

THE EAST AFRICAN COMMUNITY

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THE EAST AFRICAN COMMUNITY

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

**MEMORANDUM**

The object of this Bill is to provide for the establishment of the East African Community Surveillance, Compliance and Enforcement Commission pursuant to Article 21(b) of the Protocol on the Establishment of the East African Monetary Union; to provide for the functions, powers and governance structure for the Commission; and to provide for related matters.

HON. ADAN MOHAMED, EGH,  
*Chairperson, Council of Ministers*

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Enforcement Commission Bill, 2022*

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

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*Clause*

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*Clause*

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A Bill for an Act

ENTITLED

**THE EAST AFRICAN COMMUNITY  
SURVEILLANCE, COMPLIANCE AND  
ENFORCEMENT COMMISSION ACT, 2022**

**An Act of the Community to provide for the establishment of the East African Community Surveillance, Compliance and Enforcement Commission pursuant to Article 21(b) of the Protocol on the Establishment of the East African Monetary Union; to provide for the functions, powers and governance structure for the Commission; and to provide for related matters.**

ENACTED by the East African Legislative Assembly and assented to by the Heads of State.

PART I—PRELIMINARY PROVISIONS

1. (1) This Act may be cited as the East African Community Surveillance, Compliance and Enforcement Commission Act, 2022. Short title and commencement.
- (2) This Act shall come into force on such date as the Council may, by notice published in the *Gazette*, appoint.

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Interpre-  
tation.

2. Interpretation In this Act, unless the context otherwise requires—

“Assembly” means the East African Legislative Assembly established by Article 9 of the Treaty;

“Audit Commission” means the Audit Commission established by Article 134 of the Treaty;

“Board” means Board of the Commission established by section 9;

“Budget policy statement” means the budget framework paper or budget guidelines issued by a Partner State;

“Commission” means the East African Community Surveillance, Compliance and Enforcement Commission established by section 3;

“Community” means the East African Community established by Article 2 of the Treaty;

“Council” means the Council of Ministers of the Community established by Article 9 of the Treaty;

“exceptional circumstances” means a major natural disaster, unforeseen severe economic shock, or other significant unforeseen event that is outside the control of a Partner State;

“Executive Secretary” means the Executive Secretary of the Commission appointed under section 13;

“macroeconomic convergence criteria” means the criteria referred to in Article 6 of the Protocol;

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“medium term” means a period of five years;

“Monetary Union” means the East African Community Monetary Union established by Article 2 of the Protocol;

“Partner States” means the Republic of Burundi, the Republic of Kenya, the Republic of Rwanda, the Republic of South Sudan, the United Republic of Tanzania, the Republic of Uganda and any other country granted membership to the Community under Article 3 of the Treaty;

“pre-requisites for the Monetary Union” means the criteria provided under Article 5 of the Protocol;

“Protocol” means the Protocol on the Establishment of the East African Community Monetary Union;

“single currency area” means the geographical area of the Partner States which adopt the single currency;

“Summit” means the Summit established by Article 9 of the Treaty; and

“Treaty” means the Treaty establishing the East African Community and any annexes and protocols thereto.

3. (1) There is established an institution of the Community known as the East African Community Surveillance, Compliance and Enforcement Commission.

The East  
African  
Community  
Surveillance,  
Compliance  
and  
Enforcement  
Commission

(2) The Commission shall be a body corporate with—

(a) a common seal;

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- (b) power to acquire, hold, manage and dispose of movable and immovable property; and
- (c) power to sue and be sued in its own name.
- Functions of the Commission
4. The Commission shall—
- (a) promote the attainment of the macroeconomic convergence criteria for all Partner States during the transition to the Monetary Union;
  - (b) assess the Partner States on the attainment of the macroeconomic convergence criteria and recommend to the Council, in accordance with Article 5(5) of the Protocol, to consider the admission of a Partner State that has met the prerequisites for the Monetary Union;
  - (c) monitor the maintenance and adherence of the macroeconomic convergence criteria by the Partner States in the single currency area and make recommendations to the Council;
  - (d) facilitate convergence amongst Partner States that are not yet in the single currency area.
  - (e) upon the establishment of the single currency area, recommend to the Council to take the necessary enforcement measures against a Partner State that does not adhere to the performance convergence criteria;
  - (f) make recommendations to the Council on matters relating to surveillance, compliance and enforcement;



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- (g) monitor the effectiveness of the macroeconomic policies of Partner States;
  - (h) monitor the implementation of fiscal policies of Partner States and recommend measures to Partner states to ensure adherence to the principles of fiscal discipline;
  - (i) monitor the implementation of decisions and directives of the Council relating to macroeconomic convergence reports; and
  - (j) perform any other function that is necessary for the implementation of this Act.
5. In the performance of its functions, the Commission—
- (a) may request for information from a Partner State, Organ or Institution of the Community;
  - (b) shall recommend to the Council measures for regularly monitoring, assessing and enforcing adherence to the macro-economic convergence and fostering fiscal discipline in the Partner States.
6. The Commission shall cooperate with organs and other institutions of the Community in the performance of its functions.
7. The Commission may cooperate with regional and international organisations on matters relating to its mandate in accordance with Article 130 of the Treaty.
8. (1) The Headquarters of the Commission shall be located in such Partner State as determined by the Council.

Powers  
of the  
Commission.

Cooperation  
with  
Organs and  
Institutions

Cooperation  
with  
regional and  
international  
organisations

Head-  
quarters  
of the  
Commission

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(2) There may be established other offices of the Commission in the Partner States as may be determined by the Council.

Board of the  
Commission

**9.** (1) The Commission shall have a Board, composed of—

- (a) the Ministers responsible for finance from each Partner State; and
- (b) the Executive Secretary who shall be the Secretary to the Board and an *ex-officio* member.

(2) The chairperson of the Board shall be the Minister responsible for finance in the Partner State that is chairing the Summit.

Functions of  
the Board

**10.** (1) The Board shall—

- (a) provide strategic policy direction to the Commission;
- (b) oversee the performance of the functions of the Commission;
- (c) consider and approve the proposed annual budget of the Commission for submission to the Council;
- (d) make recommendations to the Council on staffing and recruitment of the Commission; and
- (e) perform such other functions as may be directed by the Council.

(2) For the purposes of subsection (1), the Board shall—

- (a) consider and approve reports on operations of the Commission;

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- (b) consider and approve annual accounts for the Commission for submission to the Council;
- (c) issue internal operational guidelines for the Commission.

**11.** (1) The Board shall meet at least once every three months. Meetings of  
the Board

(2) The quorum for a meeting of the Board shall be all members of the Board.

(3) The Board may invite the chairperson of the Governing Council of the East African Monetary Institute or any other person to attend a meeting of the Board.

(4) The chairperson or person invited to a meeting of the Board under subsection (3) shall not participate in decision-making.

(5) Decisions of the Board shall be made by consensus.

(6) Upon adoption of the single currency, decisions of the Board relating to the single currency shall only be made by Partner States in the single currency area.

(7) Subject to this Act, the Board may determine its own procedures, including procedures on convening its meetings and conduct of business.

**12.** (1) The Board may establish committees from among its members to perform specific functions under this Act. Committees  
of the Board

(2) Upon the adoption of the single currency, the Board shall establish a committee for the single currency area composed of members of the Board from the Partner States in

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the single currency area, to handle specific matters related to the single currency area.

(3) Committees of the Board shall exercise such powers and functions as the Board may determine.

Executive  
Secretary  
of the  
Commission

**13.** (1) There shall be an Executive Secretary of the Commission.

(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.

(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.

(4) The Executive Secretary shall serve a fixed term of office of five years.

(5) The terms and conditions of employment of the Executive Secretary shall be determined by the Council.

(6) A person is qualified for appointment as Executive Secretary if that person—

- (a) is a national of a Partner State;
- (b) is a fit and proper person of recognised professional standing in a Partner State;
- (c) holds at least a Master's degree in statistics, economics, management, business administration, finance, law or any other relevant field, from a university recognised by a competent authority in a Partner State; and

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(d) has a minimum of fifteen years experience in the fields specified in paragraph (c), at least five of which shall be at senior management level.

(7) For the purposes of this section, “fit and proper” means possessing all the attributes to be taken into account in determining the suitability of a person to be appointed as the Executive Secretary, including the person’s general probity, competence and soundness of judgement for the fulfilment of the responsibilities of the office.

14. (1) The Council shall, on the recommendation of the Board consider and approve the organisational structure of the Commission.

Organisa-  
tional  
structure and  
staff of the  
Commission.

(2) The Council shall on the recommendation of the Board and in accordance with the EAC Staff Rules and Regulations, appoint the other staff required for the performance of the functions of the Commission.

PART IV—MACROECONOMIC POLICY SURVEILLANCE

15. For the purposes of Article 6 of the Protocol, the Council shall on the recommendation of the Commission, prescribe—

Macro-  
economic  
convergence  
criteria

- (a) the definitions of the variables included in the macroeconomic convergence criteria; and
- (b) the procedure and targets for assessing and monitoring the macroeconomic convergence criteria.

16. (1) The medium-term convergence programme referred to in Article 5 (4) of the Protocol shall contain—

Medium  
term  
convergence  
programme

- (a) the expected path of the macroeconomic convergence criteria;

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- (b) the macroeconomic and fiscal forecasts for the medium term;
- (c) a description of the assumptions underlying (a) and (b);
- (d) an assessment of the consistency of the expected path with the principles of fiscal discipline; and
- (e) a description of policy measures to be taken in a medium term for the achievement of the expected path.

(2) The scope of institutional units to be covered in the compilation of fiscal accounts and forecasts under the medium-term convergence programme shall be the general government.

(3) Each Partner State shall annually submit to the Commission the medium-term convergence programme.

Assessment  
of medium-  
term  
convergence  
programme

17. (1) The Commission shall assess the medium-term convergence programme of each Partner State in order to ascertain whether—

- (a) the expected path is appropriate for—
  - (i) the attainment of the macroeconomic convergence criteria; and
  - (ii) maintenance of adherence to the macroeconomic convergence criteria;
- (b) the macroeconomic and fiscal forecasts satisfy the requirements under section 16; and
- (c) there is any deviation from the macroeconomic convergence criteria.

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(2) For the purposes of subsection (1)(c), the Commission shall—

- (a) determine what constitutes a deviation from the macroeconomic convergence criteria; and
- (b) take into account the existence of any exceptional circumstance in a Partner State, affecting the attainment or maintenance of the macroeconomic convergence criteria.

(3) The Commission shall—

- (a) upon conducting the assessment under subsection (1), issue an opinion to a Partner State on its medium-term convergence programme; and
- (b) at least once every year, report to the Council on the performance of the Partner States on the macroeconomic convergence criteria.

18. Each Partner State shall formulate and implement their fiscal policy in accordance with the following principles of fiscal discipline—

Principles  
of fiscal  
discipline

- (a) efficient and effective domestic revenue mobilization that will finance projects and programmes within a Partner State;
- (b) maintenance of prudent and sustainable levels of public debt;
- (c) ensuring that the fiscal balance is maintained at a sustainable level over the medium term;
- (d) management of fiscal risks in a prudent manner;

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- (e) consistency of the Budget Framework Paper's priorities to those of the national development plans;
- (f) efficiency, effectiveness and value for money in expenditures.

Budget  
policy  
statement

**19.** (1) 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.

(2) The budget policy statement shall include—

- (a) information on revenue and expenditure under the annual national budget of the forthcoming year;
- (b) an assessment of how the fiscal outlook under the annual national budget of the forthcoming year accords with the most recent medium-term convergence programme;
- (c) an explanation of how the annual national budget of the forthcoming year will take into account the opinion of the Commission on the most recent medium-term convergence programme, if any; and
- (d) fiscal risk statements.

(3) The Commission shall make guidelines on the preparation of the budget policy statements.

(4) Each Partner State shall submit a fiscal outturn report to the Commission in accordance with the guidelines issued by the Commission.



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PART V—COMPLIANCE AND ENFORCEMENT

20. (1) 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. Notification of deviation from expected path

(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.

(3) The response from the Partner State under subsection (2) shall include—

- (a) an explanation for the deviation or likely deviation;
- (b) the duration for which the deviation is estimated to last;
- (c) a plan of corrective measures; and
- (d) any other information as the Commission may require.

(4) The Commission shall monitor the implementation of the corrective measures under subsection (3)(c) in the fulfillment of the medium-term convergence programme.

(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.

21. (1) Where a Partner State does not implement the corrective measures specified by that Partner State in the response required by section 20 (2) or as directed by Council Reference of non-implementation to Council

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under section 20 (5), the Commission shall refer the matter to the Council for appropriate action.

(2) The directive of the Council issued under subsection (1) shall be made public.

Enforcement  
measures

**22.** (1) 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—

(a) subject that Partner State to such additional reporting requirements as specified by the Council; and

(b) issue directives to enforce corrective action for resolving the deviation in question.

(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.

PART VI—FINANCIAL PROVISIONS

Financial  
year.

**23.** The financial year of the Commission shall be the same as the financial year of the Community.

Funding and  
budget

**24.** (1) The Commission shall be funded in accordance with Article 132 of the Treaty.

(2) The Board shall submit the budget of the Commission to the Council for consideration.

Accounts  
and audit

**25.** (1) The Commission shall—

(a) keep proper books of accounts and records of its transactions and affairs;

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- (b) ensure that the moneys received are properly accounted for;
- (c) ensure that all payments out of its funds are correctly made and properly authorised ; and
- (d) ensure that adequate control is maintained over its assets.

(2) The annual accounts of the Commission shall be audited by the Audit Commission within three months after the end of the financial year.

(3) The Commission shall, within three months after the end of each financial year, submit to the Council an annual report in respect of that financial year containing—

- (a) the audited financial statements; and
- (b) any other information the Commission may deem appropriate.

(4) The Council shall cause to be laid before the Assembly the annual report of the Commission for the financial year together with a copy of the report of the Audit Commission within six months after the end of the financial year.

PART VII—MISCELLANEOUS

26. (1) The proceedings and records of meetings of the Board and its committees shall be confidential. Confidentiality

(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—

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- (a) as may reasonably be required in the performance of their functions; or
- (b) when called upon to give evidence in a court of competent jurisdiction or to fulfil any other obligation imposed by law.

(3) The members of the Board and staff of the Commission shall, even after their duties have ceased, not disclose information of the kind covered by the obligation of confidentiality.

Status,  
privileges  
and  
immunities

27. (1) The Partner States shall grant the Commission the status, privileges and immunities in accordance with Article 138 of the Treaty.

(2) The staff of the Commission shall enjoy such privileges and immunities as provide by the Treaty.

Reporting  
obligations

28. (1) The Commission shall submit to the Council on a quarterly and annual basis, reports on activities relating to the functions of the Commission.

(2) The Council may require the Commission to prepare such other reports on matters relating to the functions of the Commission.

(3) The Commission may on its own initiative prepare and publish reports on matters relating to the functions of the Commission.

(4) The Commission shall prepare and submit to the Council an annual convergence report.

(5) The Council shall submit the annual convergence report to—

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- (a) the Summit for consideration; and
  - (b) the Assembly for information.
- (6) After consideration of the convergence report by the Summit, the Commission may publish the report.
29. (1) The common seal of the Commission shall be in the custody of the Executive Secretary. Common seal of the Commission
- (2) The affixing of the common seal of the Commission on any document required by law to be made under seal shall be authenticated by the signature of the Executive Secretary and an officer of the Commission designated by the Board for that purpose.
- (3) In the absence of the Executive Secretary or such officer designated for that purpose or both, the Board shall nominate one or two officers of the Commission as the case may be, to authenticate the seal on behalf of the Commission.
- (4) Any document issued under the seal of the Commission shall be admissible as evidence and shall be deemed to be executed or issued as the case may be, without further proof.
30. The Council may, on recommendation of the Board, make regulations for the better carrying into effect the provisions of this Act. Regulations.

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