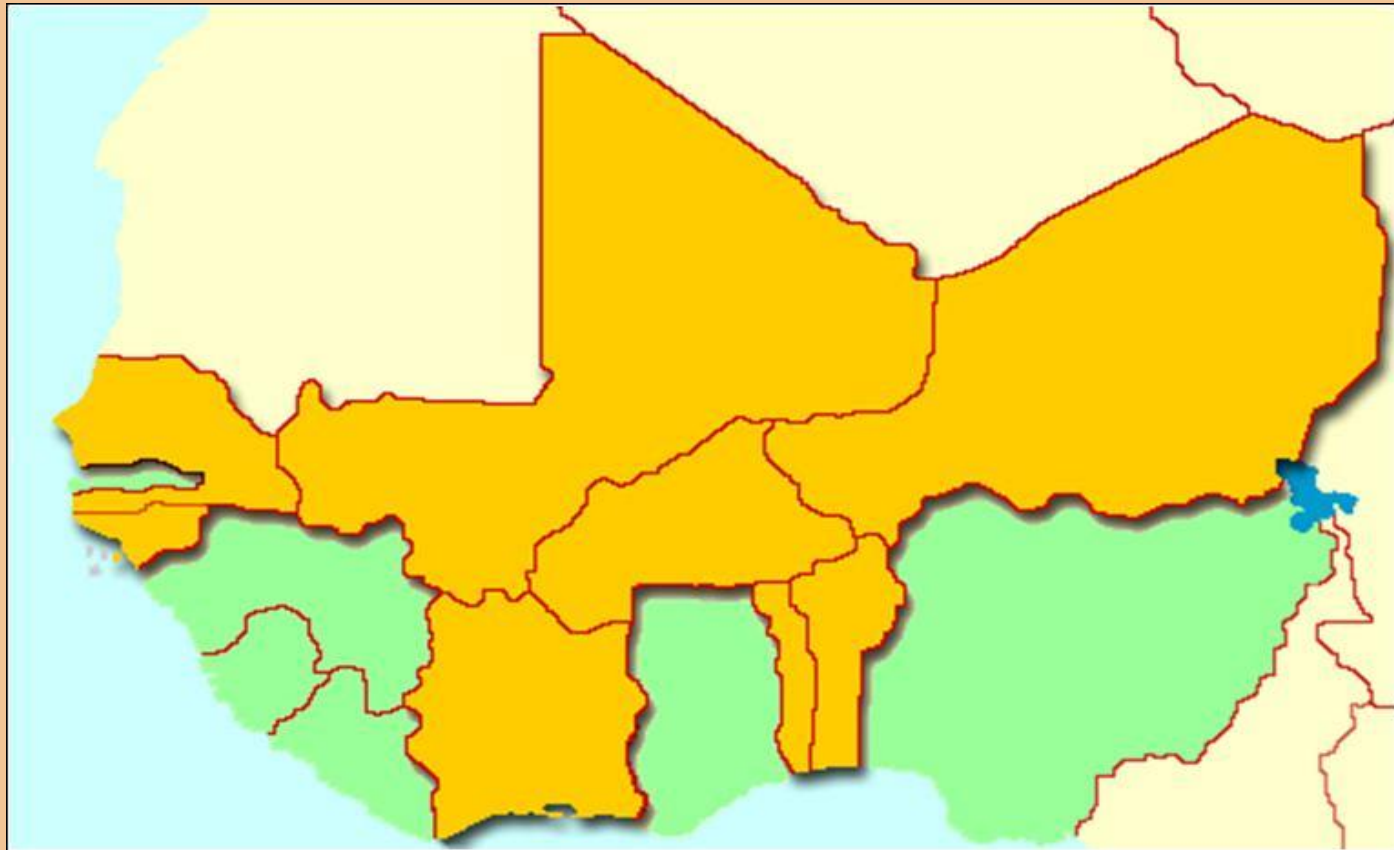


W A E M U



BENIN - BURKINA FASO - COTE D'IVOIRE - GUINEA BISSAU - MALI - NIGER - SENEGAL - TOGO



HARMONIZATION OF LEGISLATIONS, REGULATIONS AND PUBLIC PROCUREMENT PRACTICES IN AFRICA

DR ERIC PATRICK KY

TOP START OF REFORMS

- At the end of the 1998 Conference on Public Procurement in Africa, which initiated a wide-ranging reform process in this area, the following **main recommendations** were made with a view to enhancing the efficiency of the national procurement systems of African States :

1998 RECOMMENDATIONS

- **1. The establishment of a legal framework for public procurement in accordance with the United Nations Commission on International Trade Law Model Procurement Law (CNUDCI);**

1998 RECOMMENDATIONS

- **2. The empowerment of the purchasing function through the creation of central, decentralized or deconcentrated purchasing entities;**

1998 RECOMMENDATIONS

- **3. The establishment of **regulatory bodies** to enable policy-making and effective auditing of the procurement chain**

1998 RECOMMENDATIONS

- **4. The setting up of control bodies for the procurement chain;**

1998 RECOMMENDATIONS

- **5. Professionalization of the procurement chain through an appropriate human resources policy by creating a body of civil servants specialized in procurement.**

1998 RECOMMENDATIONS

- **24 YEARS AFTER THE CONFERENCE OF ABIDJAN**
- **With regard to these basic standards, no African state has fully finalized its reform program, and the discrepancies, confirmed by audits, are an indicator of the strong perception at the level of the public decision-maker that, through public procurement, something akin to **state sovereignty** is manifest.**

1998 RECOMMENDATIONS

- Some have even described public procurement as the "**last bastion of state protectionism**".
- These properties obviously conflict with the consubstantial objectives of the economic freedoms pursued by the African regional integration project of the **FTAA** (African Continental Free Trade Area)

EXISTING

- Procurement reform initiative, each African state had its own procurement rules and practices that were **disconnected** from international standards.
- Prior to the **2000s**, audits revealed an average of at least **80%** of public contracts awarded by the direct agreement procedure per African country. This constituted a governance flaw.

INSTRUMENTALIZATION OF PUBLIC PROCUREMENT FROM A GOOD GOVERNANCE PERSPECTIVE

Despite the failure of the main recommendations of this first meeting of public procurement in Africa, the community of international technical and financial partners of developing countries have decided to strengthen good governance in the field of procurement for the efficiency of public expenditure.

INSTRUMENTALIZATION OF PUBLIC PROCUREMENT FROM A GOOD GOVERNANCE PERSPECTIVE

Indeed, the TFP community had a clear awareness of the weight of public procurement in public spending in Africa, which varies from 10 to 15% of GDP.

2005 PARIS DECLARATION ON AID EFFECTIVENESS

This high **ratio of public procurement to GDP** explains why, in 2005, the TFPs decided to harmonize their interventions in emerging countries, particularly in Africa, through the Paris Declaration on Aid Effectiveness.

Among the **12 indicators** of this Paris Declaration, **2** are directly related to public procurement, namely:

2005 PARIS DECLARATION ON AID EFFECTIVENESS

Indicator 2: Reliable country systems

- Many partner countries with procurement and public financial management systems that either (a) already adhere to generally accepted good practices or (b) have a reform program in place to achieve this goal.

2005 PARIS DECLARATION ON AID EFFECTIVENESS

Indicator 5b: Use of National Procurement System

- **Percentage of donors and aid flows using partner country procurement systems that either (a) already adhere to generally accepted good practices or (b) have a reform program in place to achieve this goal.**

2008 ACCRA AGENDA FOR ACTION

As an extension of the Paris Declaration, the Accra Agenda for Action (AAP) of 2008 includes actions specific to public procurement

2008 ACCRA AGENDA FOR ACTION

- **Improving the cost effectiveness of Aid Delivery (ODR)**
- **(c) Donors will promote the use of local and regional sources of supply by ensuring that procurement procedures are transparent and allow local and regional firms to bid. We will develop examples of good practices to help improve the ability of local firms to win aid-funded contracts.**

2008 ACCRA AGENDA FOR ACTION

- **Improve transparency and accountability to our publics on the results achieved**
- a) **Improve aid transparency.** Developing countries will facilitate parliamentary oversight by ensuring greater transparency in the management of public finances, including by making public the amount of revenues, budgets, expenditures, and contracts awarded, and the findings of audit reports. Donors will provide regular, detailed and timely information on the volume, allocation and, where available, the results of development spending to enable more accurate budgeting, accounting and auditing by developing countries.

2008 ACCRA AGENDA FOR ACTION

- **Improve transparency and accountability to our publics on the results achieved**
- **d) If development funds are to be used efficiently and effectively, donors and partner countries must make every effort to combat corruption.**

TUNIS DECLARATION ON PUBLIC PROCUREMENT IN AFRICA 2009

Specifically devoted to public procurement in Africa, the Tunis Declaration initiated **second generation** reforms such as:

- **Sustainable Public Procurement (SPP);**
- **The dematerialization of public procurement.**

HARMONIZATION OF PUBLIC PROCUREMENT IN AFRICA

- The harmonization of public procurement laws, regulations and practices in Africa should be undertaken at a pan-African level by the African Union.**
- The success of this harmonization at the African continental level will depend heavily on the leadership and even the lobbying that the AU will play.**

AN AFRICAN MODEL LAW ON PUBLIC PROCUREMENT

- The AU should adopt a Model Public Procurement Law for the attention of all African states that are considering reforming their legislation.
- This model law could be usefully inspired by:
 -
 - The **UNCITRAL** Model Law on Public Procurement and
 - From the (Agreement on Government Procurement **GPA**) of the WTO

AN AFRICAN MODEL LAW ON PUBLIC PROCUREMENT

- **This African Model Procurement Law will be a guideline for all AU states to perform their national procurement systems in accordance with this pan-African instrument.**

REGIONAL HARMONIZATION OF PUBLIC PROCUREMENT

- In the absence of an African model procurement law, harmonization of legislation can be pursued at the regional level.**
- Several examples can illustrate these regional initiatives:**
 - WAEMU initiatives**
 - COMESA initiatives.**
- I will share with you the initiatives of WAEMU member states**

HARMONIZATION OF PUBLIC PROCUREMENT IN UEMOA

- **Based on a historical monetary community among its members, WAEMU's main objectives are to establish a common market through the gradual removal of barriers to freedom of movement and trade and measures having equivalent effect to quantitative restrictions, thanks in particular to the approximation of legislation and the coordination of the sectoral policies of Member States.**

WAEMU

- Created by the Treaty of Dakar (SENEGAL) of 10 January 1994 between 8 West African States which are:
 - *BENIN*
 - *BURKINA FASO*
 - *CÔTE D'IVOIRE*
 - *GUINEA BISSAU*
 - *MALI*
 - *NIGER*
 - *SENEGAL*
 - *TOGO*

STATISTICS

- **WAEMU countries account for 10% of the public contracts awarded annually in Africa, i.e. 5 billion US dollars**
- **This is equivalent on average to 10% of the GDP of WAEMU member states**

THE REGIONAL PROJECT FOR THE REFORM OF PUBLIC PROCUREMENT IN UEMOA

- **The Regional Public Procurement Reform Project aims at harmonizing the legislations of member states.**
- **It is fully in line with the objective set out in **Article 67** of the **WAEMU Treaty**, which prescribes harmonization of budget legislation and procedures, finance laws and public accounts of member states.**

THE REGIONAL PROJECT FOR THE REFORM OF PUBLIC PROCUREMENT IN UEMOA

- The Program stems from a proposal made in **April 2000** by the WAEMU Financial Policy Department and adopted by the Council of Ministers through Decision No. **01/2000/CM/WAEMU** of **June 29, 2000**, adopting the Concept Paper for the Public Procurement Reform Project in WAEMU Member States.

THE OBJECTIVES OF THE WFP-WAEMU

- *The WAEMU Council of Ministers, in Directive No. 02/2000 of June 29, 2000 on the Code of transparency in the management of public finances within WAEMU, considered that "the heterogeneity of public procurement rules within WAEMU was detrimental to the integration process and that they should be harmonized.*

THE OBJECTIVES OF THE WFP-WAEMU

- **Thus, in addition to the efficiency of public contractual action, the public procurement reform process within the WAEMU area is also part of the construction of the common market, through the pursuit of economic performance and trade promotion objectives by strengthening the effectiveness of freedom of movement, mainly of an economic nature.**

- **COMPONENTS OF THE WFP-WAEMU**
- **Component I: Development and promotion of the community regulatory framework with funding:**
- **Transposition of the WAEMU public procurement directives;**
- **Definition of a regional non-judicial appeal mechanism**
- **Definition of the Community thresholds for publication of contracts ;**

- **COMPONENTS OF THE WFP-WAEMU**
- **Component II: Institutional and human capacity building**
- **Institutional and financial strengthening of the WAEMU Regional Public Procurement Observatory ;**
- **Strengthening the institutional and logistical capacities of member states;**
- **Dematerialization of public procurement procedures;**

MAIN ACHIEVEMENTS OF THE WFP-WAEMU

Establishment of a new legal order for public procurement within WAEMU through the adoption of basic texts, namely

- **Directive No. 04/2005/CM/WAEMU of December 9, 2005 on procedures for awarding, executing and settling public contracts and public service delegations**
- ***Directive No. 05/2005/CM/UEMOA of December 9, 2005 on the control and regulation of public contracts and public service delegations.***

- **THE NEW INSTITUTIONAL ORDER OF PUBLIC PROCUREMENT**

- **Establishment of the principle of the separation of the functions of REGULATION from the functions of CONTROL and the functions of AWARDING**

THE REGIONAL OBSERVATORY OF PUBLIC PROCUREMENT

- In order to ensure a **multilateral surveillance** mechanism between the member states, the directives laid the legal foundations for an inter-state control system in the specific field of public procurement.

IMPACT OF THE WTO ON REGIONAL INTEGRATION

- ***The multilateral surveillance established in the specific sector of public procurement by the ORMP contributes to the effective achievement of the Community objectives of the common market defined in Article 64 of the Treaty, namely **the improvement of the international competitiveness of the Union's economies.*****

THE SYLLABUS OF CAPACITY BUILDING AND PROFESSIONALIZATION

The WFP-WAEMU has defined a syllabus for the capacity building strategy and for the professionalization of human resources in public procurement.

IMPACT OF THE SYLLABUS ON INTEGRATION

This syllabus aims to develop the emergence of a body of civil servants capable of driving good practices in the field of public procurement within the WAEMU internal market

THE EXTENSION OF THE SCOPE OF COMPETITION

- The obligations of a regional public procurement advertisement are a formality that serves the transparency of the procurement process and makes it possible to control the obligations prescribed by the WAEMU public procurement directives**

**WAEMU
ADVERTISING
THRESHOLDS IN
USD BILLION**

CONTRACTING AUTHORITIES

**TYPES OF
CONTRACTS**

**State, local
authorities, public
companies and
similar**

**Public law and
similar bodies**

**State-owned
companies and
companies with
majority public
participation**

WORK

5 833 333

6 250 000

6 666 666

SUPPLIES

833 333

1 250 000

1 666 666

SERVICES

833 333

1 250 000

1 666 666

**INTELLECTUAL
SERVICES**

333 333

416 666

416 666

IMPACT ON THE COMMON MARKET

- ***Increased intra-regional trade and commerce in the Common Space by eliminating the negative effects of geographical distance of bidders on competition***

IMPACT ON THE COMMON MARKET

- ***Alerting economic operators to regional business opportunities.***
- ***Strengthening of the respect of the principle of equality of candidates and bidders from the point of view of access to information on business opportunities related to public procurement***

THE PRINCIPLE OF MUTUAL RECOGNITION

- **Among the fundamental principles of WAEMU public procurement, this principle implies that member states must place mutual trust in their administrative systems, particularly with regard to the administrative formalities and certifications required of bidders as a condition of participation in public procurement.**

THE PRINCIPLE OF MUTUAL RECOGNITION

This principle requires the contracting authorities to presume the authenticity of administrative, professional, fiscal and social certificates issued by official bodies based in the Member States as proof of the administrative, technical and financial capacities of Community enterprises.

IMPACT ON THE INTERNAL MARKET

- ***This principle allows regional companies to compete for tenders **while being permanently established** in all WAEMU member states, and while being fully immersed in the local or national economic fabric.***

IMPACT ON THE INTERNAL MARKET

- ***It allows for the elimination of **MEERQs** from the free economic movement enshrined in the WAEMU Treaty;***
- ***Increases the speed of public procurement procedures;***
- ***Improves the ability of contracting authorities to absorb budgetary appropriations by eliminating barriers to trade and commerce.***

THE PRINCIPLE OF COMMUNITY PREFERENCE

- This principle requires member states to prohibit discriminatory measures based on the nationality of applicants that would constitute discrimination against companies from WAEMU member states.**

THE PRINCIPLE OF COMMUNITY PREFERENCE

- **Article 62 of the Directive provides that during the public procurement process, a preference of up to 15% must be given to bids submitted by WAEMU enterprises.**

IMPACT ON THE INTERNAL MARKET

This community preference establishes the principle of the primacy of trade and intra-community trade by promoting regional companies through a better redistribution of growth products.

PERPECTIVES

WAEMU Public Private Partnership Directive

- The reform of public procurement in WAEMU is a relevant illustration of the emergence of a **public business law** in the WAEMU area which, in addition to public procurement, has also included Public Private Partnership (PPP) contracts since September 2022, with a view to increasing intra-community trade to meet the needs of our populations.

THANK YOU FOR
YOUR ATTENTION