; Keane et al., 2010) cited in UNCTAD, 2021

<sup>13</sup> (Erasmus, 2020; Keane et al., 2010) cited in UNCTAD, 2021

There is no African continental level supranational entity, such as the EU, which can bring the desired level of harmonisation and produce regulations applicable to all AU Member States. Nevertheless, the principles that govern better regulation in the EU may be adopted under ACTReF as they pursue similar objectives.

### 3.3.2. At national level

The best practice recommendations adopted at continental level through ACTReF can be translated into national best practices by the adoption of National Technical Regulatory Frameworks (NaTReFs). NaTReFs would be aligned with ACTReF and would take into account the specificities of each country. AU Member States do present significant differences in how they operate their regulatory management functions. The World Bank's Global Indicators of Regulatory Governance (GIRG)<sup>14</sup> project explores how policymakers interact with stakeholders when shaping regulations affecting business communities. The GIRG project is a major source of recent information on regulatory governance in 186 countries, including 52 countries from Africa. The main areas covered by GIRG data include notice and comment practices in the context of new regulations, implementation of impact assessment and regulatory transparency. GIRG data from 2017-2018 for the 52 African countries show that out of a maximum score of 5, there 42 African countries which score 2 or less while only 4 countries score more than 3. This shows significant variation in the way AU Member States implement basic regulatory practices which means NaTReFs could be an important tool to help them apply GRPs.

### 3.3.3. At regional level

The issue of overlapping memberships in various RTAs in Africa was underlined in section 3.2 above. As of March 2022, African countries were participating in 43 regional trade agreements. On average, the World Bank noted that, in 2004, each African country belonged to four RTAs but this figure might be slightly higher in 2022.

Some level of regulatory cooperation *de facto* exists in RTAs and as Meyer et al<sup>15</sup> showed in the 7 sub-Saharan RTAs they analysed, including 4 AU-recognised RECs, the vast majority encourage parties to harmonise their technical regulations, standards and conformity assessment procedures. Some of these RTAs call on members to harmonize TRs and product standards in accordance with international standards while only 3 out of the 7 RTAs require or encourage parties to accept as equivalent other parties' technical regulations and standards. Four of the 7 agreements encourage mutual recognition of conformity assessment results. The study shows that there is scope for going even further in terms of technical harmonization.

Not all African RTAs or AU-recognized RECs have the same ground to cover in achieving technical harmonization. Indeed, the depth of non-tariff measures (NTMs) commitments in regional agreements, particularly regarding SPS and TBT measures, depends on several factors. One is the partner States' relative income levels, as harmonization and mutual recognition of conformity assessment results tend to be easier when countries are at similar levels of development. Another is the agreement's overall integration depth. Customs unions and common markets go more easily beyond WTO commitments than free trade agreements. A third factor, which relates to the first two, is the prior degree of similarity

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<sup>14</sup> <https://rulemaking.worldbank.org/en/methodology>

<sup>15</sup> Meyer, N. et al. (2010-06-02), "Bilateral and Regional Trade Agreements and Technical Barriers to Trade: An African Perspective", OECD Trade Policy Papers, No. 96, OECD Publishing, Paris

between regulatory approaches, as harmonization or mutual recognition is much easier when regulations are *ex ante* similar. This indicates that it might be more efficient and more effective to fully involve RTA and REC management bodies in steering technical harmonization at the level of their member States.

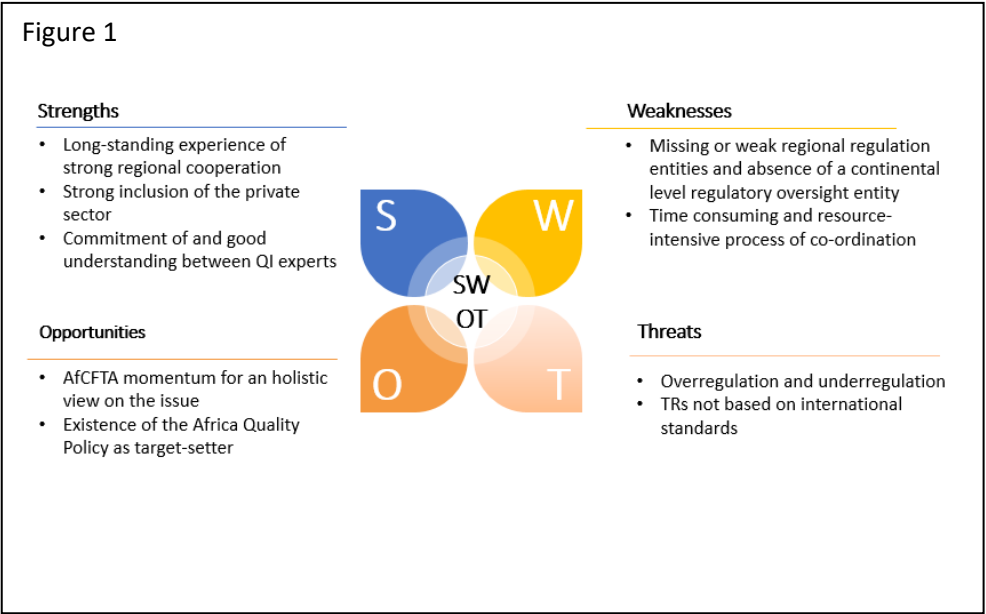
Several RTAs have felt the need reach out to other RTAs to go further in technical harmonization. For example, both ECOWAS and WAEMU aim for regional economic integration and the elimination of tariffs and non-tariff barriers (NTBs) as well as regulatory cooperation. To overcome difficulties linked to an overlapping membership, the ECOWAS and WAEMU formalized their cooperation through the establishment of a Joint Technical Secretariat (JTS) with the objective of facilitating dialogue and cooperation on trade related issues and regional integration. In order to further strengthen the mechanism of cooperation, a Memorandum of Understanding was concluded in 2012 by the ECOWAS and WAEMU. Both organizations are aware of the importance of strengthening bilateral cooperation in order to enhance the regional integration process underway in West Africa. Another example comes from the TFTA which provides for a single mechanism for COMESA, EAC and SADC, i.e. the “Tripartite NTBs Reporting, Resolving and Monitoring Mechanism”, to enlist regulatory cooperation for regulated products. Through a web-based platform, stakeholders from the three RECs can report and monitor the resolution of barriers encountered in the conduct of their business.

In light of the foregoing paragraphs, there is scope for the AU-recognized RECs to internalize ACTReF policies and recommendations and lead the regional technical harmonization efforts. But this approach is also applicable to the RTA bodies that are not recognized by the AU at this stage. One notable example is the WAEMU which implemented the first phase of West African Quality Programme (WAQP) in the eight WAEMU Member States from 2001-2005. The second phase (2007- to this date 2022) included all the ECOWAS member States (including the 8 WAEMU Member States) as well as Mauritania.

#### 3.3.4. Strengths, weaknesses, opportunities, threats (SWOT)

Africa can boast of a long-standing culture of strong regional cooperation among its RECs and their trade agreements. As we have seen earlier in this paper, operations of these RECs may not have been optimal but there is no doubt that the constraints that are hindering intra-Africa trade are well known and documented thanks to years of experience trying to navigate through the systems. However, a summary review of SWOT elements (see Figure 1) indicates that there is a real opportunity to build on the strengths of the Continent to achieve better integration.

The continent probably has a pool of very capable professionals in the area of trade regulation but perhaps no entity has endeavoured to look at the issues under a magnifying glass to properly assess the constraints and act on it. The absence of such an entity has probably been due to the lack of a regulatory strategy up to now and this is a significant weakness. The recent development of the AQP and its focus on setting up a continental regulatory strategy through ACTReF is the right step in that direction. The problem has been complemented because of excessive red tape in the setting up and operation of technical regulatory frameworks at



the national level. Lack of coordination among regulators is yet another major weakness. This only reinforces the idea that such a situation can be overcome with the right mix of policies, directions and resources. The involvement of the private sector in the effort to identify and resolve non-tariff barriers reinforces the insights that African experts have gained through collaboration, e.g. the involvement of the East African Business Council in devising a monitoring mechanism for NTBs.

With the coming up of the AfCFTA, there is a tremendous opportunity to have a holistic look at intra-African trade and deal with the regulatory constraints at the level of the continent.

Perhaps the biggest threat to ACTReF and its role in supporting the implementation of the AfCFTA is the risk of over-regulation and under-regulation which can both exist within the same country but for different products. National regulatory authorities may not even be aware that they are over-regulating or under-regulating in the absence of comparative data. This problem is further exacerbated if TRs are not based on international standards.

## 4. TRFs in regional set-ups – Lessons to draw

### 4.1. Supranational power versus coordination functions

A regulatory framework can be either at the level of an individual State, or a group of States formally involved in a regional integration agreement, or an inter-governmental organization (IGO). For obvious reasons, the rules that a regulatory framework imposes are more easily enforced at the level of a State than at the level of a regional integration organization (RIO) or an IGO. For effective enforcement, the RIO or the IGO should be vested with supranational powers. A supranational power is one that goes beyond the authority or jurisdiction of one national government. One of the best examples of a regional group having supranational powers is the European Union while the World Trade Organisation (WTO) is an example of an IGO having such powers. Indeed, the WTO agreements are the legal ground-rules for

international commerce and are implemented through a set of rules and principles that constitute the Multilateral Trading System (MTS).

#### 4.2. Africa

At the regional level in Africa, there is a mix of supranational regional organizations and those that fulfil mostly a coordination function consisting of ‘encouraging’ member States to implement any regional policy. For instance, the implementation of a framework for the harmonization of accreditation, certification, standardization and metrological activities across the WAEMU Member States is being carried out through the enactment of the highest level of community legislation, i.e. through a WAEMU regulation, which has supranational application powers.

On the other hand, the SADC agreements do not contain a binding obligation to “domesticate” the relevant SADC instruments and to make them part of the national legal systems. Article 6 of the SADC Treaty (amended version) contains the Member States’ General Undertakings and essentially leaves it to national governments to “adopt adequate measures to promote the achievement of the objectives of SADC”. SADC does not have the equivalent of the European Commission with its supranational powers<sup>16</sup>.

The EAC, through the EAC SQMT Act 2006, can declare compulsory EAC standards which actually means they declare technical regulations without calling it such. Compulsory standards are directly enforced by the EAC Partner States through a nationally appointed regulatory authority.

The Tripartite FTA establishes cooperation among COMESA, EAC and SADC, including ‘in identifying and assessing instruments for trade facilitation such as the harmonisation, and or equivalence of technical regulations’.

Under the AfCFTA protocol on trade in goods at Article 2, enhanced cooperation in the areas of TBTs and SPS is pursued as objective to boost intra-African trade. The preamble to the Protocol on Trade in Goods commits to “expanding intra-African trade through the harmonisation, coordination of trade liberalisation and implementation of trade facilitation instruments across Africa, and cooperation in the area of quality infrastructure, science and technology, the development and implementation of trade related measures.”

Although AfCFTA reaches out to the whole continent and will build upon the strengths of the AU-recognized RECs to consolidate technical harmonization, it is not vested with supranational powers. Indeed, under Article 7 on “Cooperation in Technical Regulations” of Annex 6 of the AfCFTA Protocol on Trade in Goods, the key words are cooperation and promotion.

#### 4.3. The EU

The European Union comprises one of the largest single economic areas in the world and it has set the ultimate example of regional integration, which many other regions of the world hope to replicate, including the African Union. The way EU regulations are developed provide for well-established mechanisms for consultation and cooperation among the Member States.

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<sup>16</sup> Non-Tariff Measures and Regional Integration in the Southern African Development Community, UNCTAD/DITC/TAB/2014/5



The EU guidelines<sup>17</sup> on ‘Better regulation’ is about creating legislation that achieves its objectives while being targeted, effective, easy to comply with and with the least burden possible. To do this, the EU Commission uses various regulatory instruments:

- comprehensive evaluations and fitness checks involve thorough analysis of how existing legislation and spending programmes have been performing, to check that they are efficient, effective, relevant and coherent, and that EU-level intervention is actually adding value;
- impact assessments look at the problems to be tackled, the objectives to be achieved, the trade-offs to consider, options for action and their potential impacts;
- input from stakeholders supports this work throughout the policy cycle, to provide policymakers with the best possible evidence base; and
- compliance promotion tools help Member States transpose, implement and apply EU law in a timely and correct manner.

When a third country wishes to join the EU, the accession process requires alignment of national legislation with EU rules, i.e. the partner country accepts the one-way direction of regulatory convergence (i.e. that third countries align with EU law, not the other way around). The alignment process is commonly known as “approximation”.

Working in partnership with the Member States on the implementation of EU law is one of the main components of the Commission’s enforcement policy. While the Commission should seek to prepare well-drafted, high-quality legal texts that are easy to understand, implement and apply, it should also support Member States in their subsequent efforts to implement them. Responsibility for the effective application of legislation rests with the Member States, but the Commission and Member States should agree on the best way to monitor implementation. Use of tools such as setting up an implementation strategy, use of compliance promotion tools and verification tools to monitor implementation are helpful to achieve objectives.

EU regulations and decisions become binding automatically throughout the EU on the date they enter into force while directives must be incorporated by EU countries into their national legislation. The EU Commission is responsible for making sure that all EU countries properly apply EU law.

#### 4.4. Association of Southeast Asian Nations (ASEAN)

The case of ASEAN is of particular interest to Africa as there are common traits in the two situations. Both the AfCFTA and ASEAN lack supranational powers to bring about harmonization in the field of technical regulations and they both favour a bottom-up approach leading to cooperation and agreement among Members, rather than a top-down approach as in the EU.

ASEAN manages technical regulations under the ASEAN Trade in Goods Agreement (ATIGA). Ing, Anandhika, Cadot and Urata (2019)<sup>18</sup> assert that given the heterogeneity of its members’ development levels and the lack of strong supranational bodies, ATIGA refrains from an all-encompassing, top-down

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<sup>17</sup> Better regulation guidelines, EU , 2021, [https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how/better-regulation-guidelines-and-toolbox\\_en](https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how/better-regulation-guidelines-and-toolbox_en)

<sup>18</sup> Ing, L.Y., R. Anandhika, O. Cadot and S. Urata (2019), ‘NTMs in ASEAN: Ways toward Regulatory Convergence’, in Ing, L.Y., R. Peters and O. Cadot (eds.), Regional Integration and Non-Tariff Measures in ASEAN. Jakarta: ERIA, pp.90–125



approach, but instead offers a menu of options that member states are encouraged to take, depending on circumstances. Article 75 spells out good practices for technical regulations that essentially mirror WTO provisions and are detailed in the ASEAN Guidelines on GRP. As for standards, whenever international ones are available, ATIGA stipulates that member states shall adopt them; when no international standards exist, member states shall ‘align’ national standards amongst themselves. However, as noted, there is no body in ASEAN like the EU Commission to set broad directives to guide the alignment of national standards in terms of overall regulatory objectives and, therefore, the approach is not as powerful as the EU’s ‘new approach’ in driving regulatory coherence. Article 73 requires member states to promote the mutual recognition of conformity-assessment results, as well as ‘develop and implement ASEAN Sectoral Mutual Recognition Arrangements and ASEAN Harmonized Regulatory Regimes in the regulated areas where applicable’.

However, the authors point out that In spite of ATIGA’s light-foot approach to regulatory convergence, mechanisms have been put in place in ASEAN to achieve harmonization in a number of priority sectors, under the aegis of the ASEAN Consultative Committee on Standard and Quality (ACCSQ), established in 1992. The focus on priority sectors has been an important approach for ASEAN and lessons learnt in the process have been instrumental in achieving results. Annex A gives further details on these lessons learnt which ACTReF could take on board.

## 5. Policies and principles guiding ACTReF

### 5.1. Policies

The policies governing ACTReF are indicated in the AQP and are detailed below.

#### 5.1.1. Policy

##### The AU will

- request each Member State to establish a national technical regulatory framework (NaTReF) with a view to applying a set of mechanisms and related principles of GRP recommended by the WTO TBT Committee;
- encourage RECs and Member States to align NaTReFs with any REC-level technical regulatory framework with a view to assuring regulatory coherence and regulatory harmonization aimed at minimizing TBT; close collaboration will be maintained in this process with the AfCFTA Sub-Committees on NTBs and TBT established under the AfCFTA Annexes 5 and 6 respectively; as well as with REC NTB Coordination Units;
- encourage Member States and RECs to use international standards and ARSO African Harmonized Standards as relevant as basis for technical regulations;
- encourage Member States and RECs to be linked and to share information and data on counterfeit and sub-standard goods in their markets;
- establish a continental early warning system to enhance the effectiveness of market surveillance systems operating at Member State or REC levels with a view to alerting all African countries when imports of sub-standard or dangerous goods on African soil are encountered.

#### 5.1.2. Policy measures

##### The AUC will

- develop guidance on setting up national technical regulatory frameworks (NaTReF) at the level of Member States;

- work with RECs to organize awareness and training programmes for national regulators on the NaTReF guidance document to help them understand and apply GRP, regulatory impact assessment (RIA) and other tools/principles;
- develop guidance on referencing international standards or African Harmonized Standards in technical regulations with a view to train regulators on referencing only the essential requirements of a standard necessary to meet the desired objectives of the technical regulation;
- facilitate the sharing of information, through the AU Trade Observatory, on findings of national market surveillance authorities on dangerous goods.

## 5.2. Principles

### 5.2.1. WTO TBT Agreement principles

ACTReF will be based on the following WTO TBT Committee’s principles of Good Regulatory Practice (GRP) adopted at the Sixth triennial review of the operation and implementation of the agreement on technical barriers to trade:

- (i) transparency and public consultation mechanisms;
- (ii) mechanisms for assessing policy options, including the need to regulate (e.g. how to evaluate the impact of alternatives through an evidence-based process, including through the use of regulatory impact assessment (RIA) tools);
- (iii) internal (domestic) coordination mechanisms;
- (iv) approaches to minimizing burdens on economic operators (e.g. how to implement mechanisms that ensure reflection of the TBT Agreement's substantive obligations in the design and development of regulations);
- (v) implementation and enforcement mechanisms (e.g. how to provide practical, timely and informative guidance needed for compliance);
- (vi) mechanisms for review of existing technical regulations and conformity assessment procedures (e.g. how to evaluate the effectiveness and continued adequacy of existing measures, including with a view to assessing the need for amendment, simplification or possible repeal); and
- (vii) mechanisms for taking account of the special development, financial and trade needs of developing Members in the preparation and application of measures, with a view to ensuring that they do not create unnecessary obstacles to exports from developing Members. (Note 2: In the context of Africa, this notion of “developing Members” is not relevant but one can consider categorizing AU Member States for the purpose of channelling resources and technical assistance on a priority basis under this project. The feasibility of this approach will have to be agreed upon by the AUC).

### 5.2.2. The EU principles

ACTReF will be based on the following key concepts and principles adopted by the EU Commission to implement the EU regulatory policy, also referred as ‘Better regulation’:

- (i) a comprehensive approach, i.e. covering all relevant economic, social and environmental impacts, all interested parties and every phase in the policy cycle;
- (ii) a coherent approach, i.e. taking account of all relevant high-level and long-term policy objectives of the AU;
- (iii) **proportionate** approach, i.e. while comprehensive, the approach should also be proportionate to the expected impacts and analysis should focus on areas where it matters most ;
- (iv) a **participative** approach, i.e. all interested parties should be able to contribute to policymaking by expressing their views;
- (v) an evidence-based approach, i.e. policy decisions need to be informed by the best available evidence;
- (vi) transparency, i.e. preparing laws and regulation in a transparent way (i.e. openly documenting the process, making available the evidence underpinning political decisions and explaining the underlying rationale); and
- (vii) learning from experience i.e. policymakers need to learn from the experience of implementing and applying regulations.

### 5.3. Prioritization

Both from the successful experiences of ASEAN and the principle 5.2.2 (iii) above on proportionality, ACTReF will consider regulatory harmonization in priority sectors agreed upon by AU Member States. It is likely that what are considered priority sectors for individual AU Member States and individual RECs might not be the same when considering the continental level priorities. Therefore, ACTReF Governance, in consultation with AU Member States and RECs, will establish the list of priority sectors.

Agreeing on a list of priority sectors does not mean that regulatory harmonization needs to be exclusively limited to these sectors. Prioritization helps to focus efforts from all parties concerned and favours efficiency and effectiveness in dealing with these sectors in light of resources that are available for the implementation of actions at the continental level. This does not prevent RECs or AU Member States to use the same tools of regulatory harmonization put in place under ACTReF to proceed with technical harmonization at their respective levels on their own under resources that they could mobilize.

## 6. Policies on tools to support regulatory harmonization

### 6.1. Compilation of baseline data

#### 6.1.1. Policy

Implementation of actions to achieve the vision and objectives of ACTReF will be based on principle 5.2.2 (v) above, i.e. policies and policy measures shall be formulated based on evidence. Consolidation of data from African countries on the status of their regulatory systems is essential to draw a proper baseline of the actual situation. Once a baseline is defined, it will be possible to measure progress and impact of the policies and actions over time. There is no detailed information across the continent on current regulatory systems and their performances.

The World Bank GIRG database has been mentioned in 3.3.2 and it does give indications about the regulatory governance of AU Member States. But the WB itself points out the limitations of the GIRG which does not measure everything that is important for a good regulatory system to function well. Specifically, the data does not capture the quality of existing rulemaking processes and practices. For

example, while the dataset captures if rule-makers engage stakeholders in consultation around proposed regulations, it does not reflect the quality of such discussions or the extent to which the comments lead to changes in proposed regulations.

The lack of data also makes it difficult to assess the extent of the regulatory divergence that exists among African countries. UNCTAD has developed an innovative, yet simple approach of measuring such divergence based on what is termed “regulatory distance” which measures whether or not a regulation of the same type is applied by two different countries to the same product. The measure of regulatory distance can serve to assess the extent of regulatory dissimilarity among Member States in Africa. It is clear that the tool can prove to be very useful in the context of ACTReF implementation since reducing the regulatory distance among Member States is one of the ultimate objectives. UNCTAD has been contracted by PAQI/AUC to compile data on regulatory distance on a selected number of countries. This data will consolidate data on African countries that UNCTAD already has to draw a representative picture of the regulatory distance for these countries.

#### 6.1.2. Policy measure

In addition to the UNCTAD study mentioned above, other data collection exercises will be carried out to obtain a correct baseline situation about technical regulatory systems in AU Member States and RECs.

### 6.2. Good regulatory practices (GRP) and better regulation guidelines

#### 6.2.1. Policy

In developing technical regulations, AU Member States and RECs are encouraged to:

6.2.1.1. apply the principles and practices recommended by the WTO TBT Committee under GRP; and

6.2.1.2. apply the ‘Better regulation’ principles used by the EU Commission and described above in section 5.2.2.

#### 6.2.2. Policy measures

The AU will develop guidance for use by regulators and policy-makers in AU Member States and RECs as follows:

6.2.2.1. on the application of GRP based on guidance developed by relevant international and regional organizations; and

6.2.2.2. on the application of ‘Better regulation’ practices based on the publications of the EU Commission, namely “Better Regulation Guidelines, November 2021” and “Better Regulation Toolbox, November 2021”.

### 6.3. International Regulatory Co-operation (IRC)

#### 6.3.1. Context

While implementation of good regulatory practices (GRPs) at the national level could positively contribute to improve the national regulatory management system, it falls short of addressing regulatory issues in cross-border trade. International Regulatory Cooperation (IRC) between trading partners is an effective means of building confidence through enhancing mutual understanding of regulatory systems, thereby supporting efforts that aim at removing unnecessary barriers to trade.

Several international organizations (such as the OECD, the World Bank, the United Nations Economic Commission for Europe (UNECE)) and economic groups (such as the Asia-Pacific Economic Cooperation (APEC)), have produced information and guidance on IRC to help regulators and trade experts implement it to enhance international trade. The OECD has proposed 11 IRC hierarchical mechanisms (please see Annex B for a description) that countries may use to pursue their regulatory objectives. The OECD suggests that countries can do a lot domestically to improve the coherence of their regulatory frameworks with

the international environment and build trustworthy institutions that can form the foundation of co-operation arrangements.

### 6.3.2. Policy

- 6.3.2.1. The AU and AU Member States endorse the 11 IRC mechanisms proposed by OECD and undertake to use the most appropriate ones for their respective situations to undertake regulatory cooperation.
- 6.3.2.2. AU Member States shall consider engaging at the most simple level of IRC to start with, and if necessary climb further on the ladder of more complex IRC processes.
- 6.3.2.3. AU Member States shall unilaterally take steps to implement GRP which constitutes the foundation stone without which no viable IRC could be taken forward.
- 6.3.2.4. When envisaging to engage in IRC, AU Member States shall first determine the depth of cooperation they wish to enter into, i.e. whether it is to be at the level of regulatory policies (making rules), regulatory enforcement practices (interpreting, applying, and enforcing rules), or other regulatory organizational management practices (supporting rules administration).
- 6.3.2.5. The AU and AU Member States shall make a special effort to engage in IRC involving trans-governmental networks (TGNs) as a means of building trust between peers and consensus decision-making, mainly in the area of non-regulated products. The OECD<sup>19</sup>, has in one of their surveys, already identified the PAQI institutions, namely the African Accreditation Cooperation (AFRAC) and the Intra-Africa Metrology System (AFRIMETS) as TGNs. The other two PAQI institutions, namely the African Organisation for Standardisation (ARSO) and the African Electro-technical Standardisation Commission (AFSEC) were missed out but obviously they are TGNs as well.

### 6.3.3. Policy measures

- 6.3.3.1. The AU will compile information on the success factors and barriers to IRC from AU Member States and RECs with the aim of developing an effective and a continent-wide technical regulatory cooperation mechanism.
- 6.3.3.2. The AU will develop guidance to assist AU Member States and RECs in engaging in IRC mechanisms that are the most relevant for the continent. Annex C presents a list of IRC mechanisms in operation in Africa.

## 6.4. Linking of all continent-wide NTM/TBT reporting databases

### 6.4.1. Context

Knowledge about TBTs that arise during trade and their rapid resolution is critical for the business community. The publication of Non-Tariff Barriers in EAC and the close collaboration with the East African Business Council (EABC)<sup>20</sup> for monitoring NTBs is an effective strategy. Indeed, the private sector is at the forefront when NTBs hinder trade and they are also the direct beneficiary of initiatives to reduce NTBs. But it is not enough to identify NTBs quickly and effectively – the mechanisms for addressing NTBs and resolving them should also operate effectively. A World Bank report in 2012<sup>21</sup> found that the absence of

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<sup>19</sup> THE CONTRIBUTION OF TRANS-GOVERNMENTAL NETWORKS OF REGULATORS TO INTERNATIONAL REGULATORY CO-OPERATION, Kenneth W. Abbott, Céline Kauffmann with Jeong-Rim Lee, OECD, 2018

<sup>20</sup> Monitoring Mechanism for Elimination of Non-Tariff Barriers in EAC, East African Business Council (EABC), 2007

<sup>21</sup> De-Fragmenting Africa - Deepening Regional Trade Integration in Goods and Services, World Bank, 2012

a clearly defined monitoring mechanism with time limits for action meant that each Partner State was responsible for voluntarily removing or reforming listed NTBs without being subject to possible sanctions for non-compliance.

The WTO report<sup>22</sup> states that NTBs are seen as the main impediment to trade within the TFTA region, and each of the three regional blocs has in place procedures for their reporting, monitoring and elimination<sup>23</sup>. The TFTA provides for the harmonization of these procedures under a single mechanism, i.e. the Tripartite NTBs Reporting, Resolving and Monitoring Mechanism. Through a web-based platform<sup>24</sup>, stakeholders from the three communities can report and monitor the resolution of barriers encountered in the conduct of their business. As of March 2022, there were 74 active complaints, the latest one dated 12 March 2022. The site also reports that 698 complaints were resolved.

#### 6.4.2. Policy

The AU will encourage RECs which do not yet have a publicly accessible NTB/TBT reporting and monitoring platform to create one.

#### 6.4.3. Policy measure

The AUC will invite all RECs to look into the feasibility and benefits of linking all such platforms so that there is one database for Africa where the public can access information.

## 7. Policy for regulatory harmonization approaches for Africa

### 7.1. Harmonisation of regulatory objectives

#### 7.1.1. Context

Harmonization of regulatory objectives is one way to achieve regulatory harmonization since every Government should know precisely what outcomes they expect from regulation. If GRP is systematically applied when developing TRs, the regulatory objectives should be clear. Harmonization of regulatory objectives between or among countries brings about the concept of equivalence of technical regulations when these aim the same regulatory objectives/outcomes, hence mutual recognition of one another's technical regulations. Mutual recognition (MR) means that countries agree that the proper way of reaching those regulatory objectives is to regulate performance rather than the detail of technical specifications. For MR to work, member countries need to trust each other's enforcement capabilities, which is easier when they are at similar levels of development. In Africa, the heterogeneity of the technical capabilities relative QI in different economies poses a challenge to this pre-requisite.

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<sup>22</sup> TRADE POLICY REVIEW -EAST AFRICAN COMMUNITY (EAC), WTO, WT/TPR/S/384/Rev.1 2019

<sup>23</sup> The elimination of NTBs is provided for by Article 6 of the SADC Protocol, Article 49 of the COMESA Treaty, and Article 75 of the EAC Treaty

<sup>24</sup> <https://www.tradebarriers.org/>

### 7.1.2. Policy

7.1.2.1. For the development of new TRs or the revision of the existing stock of TRs, AU Member States are encouraged to design their TRs to achieve regulatory objectives aiming at performance rather than on detailed specifications.

7.1.2.2. If the new or revised TRs are to be based on harmonized African Standards (HAS), in case international standards do not exist, the HAS should be a performance standard rather than a composition-based standard, if feasible.

### 7.1.3. Policy measures

7.1.3.1. The AU will prepare guidance on this subject and make it part of the training objectives for regulators at the level of AU Member States and RECs.

7.1.3.2. Adapted training materials will also be developed and deployed for standardizers at the level of AU Member States, RECs and ARSO.

## 7.2. Harmonisation of technical regulations (TRs)

### 7.2.1. Context

Harmonisation of technical regulations among a number of a countries can best be carried out effectively if there is a supranational entity such as the EU or through inter-governmental negotiations. The 'Old Approach' used by the European Union for the purposes of technical harmonisation made the adoption of such legislation so unwieldy that it is now only used in special circumstances. The complexity of harmonizing technical regulations among countries is simply too big given that countries have many regulations on the books and achieving harmonisation in such a way would be an arduous task, not counting the fact the harmonized text would be rigid and could stifle innovation and progress.

Harmonisation of technical regulations at world level is bound to be rare, outside a system like the EU. However, it is important to promote 'harmonised or compatible technical regulations' in case a regulation is prepared of 'equivalent scope', that is, either a new one or a major revision.

### 7.2.2. Policy

Whenever a situation arises that require harmonization of TRs from several AU Member States, the process shall be considered under the policy at 7.1, i.e. harmonization of regulatory objectives.

## 7.3. Harmonisation of standards

### 7.3.1. Context

The standardization activity consists of the processes of formulating, issuing and implementing standards. Standards are voluntary but when referenced in technical regulations, they become mandatory. In Africa, some countries and at least one REC, namely the East African Community (EAC) also make their standards compulsory which in effect has the same result as declaring such standards as technical regulations. Similar to the WTO TBT Agreement, the AfCFTA Agreement, through Annex 6 on Technical Barriers to Trade, also advocates for the use of International Standards or parts thereof as the basis of technical regulations so as not to create unnecessary obstacles to international trade. Annex 6 on TBT to the AfCFTA Agreement also aims at 'identifying and assessing instruments for trade facilitation such as harmonization of standards'. In Africa, standards are developed by national standards bodies (NSBs) and regional standards organizations (e.g. the African Organisation for Standardisation (ARSO) or the African Electro-technical Standardisation Commission (AFSEC)). As of August 2022, NSBs from forty-two African countries are members of ARSO while 17 are members of AFSEC.



For priority products traded among AU Member States and which may be covered by different national standards, there is scope for harmonised regional standards to be developed and aligned, whenever appropriate, with relevant international standards so that their use in technical regulations do not create unnecessary technical barriers to trade. Harmonisation of standards thus could lead to regulatory convergence.

#### 7.3.2. Policy

AU Member States are encouraged to:

- 7.3.2.1. use international standards or, in the absence of such international standards, ARSO/AFSEC African harmonized standards, as relevant, as basis for technical regulations;
- 7.3.2.2. align their national standards referenced in technical regulations among themselves if relevant international standards or ARSO/AFSEC African harmonized standards do not exist and their development is not due in the short-term;
- 7.3.2.3. ensure that standards harmonization work at the level of ARSO and AFSEC is always carried out based on priority needs as defined by the AUC in consultation with all stakeholders under the AQP;
- 7.3.2.4. support ARSO and AFSEC with the means to develop Harmonized African Standards and ensure that standards will be developed only if they are suitable as a technical solution.

#### 7.3.3. Policy measures

AU Member States are encouraged to:

- 7.3.3.1. Ensure that ARSO and AFSEC liaise with the AfCFTA Sub-committee on Technical Barriers to Trade to facilitate AfCFTA standards harmonisation needs in terms of the AfCFTA Agreement's Protocol on Trade in Goods Annex 6 on Technical Barriers to Trade;
- 7.3.3.2. Use guidelines developed under the AQP in the matter of referencing international standards or African Harmonized Standards in technical regulations with a view to referencing only the essential requirements of a standard necessary to meet the desired objectives of the technical regulation;
- 7.3.3.3. Develop training materials and organize training courses for regulators in matters of referencing standards in technical regulations.

### 7.4. Mutual Recognition (MR)

Objective (b) of Annex 6 on TBT to the AfCFTA Agreement is to 'identify and assess instruments for trade facilitation such as harmonization of standards, equivalence of technical regulations, metrology, accreditation and conformity assessment' while objective (f) is to 'promote mutual recognition of results of conformity assessment'.

#### 7.4.1. MR of technical regulations

##### 7.4.1.1. Context

Mutual recognition of TRs result from a determination that the TRs are equivalent when their regulatory objectives/outcomes are similar. If TRs are harmonized, as in the EU, it means they are similar and

therefore the question of mutual recognition does not arise. But when TRs are not harmonized, they can still be determined equivalent and therefore mutually recognized provided the regulatory objectives are harmonized.

#### 7.4.1.2. Policy

AU Member States are encouraged to consider as equivalent and mutually recognize TRs whose regulatory objectives have been harmonized.

### 7.4.2. MR of conformity assessment results

#### 7.4.2.1. Context

Results of conformity assessment are automatically mutually recognized when the conformity assessment bodies (CABs) are accredited by an accreditation body that is signatory to the AFRAC Mutual Recognition Arrangement (MRA). When CABs are not signatory to the AFRAC MRA, then mutual recognition of conformity assessment results produced by these CABs can only be effected after an alternative type of assessment other than accreditation.

#### 7.4.2.2. Policy

The AU will encourage Member States and RECs to accept all accredited conformity assessment results or to support voluntary mutual recognition arrangements (MRAs) between conformity assessment bodies (*Note: this policy is the exact copy of the AQP policy on conformity assessment*).

#### 7.4.2.3. Policy measure

- At its 20<sup>th</sup> meeting in February 2022, the PAQI JC (Resolution 8.1) requested AFRAC to lead the development of a framework and guidance document on MRAs on Conformity Assessment for Africa.
- The AU will encourage AU Member States which do not have access to accreditation services to use the AFRAC framework and guidance document, when it becomes available, to establish MRAs between CABs.

### 7.4.3. MR of standards

#### 7.4.3.1. Context

Mutual recognition of national standards between countries<sup>25</sup> is problematic. An interesting paper<sup>25</sup> prepared by the European Committee for Standardization (CEN) and the European Committee for Electrotechnical Standardization (CENELEC) when the United States of America (USA) and EU were discussing the Transatlantic Trade and Investment Partnership (TTIP) nicely sets the scene about the challenges and risks posed by the mutual recognition of voluntary standards referenced in TRs.

On the face of it, mutual recognition of standards can appear to be an attractive proposition, avoiding the need to create a single standard. However, by definition, mutual recognition means that the two standards must be different (otherwise they would not need to be recognized as equivalent; they would be identical). Mutual recognition of standards would lead to more standards in circulation in the market place, not fewer, and this goes against the principle of harmonization as a means to reduce the number of conflicting standards. Mutual recognition could be easily possible if the different national standards set for mutual recognition were identical to international standards that have been adopted as national standards. This basis for mutual recognition simply confirms the principle of harmonization

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<sup>25</sup> [https://www.cencenelec.eu/News/Policy\\_Opinions/PolicyOpinions/TTIP\\_std\\_mutual\\_recognition.pdf](https://www.cencenelec.eu/News/Policy_Opinions/PolicyOpinions/TTIP_std_mutual_recognition.pdf)

through international standards. However, if national standards not identical with International Standards are submitted for mutual recognition, it becomes quite complex to determine their equivalence. Slight differences in the requirements stated in the standards could bring a lot of difference in the performance of products conforming to the two different standards. The best approach in this area is to proceed with harmonisation of different national standards to create one standard.

#### 7.4.3.2. Policy

If a need arises to mutually recognize different standards referenced in TRs, the AU Member States concerned shall request ARSO to develop a single harmonized African Standard on the subject to replace the different standards concerned.

#### 7.4.3.3. Policy measure

The AUC will assess the needs for harmonized African standards, establish priorities and request ARSO and AFSEC as needed to prepare such African standards within given deadlines (*Note: this policy is the exact copy of the AQP policy on standards*).

### 7.4.4. MR of accreditation

#### 7.4.4.1. Context

The TBT Agreement stipulates that WTO members have to ensure that procedures for assessment of conformity with technical regulations and standards do not create unnecessary obstacles to international trade. In that respect, WTO Members shall ensure, whenever possible, that results of conformity assessment procedures in other Members are accepted, provided that there is assurance of adequate and enduring technical competence of the relevant conformity assessment bodies in the other Member, for instance through accreditation.

Accreditation is therefore the ultimate element that builds trust in trade as to the conformity of goods to requirements, e.g. technical regulations. Accreditation is the perfect example where mutual recognition is the norm. Indeed, the recognition of national accreditation is achieved when national accreditation bodies become signatory to the AFRAC MRA.

To ensure that accreditation services are available as widely as possible in Africa, a multi-economy accreditation body in SADC (SADC Accreditation Services, SADCAS) delivers accreditation services to multiple countries, thus even removing the need for mutual recognition among these countries. The West African Accreditation System (SOAC) also is geared to provide services to multiple countries.

#### 7.4.4.2. Policy

The AU requests Member States to recognize and accept results of conformity assessment from CABs accredited by any national or multi-economy accreditation body that is signatory to the AFRAC MRA, or alternatively signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Arrangement (ILAC MRA) or the International Accreditation Forum Multilateral Recognition Arrangement (IAF MLA).

## 8. ACTReF implementation arrangements

### 8.1. Governance

The proposal for the governance of ACTReF has been formulated considering the factors described in the following paragraphs.

ACTReF is one of the policy focus areas of the AQP and the latter's governance is vested with the Specialized Technical Committee on Trade, Industry and Minerals (STC-TIM), which may delegate some of its tasks to an AQP Council that will be created. The AQP Council comprises the AfCFTA Secretariat, REC representatives and the Pan African Quality Infrastructure (PAQI) institutions. The AQP Council is expected to consider and approve an AQP Action Plan which cover all the 7 AQP focus areas, one of which is ACTReF. But all the other focus areas of the AQP are concerned with quality infrastructure technical fields.

Both the AfCFTA and the AUC have a role in the implementation of ACTReF. The AfCFTA will be responsible for ensuring that ACTReF enhances intra-African trade while the AUC will use ACTReF to work towards achieving better regulation practices on the continent in other areas, such as health, physical infrastructure, the environment, energy, etc.

In order to avoid duplication and overlaps in matters of technical regulations across the continent and to ensure maximum effectiveness and efficiency, it is proposed that ACTReF implementation should be under the responsibility of the Council of Ministers of the AfCFTA, through the Committee on Trade in Goods (CTG). The Council has as function to *"make regulations, issue directives and make recommendations in accordance with the provisions of this (AfCFTA) Agreement"*. The AfCFTA has already provided for the creation of bodies to deal with TBTs, both at continental and national levels under the Annex 6 to the Protocol on trade in good of the AfCFTA. Besides, RECs are the building blocs of the AfCFTA and therefore the mechanisms for enhanced cooperation at regional level is in-built into the Agreement.

## 8.2. Management of ACTReF implementation

### 8.2.1. At continental level

ACTReF will be managed by the Office of Legal Counsel at the AfCFTA secretariat, working together with the Unit responsible for implementation of the AfCFTA Agreement Annex on TBT.

The Sub-Committee on Technical Barriers to Trade (SCTBT), created under Article 13 of Annex 6 of the AfCFTA, shall exercise technical oversight on all the work related to implementation of ACTReF.

### 8.2.2. At national level – National Technical Regulatory Framework (NaTReF)

NaTReF will be the managed by the National Focal Points on NTBs working under the National Monitoring Committee on NTBs (NMNTB) created under Article 6 of Annex 5 of the AfCFTA.

Close collaboration will be maintained between the Sub-Committee on Technical Barriers to Trade and the Sub-Committee on Non-Tariff Barriers to Trade created under Article 4 of Annex 5 of the AfCFTA.

## 8.3. Coordination between AU Member States and RECs

It is assumed that AU Member States will contribute to the implementation of ACTReF by developing and implementing their respective NaTReFs. Furthermore, AU Member States will also work towards regulatory harmonization among themselves in the spirit of ACTReF but also at REC level in the context of the respective RTAs.

The modalities for coordination between RECs and ACTReF governance or management need to be elaborated in light of the type of roles that RECs envisage to play in ACTReF implementation.

## 9. Performance indicators

### 9.1. Introduction

In line with the AQP where performance indicators have been set, it is equally important for ACTReF's progress in achieving regulatory harmonization to be monitored and corrective actions taken in a timely manner to achieve the objectives. Two performance indicators described in 9.2 and 9.3 below will be used to measure the impact of ACTReF.

### 9.2. Regulatory distance

As mentioned elsewhere in this document, the regulatory distance measures can serve to assess the extent of regulatory dissimilarity among Member States in a given REC and thus help to map the way for achieving regulatory integration as effectively as possible. While regulatory distance measures can be of immediate interest for a group of more or less homogeneous countries within a REC, the tool can also be used to assess all AU Member States' technical regulatory frameworks with a view to reducing the regulatory distance among them. Therefore, regulatory distance data could be a significant indicator of regulatory convergence among African countries in view of the implementation of ACTReF. There are two types of regulatory distance measure described below and both will be monitored.

#### 9.2.1. Distance between regulatory structures in two countries

The regulatory distance between pairs of countries measures whether or not a regulation of the same type is applied by two different countries to the same product. Comparisons can be made between two or more countries, or entire regional groups can be benchmarked against each other. UNCTAD results show that the average regional trade agreement (RTA) cuts distance in regulatory structures by 41 % which is quite significant. Data for SADC and COMESA show that regulatory distance between their respective members are reduced by 57 % and 41 % respectively. In other words, participating in a RTA brings regulatory convergence.

The UNCTAD toolkit connects vast amounts of hard-to-grasp NTM data to a practical regulatory distance measure. The distance in regulatory structure is capable of comparing patterns of NTM regulation; in other words, do countries apply the same types of NTMs to imported products? Policymakers can use the tool to assess the status quo of NTM-related integration and to assess and benchmark the effectiveness of RTAs in fostering regulatory convergence. For instance, is there already a "core" of similar regulatory structures within a regional group, and, if so, which countries diverge from it? Related to this, is there a "shortest" way to bring the whole group to a common NTM structure. The regulatory distance measure is a powerful tool that can provide answers to these questions.

#### 9.2.2. Distance between national technical regulations and International standardizing body (ISB) recommendations

The regulatory distance metric can also be used to measure the distance between NTMs, e.g. technical regulations applied in a given country, and ISB recommendations. For example, results from an Asia-Pacific study covering several countries reveal that in most of the cases only developed countries come close to the reference point of ISB recommendations. The indicator provides interesting information for policy makers involved in regional integration and countries can also be compared. For example, while the Republic of Korea and the Russian Federation are both relatively close to the ISB recommendations (distance as defined in 9.2.2), they are quite far apart from each other in terms regulatory distance between regulatory structures (distance defined in 9.2.1). This would indicate that they achieve similarity

to international standards, but in such different ways that it does not lead to trade promoting regulatory similarity between them. Conversely, most other ASEAN member States appear in a cluster of relative proximity, but notably those ASEAN members with a lower share of intra-ASEAN trade (i.e. Viet Nam, Cambodia, the Philippines, and Indonesia) appear more distant from the rest of the group. In this latter case, it is possible that the lower participation of these 4 countries in intra-ASEAN trade could be due to the bigger distance of their regulatory requirements compared to ISB requirements. The indicator can thus unearth underlying regulatory dissimilarities hindering trade so that policy makers can take action towards better integration efforts.

### 9.3. OECD indicators of Regulatory management systems (RMS)

The concept of RMS is not mentioned in any of the WTO TBT Committee's decisions on the implementation of the WTO TBT Agreement. Since the advent of ISO 9000 series on quality management systems and the usefulness of thinking in terms of a systems approach to manage quality, this approach has been adopted in the areas of environmental management, food safety, information security, etc.

Since regulations pervade all economic activities, ensuring proper regulatory management for improving the quality of the existing stock of regulations as well as for developing new regulations is an important concern for public officials. The OECD has led work relating to the concept of quality in regulatory management, as developed by the OECD Programme on Regulatory Reform<sup>26</sup>, which fundamentally refers to the way in which regulatory management systems are organised in terms of institutions, tools and policies. While a number of international efforts have been made to assess the economic impact of regulations, few indicators exist on regulatory management systems as such. Indicators of regulatory management systems quality serve to assess countries' regulatory practices. They can help to analyse regulatory governance performance and to diagnose success factors and priority areas for further reform. They contribute to a better understanding of what good regulatory governance is, and of the links between regulatory policies and outcomes such as economic performance.

The OECD indicators for RMS will be used to develop a set of performance indicators for ACTReF to monitor progress in regulatory convergence in Africa.

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<sup>26</sup> <sup>26</sup> Jacobzone, S., C. Choi and C. Miguet (2007), "Indicators of Regulatory Management Systems", OECD Working Papers on Public Governance, 2007/4, OECD Publishing

## ANNEX A - ASEAN approach in technical regulatory harmonisation

Ramesh, Intal and Lim (2019)<sup>27</sup> have conducted a review of the sectors in which a significant degree of harmonisation has been attained in ASEAN. The Electrical and Electronic Equipment (EEE) sector has achieved a significant level of achievement in terms of harmonising technical regulations and standards, and achieving mutual recognition of conformity assessment procedures. The implementation of regional technical regulations through the ASEAN Harmonised Electrical and Electronic Equipment Regulatory Regime (AHEEERR) is fully supported by regionally adopted standards based on international benchmarks (e.g., the international standards from the International Electrotechnical Commission (IEC)) and accredited conformity assessment bodies with the capability to certify and test inspection and testing bodies. This model reflects the principle of 'One Test, One Certificate, Accepted Everywhere', which fulfils trade facilitation principles to reduce cross border transaction costs and increase speed to market. In this model, all three key components of the quality infrastructure (standards, technical regulations, and conformity assessment procedures) are harmonised, and testing and inspection capacities are raised. The latter focuses on the technical infrastructure required to implement regional regulation. In summary, the success of the EEE sector was due to the pragmatic approach of laying out the necessary foundations step by step, as follows:

- (i) Adopt a regional agreement for the uniform application and treatment of barriers to trade that arise for regulated products at the national level;
- (ii) Adopt international standards and conformity assessment procedures to demonstrate compliance with the regional agreement;
- (iii) List conformity assessment bodies for recognition to provide test reports and certifications.

However, based on the progress made in the EEE and another equally successful sector, i.e. the cosmetics sector, it appears that the following general approaches should be applied to all sectors:

- a) the adoption of harmonised, mandatory regional technical regulation and its transposition at the national level;
- b) technical infrastructure to support the implementation of the regional technical regulations, including the adoption of standards and conformance procedures based on international benchmarks;
- c) market placement requirements that take into consideration products' risk level to avoid unnecessary over-regulation that can impede trade; and
- d) the adoption of a multi-stakeholder approach to support the effective implementation of the regional technical regulations.

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<sup>27</sup> Ramesh, S., P. Intal Jr., and H. Lim (2019), 'ASEAN Vision 2040 and Key Strategies on Standards and Conformance', in Intal, P. and M. Pangestu, Integrated and Connected Seamless ASEAN Economic Community, Jakarta, ERIA, pp. 50–76

## ANNEX B -Types of IRC mechanisms

The OECD (2013) has proposed the following 11 IRC mechanisms that countries may use to pursue their regulatory objectives:

- i. Integration/harmonisation through supranational institutions;
- ii. Specific negotiated agreements (treaties/conventions);
- iii. Regulatory partnership between countries;
- iv. Through intergovernmental organisations;
- v. Regional agreements with regulatory provisions;
- vi. Through Mutual recognition agreements (MRAs);
- vii. Through Transgovernmental networks;
- viii. Formal requirements to consider IRC when developing regulations;
- ix. Recognition of international standards;
- x. Soft law;
- xi. Dialogue/informal exchange of information.

The above list is arranged in a hierarchy, with the most formal mechanism at the top and least formal at the bottom. Sometimes referred to as a ladder, the complexity of IRC increases as one moves up the ladder.

It is important to point out that for any IRC outcome to be successful, economies should first build the national regulatory foundation on which IRC will stand. The OECD suggests that countries can do a lot domestically to improve the coherence of their regulatory frameworks with the international environment and build trustworthy institutions that can form the foundation of co-operation arrangements. Implementing GRP provides an essential first step and building block of IRC. Beyond helping to avoid the unnecessary regulatory divergences through better informed rulemaking, they foster the mutual knowledge and confidence needed across jurisdictions for stronger forms of IRC. They, however, do not in themselves necessarily ensure the expected outcome of IRC, which may require going beyond unilateral action and entering bilateral, regional or international forms of co-operation.

Trans-governmental institutions involve direct co-operation among individual units of government, such as regulatory agencies, which act without strong control or direction by their respective governments. The relatively informal legal basis of TGNs has implications for organisational structure. TGNs rarely involve hierarchical relationships, with certain members authorized to make decisions binding on others. Instead, they feature relatively “flat” organisational structures, dominated by horizontal ties between peers and consensus decision-making.



## ANNEX C -Known IRC mechanisms in Africa

The table below illustrates what kind of examples are known in Africa for each of the IRC mechanisms mentioned in Annex B. The list is not exhaustive certainly and other cases need to be further researched.

Table – Examples of IRC mechanisms in Africa

<b>1. IRC mechanism</b>	<b>Known examples in Africa in the area of technical regulations</b>
Integration/harmonization through supranational institutions	EAC provision for declaring compulsory standards
Specific negotiated agreements (treaties/conventions)	<ul style="list-style-type: none"> <li>• Treaty Establishing the African Economic Community popularly referred to as the Abuja Treaty</li> <li>• Various RTAs</li> <li>• African Medicines Agency Treaty</li> </ul>
Regulatory partnership between countries	EAC Pesticide regulatory system
Intergovernmental organizations	IRENA with objective of certifying persons with Sustainable Energy skills and work on standards and quality for small wind turbines
Regional agreements with regulatory provisions	No known cases except for the RTAs
Mutual recognition agreements (MRAs)	MRA for EAC Engineers signed in 2012
Transgovernmental networks	<ul style="list-style-type: none"> <li>• PAQI institutions</li> <li>• Algeria, Tunisia, Egypt status as individual signatories of bilateral arrangements with the European co-operation for Accreditation (EA)</li> </ul>
Formal requirements to consider IRC when developing regulations	<ul style="list-style-type: none"> <li>• Various RTAs</li> <li>• Tripartite FTA</li> </ul>
Recognition of international standards	<ul style="list-style-type: none"> <li>• AfCFTA</li> <li>• Various RTAs</li> <li>• Tripartite FTA</li> </ul>
Soft law	<ul style="list-style-type: none"> <li>• African Agenda 2063</li> <li>• Boosting Intra-African trade (BIAT).</li> <li>• Accelerated Industrial Development for Africa (AIDA)</li> </ul>
Dialogue/informal exchange of information	<ul style="list-style-type: none"> <li>• East African Business Council</li> <li>• African Manufacturers Association (AMA)</li> <li>• The African Business Council (ABC)</li> </ul>