



## How will the AfCFTA Institutions contribute to Compliance?

Gerhard Erasmus and Trudi Hartzenberg

The AfCFTA is a member-driven construct. The implementation of the adopted obligations is the responsibility of the State Parties. But since the underlying motive is continent-wide integration, such a design must have institutions to ensure uniform outcomes and convergence of national policies and measures. Fragmentation should be avoided.

Article 9 of the AfCFTA Agreement provides for an “*institutional framework for the implementation, administration, facilitation, monitoring and evaluation of the AfCFTA.*” It consists of the Assembly, the Council of Ministers, the Committee of Senior Trade Officials, and the Secretariat. Political control and oversight through institutions consisting of representatives of the State Parties (both Ministers responsible for trade and related matters and their Senior Officials) are prominent features of this design. Independent institutions with supra-national powers are absent.

The African Union **Assembly** shall provide oversight and strategic guidance on the AfCFTA, including the Action Plan for Boosting Intra-African Trade (BIAT). The Assembly shall have the exclusive authority to adopt (on the basis of consensus) interpretations of the AfCFTA Agreement on the recommendation of the Council of Ministers.<sup>1</sup>

The AU Assembly meets at least once a year for ordinary sessions. A Member State (of the African Union) can request an additional meeting if approved by a two-third majority. Although the Assembly has the final vote on resolutions, they often originate in other agencies and committees, coming to the Assembly from the Executive Council of Ministers only after the Council has held a primary vote on any given resolution.<sup>2</sup>

The **Council of Ministers** of the AfCFTA consists of the Ministers responsible for Trade or such other ministers, authorities, or officials duly designated by the State Parties.<sup>3</sup> Only State Parties are represented in the AfCFTA’s Council. It will be the institution responsible for decisions about the implementation of the AfCFTA and its

---

<sup>1</sup> Art 10 AfCFTA Agreement.

<sup>2</sup> [http://www.experience-africa.de/index.php?en\\_assembly-au](http://www.experience-africa.de/index.php?en_assembly-au)

<sup>3</sup> Art 11 AfCFTA Agreement.

Protocols but must report to the Assembly through the Executive Council of the AU Assembly. It can take decisions which shall be binding on State Parties.

The **Committee of Senior Trade Officials** consists of Permanent or Principal Secretaries or other officials designated by each State Party.<sup>4</sup> It shall, subject to directions given by the Council of Ministers, meet at least twice a year and shall operate in accordance with the rules of procedures as adopted by the Council of Ministers.

The Committee is responsible for more immediate tasks and implementation of decisions. It reports to the Council of Ministers. The Committee will be composed of all AfCFTA State Parties and will not be representative of the different RECs. The latter have their own membership configurations. Some of their Members belong to more than one REC.

The **RECs** (not customs unions and regional trading arrangements mentioned in Article 19(2) of the AfCFTA Agreement) shall be represented in the Committee of Senior Trade Officials, in an advisory capacity. Exactly how this representation will happen and how all the different RECs (some of which do not have FTAs) will act through a single mechanism, is not yet clear.

The **Secretariat** shall be a functionally autonomous institution within the AU system with an independent legal personality but shall be autonomous of the AU Commission.<sup>5</sup> The “legal personality” of the AfCFTA Secretariat is unique. It is not typical for Secretariats of African (or other) trade arrangements to be endowed with their own, separate legal personality, because legal personality is an indication of independence and of being endowed with powers to undertake legal transactions in their own right.

The Secretariat will operate on a full-time basis. Its headquarters are in Accra, Ghana. The Funds of the Secretariat shall come from the overall annual budgets of the AU. The Assembly shall establish the Secretariat, decide on its nature, location and approve its structure and budget. The roles and responsibilities of the Secretariat shall be determined by the Council of Ministers of Trade.

The Secretariat’s specific responsibilities include the following:

- State Parties must notify each other, through the Secretariat, of laws, regulations, procedures and administrative rulings of general application as well as any other commitments under an international agreement relating to any trade matter covered by the AfCFTA Agreement.<sup>6</sup>

---

<sup>4</sup> Art 12 AfCFTA Agreement.

<sup>5</sup> Art 13 AfCFTA Agreement.

<sup>6</sup> Art 17 AfCFTA Agreement.

- State Parties shall also, through the Secretariat, promptly provide information and respond to questions pertaining to an actual or proposed measure.<sup>7</sup>
- State Parties shall notify the Secretariat of any international and regional agreement pertaining to or affecting trade in services with Third Parties.<sup>8</sup> The Secretariat shall promptly circulate the said notification to other State Parties.
- The Secretariat must circulate information on the modification of Schedules of Specific Services Commitments to State Parties.<sup>9</sup>
- The Secretariat will be responsible for technical assistance and capacity building. It shall, for example, coordinate the provision of technical assistance in the area of trade in services.<sup>10</sup>
- The Secretariat shall provide technical assistance to State Parties in collaboration with partners, on request by such State Parties, to enhance the capacities of State Parties in the application of trade remedies measures.<sup>11</sup>
- The Secretariat shall, in addition, develop mechanisms for cooperation in technical assistance and capacity building to address standards, technical regulations, conformity assessment, accreditation and metrology.<sup>12</sup>

In the context of dispute settlement, the Secretariat shall facilitate the constitution of Panels and also assist Panels especially on legal, historical and procedural aspects of the matter and provide secretariat support.<sup>13</sup>

---

<sup>7</sup> Ibid.

<sup>8</sup> Art 5 AfCFTA Protocol on Trade in Service.

<sup>9</sup> Art 23 Protocol on Trade in Services.

<sup>10</sup> Art 27(3) AfCFTA Protocol on Trade in Services.

<sup>11</sup> Art 10 AfCFTA Trade Remedy Annex.

<sup>12</sup> Art 12(2) AfCFTA Annex on Technical Barriers to Trade.

<sup>13</sup> Art 29 Protocol on Rules and Procedures on the Settlement of Disputes.