



THE EAST AFRICAN COMMUNITY SURVEILLANCE, COMPLIANCE AND ENFORCEMENT COMMISSION BILL (2022)

CIVIL SOCIETY ORGANIZATIONS PROPOSALS

INTRODUCTION

In November 2013, EAC member Heads of states adopted and signed the Protocol for the establishment of the [East African Monetary Union \(EAMU\)](#). The protocol sets out the process and convergence criteria for attainment of a Monetary Union in the EAC region over a period of 10 years. The envisaged Monetary Union is expected to be in place in 2024 with the introduction of a common currency to replace the national currencies and the establishment of a regional central bank,

The creation of a monetary union, the third pillar of regional integration after the Customs Union and the Common market have been facing challenges. This is largely due to the inability of member countries to comply with the macroeconomic convergence criteria on inflation, fiscal deficit, public debt and the volume of foreign exchange reserves, with the establishment of critical institutions necessary for the implementation of the single currency regime lagging way behind. One of the key institutions is the East African Community Surveillance, Compliance and Enforcement Commission.

SEATINI and partners under the Tax Justice Alliance Uganda, have been engaging with key stakeholders such as the Ministry of Finance, Planning and Economic Development, Bank of Uganda, Ministry of East African Affairs (MEACA), EALA Members of Parliament-Uganda Chapter etc on the Bill and the current process to adhering to macro convergence criteria under the East Africa Monetary Union Protocol in the EAC.

It is against this background, as Civil Society Organizations wish to share our position paper with concerns and recommendations for adoption into this Bill.



ARTICLE	CONCERN	RECOMMENDATION
FUNCTIONS AND POWERS OF THE COMMISSION		
<p>Article 4(j) The Commission shall – perform any other function that is necessary for the implementation of this Act.</p>	<p>Accessibility of data on the performance of countries towards the maintenance and adherence of the macro convergence criteria by the partner states is a challenge and should be included as part of the functions of the Commission.</p> <p>We are aware that for the last 10 years, central banks in the region have been sharing data with the Bank of Tanzania and Central Bank of Kenya on monetary policy cooperation.</p> <p>Monthly reports are given out on how different countries are meeting the criteria (Customs) are submitted.</p> <p>However, we believe the Commission should have the mandate to access countries' data on the maintenance and adherence of the macro convergence criteria by the partner states is a challenge.</p>	<p>We call on the council to consider collecting and centralizing data based on what is already done by departments and agencies at country level in relation to compliance and enforcement, so as to establish a strategic picture of trends and potential issues.</p>
POWER OF THE COMMISSION		
<p>Article 5 (a) In the performance of its functions, the Commission –</p> <p>a) may request for information from a Partner State, Organ or Institution of the Community;</p>	<p>We believe the commission should have the power to request for information from a Partner State, Organ or Institution of the Community.</p> <p>Under the article, the use of 'may' i.e request for information from a Partner State, organ or institution of the community by the Commission.</p>	<p>We propose the use of the word 'shall' which is more a guarantee that the Commission can request for information from a Partner State, Organ or institution of the community.</p>

EXECUTIVE SECRETARY OF THE COMMISSION		
<p>Article 13 (1) There shall be an Executive Secretary of the Commission.</p> <p>(2) The Executive secretary shall be the chief executive officer of the Commission and shall, subject to the direction of the board, be responsible for the day to day management of the commission.</p> <p>(3) The Executive Secretary shall be appointed by the council on the recommendation of the Board, on a rotational basis, in accordance with the EAC staff rules and regulations.</p> <p>(4) The Executive Secretary shall serve a fixed term of office of five years.</p> <p>(5) The terms and conditions of employment of the Executive Secretary shall be determined by the Council.</p>	<p>We are concerned about the suitable qualifications for the Executive secretary.</p> <p>Nomination and approval process should be made transparent to the public.</p> <p>The 'day to day management of the commission' is more of the Human Resource/ Admin role. There is a need to have day to day management according to the terms and conditions of employment of the Executive Secretary. (As stipulated under Article 13 section (5).</p>	<p>We recommend that the bill should provide for a competitive selection of the Executive Secretary rather than political appointments.</p> <p>We recommend nomination should be by the Council and approved by the EALA Parliament. The proposed person nominated should be an independent and highly qualified.</p> <p>The responsibilities of the Executive Secretary under this section should be aligned with Article 13 section (5)</p>
PART IV MACROECONOMIC POLICY SURVEILLANCE		
<p>Article 17(1) Medium Term Convergence Program referred to in Article 5(4) of the protocol shall contain -</p> <p>(d) an assessment of the consistency of the expected path with the principles of fiscal discipline;</p>	<p>We are aware that for the last five years, some Partner States have been producing the medium-term convergence program, Uganda inclusive. These are submitted to the EAC secretariat.</p> <p>There has been a delay in the assessment of MTCPs. Also, we are aware that the MTCPs are also not regularly uploaded online by the partner states. We noted Rwanda had uploaded their MTCP¹ (2018/19 - 2022/23) online.</p>	<p>We call for the powers of the council to ensure regular assessment of the MTCPs by the Commission in collaboration with Ministry of Finances from the different partner states.</p> <p>We also further recommend the use of an assessment tool to enable a faster approach to tracking countries' consistency of the expected path.</p> <p>Also, we recommend that Uganda and all other partner states publish their MTCPs online on their respective Ministry of Finance websites.</p>

<p>Article 17 (2) For the purposes of subsection (1) (c), the Commission shall—</p> <p>(a) determine what constitutes a deviation from the macroeconomic convergence criteria; and</p> <p>(b) take into account the existence of any exceptional circumstance in a Partner State, affecting the attainment or maintenance of the macroeconomic convergence criteria.</p>	<p>In particular, the Commission would benefit from introducing more specific criteria for the activation of clauses under exceptional circumstances such as severe economic downturns or natural disasters. These two types of escape clauses are quite common in fiscal rules systems around the world and can be defined with some degree of precision and quantified triggers.</p> <p>First, we believe the terms such as “emergency circumstances” or “public calamities” are vague escape clauses and should be avoided because they allow too much discretion in interpreting trigger events.</p> <p>Second, escape clauses for persistent security problems may also be questionable to the extent that such situations may not constitute exceptional events and would require adjusting the fiscal stance rather than deviating repeatedly from fiscal targets.</p> <p>Third, there is a need to ensure that the activation of the escape clause is not subject to excessive political influence.</p>	<p>We believe there is a need for the Commission by enhancing the credibility of escape clauses for authorized deviations from the rule including by clearly defining triggers as well as the timeline and procedures to revert to the rule.</p> <p>There is the need to enhance Public Finance Management to contain stock-flow adjustments, prevent a buildup of fiscal imbalances and tighten the link between the evolution of fiscal and debt targets. In this regard, member countries must accelerate the implementation of the regional directives on PFM reforms, especially those related to improving internal expenditure controls and transparency of accounts.</p> <p>Moreover, regional action should be complemented by efforts to improve discipline at the national level to minimize deviations from approved budget appropriations and impose stricter compliance with expenditure controls.</p> <p>For example; the process in the West African Economic and Monetary Union (WAEMU) is somewhat similar to the European Union. For the latter, the decision of the European Council to invoke the general escape clause of the Stability and Growth Pact is also based on a recommendation of the European Commission. However, the latter has the responsibility to confirm that conditions for triggering the clause have been fulfilled, an aspect that is not explicitly defined in the Bill.</p> <p>More importantly, the activation of the escape clause in the European Union does not suspend the procedures of the Stability and Growth Pact. It simply allows the Commission and the Council to undertake the necessary policy coordination measures within the framework of the Pact, while departing from the budgetary requirements that would normally apply.</p>
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<p>Article 19(1) Budget Policy Statement.</p> <p>For the purposes of monitoring, assessing and enforcing the adherence to the macroeconomic convergence criteria and fostering fiscal discipline, each Partner State shall annually submit to the Commission its budget policy statement.</p>	<p>The Budget Policy statements lack inclusion of the impact on macroeconomic convergence.</p>	<p>We recommend that the Budget Policy statements include the impact on macroeconomic convergence.</p> <p>We recommend that the commission in collaboration with Government agencies Central Bank and Ministries of Finance prepare a range of fiscal forecast scenarios based on alternative macroeconomic assumptions, and these scenarios are published, together with its central forecast in consideration with the Convergence criteria.</p> <p>Publication of forecasts and underlying assumptions in line with international standards is important. Subjecting the forecasts to independent validation is imperative.</p> <p>These should be included under budget policy statements</p>
<p>PART V - COMPLIANCE AND ENFORCEMENT</p>		
<p>Article 20(2) The notification under subsection (1) shall specify the nature of the deviation or likely deviation and require the Partner State to submit to the Commission a response within a specified period.</p> <p>Where the Commission determines that a Partner State has deviated or is likely to deviate from an expected path of the macroeconomic convergence criteria, the Commission shall notify the Partner State of the occurrence or likely occurrence of the deviation.</p>	<p>Our concern is that the circumstances covered by the escape clauses are relatively vague (only described as “exceptional circumstances”)</p> <p>Also, estimating the impact of security and health shocks on the fiscal balance could be very complex, given their wide-ranging effects on both government spending and revenue.</p> <p>Additionally, there is no guidance on the design of the measures that would resume compliance with the rule and end the activation of the escape clause. Without well-designed escape clauses, there is a clear risk that rules be put in abeyance following large shocks, or countries resort to ad hoc measures to accommodate them.</p>	<p>There is a need for a clear definition of exceptional circumstances and also clear guidelines on the interpretation of events which should preferably be defined.</p> <p>Triggers of the escape clauses, we believe could be defined more precisely. To preserve the credibility and effectiveness of the system of fiscal rules, trigger events of escape clauses need to be precisely defined and be limited to a predetermined set of events that are truly outside the government’s control.</p>

<p>Article 20 (3)(2) The notification under subsection (1) shall specify the nature of the deviation or likely deviation and require the Partner State to submit to the Commission a response within a specified period.</p> <p>The response from the Partner State under subsection (2) shall include—</p> <p>(c) a plan of corrective measures; and</p>	<p>We note that there is no disclosure of the specified period when the Partner state will respond and share their plan of corrective measures.</p> <p>There is a need for a correction mechanism framework plan to be in place.</p>	<p>We propose that the corrective measures be set within 30 days to comply with the directive.</p> <p>There is the need for the establishment of the correction mechanism framework plan which can capture such as the size and the duration of the deviation, the pace of correction, risks, milestones and deadlines, supervisory requirements, and economic cost can be defined.</p>
<p>Article 20 (5): Where a Partner State fails to submit a response required under subsection (2), the Commission shall recommend to the Council corrective measures to be implemented by the Partner State within a specified period.</p>	<p>Our observation, the Council does not have powers to implement the recommended corrective measures within a partner state.</p> <p>Initially, the authority to enforce correction mechanisms lies with the Council of Ministers rather than with the Commission.</p> <p>The Commission ideally would be better positioned and broaden its powers, improving its accountability while enhancing the transparency of the decision-making process at the Council of Ministers.</p>	<p>The commission with guidance from the council should work directly with the concerned partner state to develop and implement corrective measures.</p>
<p>Article 22 (1) Enforcement measures</p> <p>Where a Partner State in the single currency area deviates from any of the macroeconomic convergence criteria the Council shall on recommendation of the Commission—</p> <p>(a) subject that Partner State to such additional reporting requirements as specified by the Council; and</p> <p>(b) issue directives to enforce corrective action for resolving the deviation in question.</p>	<p>Our observation is there is need to grant the Commission the authority to determine non-compliance with fiscal rules,</p> <p>(ii) requiring that the Commission submits recommendations on the application of enforcement measures to the Council of Ministers,</p> <p>(iii) ensuring that such recommendations are adopted unless rejected by a qualified majority voting of the Council.</p>	<p>We recommend that failure to implement appropriate corrective measures by partner states could lead to sanctions imposed by the Council of Ministers.</p>

<p>Article 22 (2) Where a Partner State in the single currency area deviates from any of the macroeconomic convergence criteria the Council shall on recommendation of the Commission—</p> <p>(2) The Summit may, on the recommendation of the Council, impose sanctions on a Partner State that fails to take corrective measures directed by the Council. Enforcement measures;</p>	<p>Regional Blocks such as the European Union (EU) have sanctioning proceedings that are followed while imposing sanctions to a particular member state².</p> <p>We observe that the bill specifically under section 22 clause 2 is not clear on giving sanctions and the kind of sanctions that shall or may be given to a partner state that has failed to take corrective measures that were directed by the council.</p>	<p>There is a need to define sanctions for unauthorized deviations i.e sanctions can include those that are declarative or financial in nature etc.</p> <p>These are (i) the publication of a statement by the Council of Ministers, possibly accompanied by additional information on the situation of the member state facing sanctions, (ii) the publicly announced withdrawal of any positive measures that may have benefited the member state, (iii) the recommendation to the Central Bank to review its policy of interventions in favor of the member state, and (iv) the suspension of the any assistance to the member state etc.</p>
<p>PART VII MISCELLANEOUS</p>		
<p>Article 26 (2) The members of the Board and staff of the Commission shall be bound by the oath taken in accordance with the East African Community Oaths Act, 2019 and shall not disclose to any person any material information acquired in the performance of their functions, except—</p> <p>(a) as may reasonably be required in the performance of their functions; or</p> <p>(b) when called upon to give evidence in a court of competent jurisdiction or to fulfill any other obligation imposed by law.</p>	<p>The activation of escape clauses in the Bill should follow a well-specified and transparent process that preserves the credibility of fiscal rule.</p> <p>Such a process should involve the announcement of the activation by the responsible authority and a timeline and procedures to revert to the rule.</p>	<p>Transparency and Access to Information Act needs to be adhered to.</p> <p>To improve the activation process of the escape clause, it is important to communicate publicly and in more detail on the procedures to transition back to the rule for member countries. All these details related to the process of returning to the rule need to be well communicated to ensure transparency and preserve the credibility of the fiscal framework.</p>

We the undersigned;

No.	Organization	Country	
1	SEATINI UGANDA		
2	UGANDA DEBT NETWORK		
3	WATER GOVERNANCE INSTITUTE		
4	TRANSPARENCY INTERNATIONAL UGANDA		
5	THE POPULACE FOUNDATION INTERNATIONAL (TPFI)		

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Southern and Eastern Africa Trade Information and Negotiations Institute (SEATINI) Uganda is a Non-Governmental Organization that works to promote pro development trade, fiscal and investment related policies and processes for sustained equitable development and improved livelihoods in Uganda and the East African Community region. Through raising awareness, research, alliance building and partnerships, public interest litigation, building stakeholders' capacity and joint advocacy, we stimulate dialogue between stakeholders and government and promote indigenous alternatives for improved livelihoods and sustainable development.

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(Footnotes)

1 https://www.minecofin.gov.rw/fileadmin/user_upload/Minecofin/Publications/LAWS/Ministerial_Orders/Rwanda_Medium_Term_Convergence_Reports/MTCP_REPUBLIC_OF_RWANDA_Final.pdf

2 <https://globalinvestigationsreview.com/guide/the-guide-sanctions/third-edition/article/eu-restrictive-measures>

