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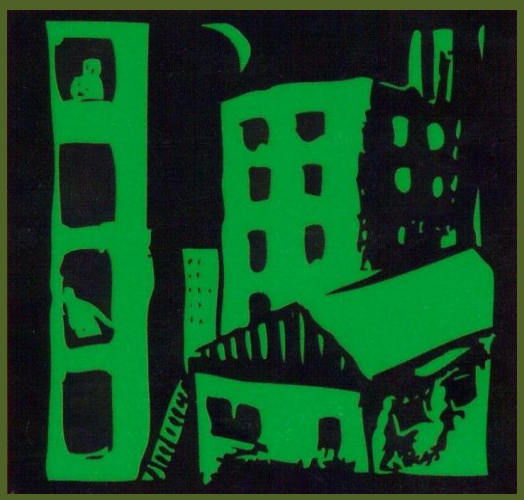

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# The European Union as a model for regional integration in the Southern African Development Community: A selective institutional comparative analysis

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## 1 INTRODUCTION

The SADC has adopted the EU model of integration. Most SADC institutions mirror their EU equivalents. These institutions are treaty based; hence this comparative discussion is relevant in showing how institutions in both the SADC and the EU play influential roles in economic integration as mandated by their Treaties. These institutions have defined roles pertaining to law-making processes and in relation to the adjudication of the EU's activities. The rationale behind this discussion is

mainly informed by the choice SADC has made in electing the EU linear model of integration. The choice of using the EU as a model was irresistible for SADC as "the EU is a living laboratory for the integration theory".[1] It is for this reason that this article investigates the rationale behind the choice, its implications and, ultimately, whether such an ambitious agenda can produce the desired results.

It is also important to realise that this path cannot be changed; the SADC has already gone too far and it may have to deal with any eventuality in the future. The EU, now comprising 27 vastly different Member States, is proof that the efforts of investing in regional integration pay dividends – economically, socially and politically.[2] According to Risse,[3] the EU experience is regarded as unique and its exceptionalism as sufficient reason why other regional arrangements follow it. Perhaps one of the hallmarks of this EU method of integration and the greatest difference between the EU and other regional organisations of the day is "the sophistication and intensity of its institutional fabric underpinned by the organic system of law".[4] Article 13(1) of the Treaty on Europe Union 2008 (TEU) provides that the EU shall have an "institutional framework which shall aim to promote its values, advance its objectives, serve its interests, those of its citizens and those of Member States, and ensure consistency, effectiveness and continuity of its policies and actions".[5] Article 13(2) TEU further provides that each institution shall act within the limits of the powers conferred on it by the Treaties. Thus, each institution can only act if it has been expressly authorised to do so by the EU Treaties. This article is not an attempt to describe what the EU is about, but rather how it works so that that can be transferred to the SADC. Wallace has argued that the EU is less than a federation, more than a regime,[6] while some constitutional scholars have labelled it a federation of states.[7] On the other hand, political scientists have seen it as a form of "intergovernmental federalism"[8] or institutionalised intergovernmentalism.[9] Although the EU is still primarily an intergovernmental forum, it is one where states are far more linked than in other international regimes.[10] This comparative study will not

[1] De Melo, Panagariya & Rodrik "The New Regionalism" (1992).

[2] Bösl A *et al Trade Law Centre for Southern Africa Monitoring the process of regional integration in Southern Africa in 2006* (2006).

[3] Risse "Approaches to the study of European politics" (1999) at 2- 9.

[4] Laffan "The European Union: A distinctive model of internationalisation" (1998) at 235.

[5] The following seven EU institutions are recognised by art 13(1) of the TEU: the European Parliament; the European Council; the Council; the European Commission; the Court of Justice of the European Union; the European Central Bank; and the Court of Auditors. These institutions will be compared with SADC institutions having similar function. The European Central Bank and the Court of Auditors will not be discussed since there are no institutions of having a similar function in the SADC.

[6] See generally Wallace "The sharing of sovereignty: the European paradox" (1999) at 511.

[7] Streek & Schmitter "From national corporatism to transnational pluralism: Organised interests in the Single European Market" (1991) at 159.

[8] Quermonne JL *Le système politique de l'Union Européenne: Des communautés economiques à l'union politique* (2004) at 34.

[9] Menon "Member States and international institutions: Institutionalising Intergovernmentalism in the European Union" (2003).

[10] Slaughter "International Law in a World of Liberal States" (1995) at 538.

include the judicial organs in both the SADC and the EU mainly because of their wide scope that can only be fully addressed in a separate paper.

## 2 PRELIMINARY REMARKS

European integration is primarily about co-ordinating national economic policies to adapt to an increasingly interdependent world market.[11] The European experience supports the view that both smaller and bigger states can gain from trade relations based on rules and the associated institutions that apply them – and not power.[12] Regional integration in Europe continues to be a dynamic process, processing an incremental nature, by which Member States of the EU have gradually established their institutional and legal arrangements as the framework and basis for integrating their markets and developing common policies in ever-increasing fields, while broadening the membership across the continent.[13]

It is, therefore, very ambitious for one to draw wider lessons from this experience for South to South integration.[14] For instance, in terms of different historical legacies, the EU never experienced slavery and colonialism. The economies in the EU never went through Economic and Structural Adjustment Programmes (ESAPs) as determined by the International Monetary Fund (IMF) and the World Bank in Africa.[15] However, the relationship between Africa and Europe goes back a long way. The EU is a major trading partner of sub-Saharan Africa and the two continents are geographically and historically bound through colonial relations;[16] the Younde and Lomé Conventions and, of late, the Cotonou Agreements that are being replaced by the EPAs, attest to this.[17] The assessment made by Rosecrance[18] is extremely relevant here:

> The possible paradox is the fact that the continent which once ruled the world through physical impositions of imperialism is now coming to set world standards in normative terms, there is perhaps a new form of European symbolic and institutional dominance even though the political form has entirely varnished.

What this means is that the European presence in Africa is very evident; it just takes a different form. According to Koutrakou, the main driving force of this relationship was the continued economic interests of the EU Member States in Africa.[19] Both critics and

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[11] Milward A "*The European rescue of the national state"* (1993).

[12] Evans D *et al* "*SADC: The cost of non-integration"* (1999) report prepared for the SADC Secretariat at 1-18.

[13] Ziller "The challenges of governance in regional integration: Key experiences from Europe" (2004).

[14] "South to South" is used here to mean developing and least developed countries that make up the membership of the SADC.

[15] For a detailed analysis of the impact of the IMF and World Bank policies on Africa, see Brown *European Union and Africa* (2002) at 53-66.

[16] Mbaye K "Le destin du Code Civil en Afrique" (2007) at 790 - 795. Mbaye recalls that Africa was mainly divided between France and its codes and the United Kingdom and its common law tradition which legal divisions are still apparent to this day.

[17] Kühnhardt L, "*African regional integration and the role of the European Union"* (2008) at 24.

[18] Rosecrance "The European Union" (1998) at 22.

[19] Koutrakou "New directions in the EU's Third World policy" (2004) at 123.

supporters of the current negotiations towards EPAs tend to agree that they are likely to have a significant impact on the development prospects of many African states.[20] According to Holland,[21] historical ties, rather than need, have been the criteria for determining preferential trade and aid relations. Furthermore, the advent of the New Partnership for African Development (NEPAD) based on various European endorsed ideas has further strengthened the ties between Africa and Europe. Through such interactions, there is no doubt that the experiences of regional integration, such as those from the EU, had some influence in shaping the thinking of African leaders on issues pertaining to regional integration.

From the discussion thus far, it becomes clear that using the EU as a model for integration for the SADC was not a choice the author sought; rather, this discourse is influenced by the choices the SADC made in this regard. This article will show that the EU itself has also contributed to the externalisation of its model over time.[22] Accordingly, the strategy has been to secure market access for European producers while selling the concept of the European model of regional integration.[23] The EU is also able to strengthen or protect its economic power since fostering regional cooperation "tends to go hand in hand with facilitating trade and investment by EU economic actors."[24]

In this article, questions will be raised as to whether this choice is the best for the SADC. The EU clearly has the most highly elaborated set of regional institutions based on Treaties, with supra-national organisations[25] (the Commission, Parliament and Court of Justice), an intergovernmental body (Council), a capacity to establish secondary legislation, a body of law and regulations, as well as a broad set of common policies and instruments. This institutional strength is lacking for the SADC. Despite the pauses and lapses in the integration process, Europe is a paradigmatic case of the reciprocal interaction of economic and institutional integration.[26] However, this emphasis on, and the high hopes for, regional integration do not appear to match the real progress made. As the European example shows, regional integration is a long-term and complex process, in which the EU stands as the model for endurance and effectiveness.[27] For this reason, the integration frameworks of regional organisations in Latin America[28] and Africa tend to follow varying degrees that which is provided for in the Treaty on the Functioning of the European Union.[29]

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[20] Koutrakou (2004) at 17.

[21] Holland M "*The European Union and the Third World"* (2002) at 27.

[22] Holmes & Young "Exporting rules: The European Union as model for international regimes?" (1999) at 128.

[23] Farrell "The EU and inter-regional cooperation: In search of global presence?" (2005) at 19.

[24] Smith K *European Union foreign policy in a changing world* (2008) at 26.

[25] McCormick "The European Union: Politics and policies" (1999) at 10.

[26] Henning "Regional economic integration and institutional building" at 88.

[27] Volcansek, "Courts and regional Integration" (2002) at 165-180.

[28] For a detailed analysis of EU relations with Latin America, see e.g. Piening C *Global Europe: The European Union in World Affairs* (1997) at 119-138.

[29] Tatham AF *EC Law in practice: A case-study approach* (2006).

## 3 HISTORICAL BACKGROUND

In 2007, the EU celebrated its 50 years since the original six countries signed the Treaties of Rome.[30] The EU was officially established by the Treaty of Maastricht in 1993,[31] on the foundations laid down by the European Economic Community (EEC).[32] This laid the firm foundations for the modern EU, which now consists of 27 Member States. The political climate after the devastation of the Second World War favoured the unification of Europe. The then political leaders resolved to fight and overcome the enemy in the shape of extreme forms of nationalism. In the aftermath of the Hague Convention of 1948,[33] it was realised that the rebuilding of Europe meant not only the recovery of the national economies, but also the design of a European project to prevent future wars.

Based on the Schuman Plan,[34] six countries signed a treaty to run their heavy industries of coal and steel under a common management. In this way, none could on their own make the weapons of war to turn against another, as had happened in the past. Accordingly, in 1951, the six countries[35] signed the Treaty of Paris covering the integration of coal production and steel.[36] Building on this Treaty, two more treaties were signed (Treaties of Rome) in 1957.[37] A further relevant outcome of the second Treaty gave birth to the first integrated policy, the Common Agricultural Policy of 1962.[38] This signalled the first example of the adaptation of the countries to the EEC's regulation. Instead of having tariffs and subsidies decided at national level, starting in 1962, tariffs between the EEC members and national subsidies would disappear and external tariffs would be harmonised. Subsidies and agricultural regulations would be decided at the European level based not on the needs of individual countries but on targets for certain products. The rationale behind this was to prevent competitive distortions. The EEC transition into a free trade area (FTA) was realised in 1967.[39] The entrance of new members meant that the period of the 1970s and 80s saw a need for a new and enlarged FTA and a single market for goods, services, capital and labour. The roadmap for the realisation of these milestones was launched in 1986 and was hailed as

[30] For a detailed account of the EU background see, Tathan (2006).

[31] Turnbull-Henson "Negotiating the third pillar: The Maastricht Treaty and the failure of justice and home affairs cooperation among EU Member States" at 28.

[32] Turnbull-Henson (1997) 28.

[33] See Eilstrup-Sangiovanni & Verdier "European Integration as a solution to war" (2005) at 30.

[34] Diebold W *The Schuman Plan: A study in international cooperation* (1959) at 45.

[35] These countries were Belgium, France, Germany, Italy, Luxembourg and The Netherlands.

[36] See generally Mathijsen SRF *A Guide to European Union law as amended by the Treaty of Lisbon* (2010).

[37] The first Treaty created the European Treaty of Energy: Euratom. The second crafted the plan for a total Free Trade Area and Customs Union for goods and services. This also included complete freedom of migration between the members.

[38] Buckwell A ,Haynes J, Danidova S, Kwiecinski A *"Feasibility of an agricultural strategy to prepare the countries of central and Eastern Europe for EU accession: Report to European Commission"* (1995).

[39] Skully "Finland and the EEC: A historical economic outline of their trade relations" (1976) at 220.

a major step in the right direction. Its full implementation was realised in 1993 by the Single European Act.[40]

The African continent shares a special relationship with the EU dating back to the colonial period. The EU's relationship with Africa has been formalised since its creation in 1957. Owing to the insistence of the French government, the Treaty of Rome included Articles providing for the association of African colonies. Thus, in terms of trade and aid arrangements, a special relationship between the EU and Africa has been in existence for over five decades. In the process, the EU relations with Africa and the SADC in particular, have helped shape the trends of regional integration.

In order to make a balanced comparative study of the historical background, a brief reference to the SADC is necessary. The origins of the SADC lie in the Frontline States,[41] a group of nine Southern African countries that fought for independence from colonial rule. Their objective was to liberate the whole region from colonial rule. In the 1960s and 70s, these newly independent states supported national liberation movements in the region by co-ordinating their political, diplomatic and military struggle to bring an end to colonial and white minority rule. This objective was realised when South Africa became the last country to receive independence in 1994. After 1994, the focus shifted to that of securing international co-operation for economic liberation and collective self-reliance.[42] According to the late President of Botswana, Sir Seretse Khama, "economic dependence had in many ways made political independence somewhat meaningless".[43] This *de facto* regional organisation needed a treaty and a number of other legally binding instruments.[44] Thus, the SADC was formed as an international regional organisation established in terms of a treaty and declaration referred to as the "Treaty of the Southern African Development Community" (SADC Treaty) signed by the Heads of state and government of the signatory Member States.[45]

The SADC Treaty provides the legal framework of the organisation by setting out the status[46], principles and objectives[47], obligations of Member States[48], membership[49], institutions[50], procedural matters relating to areas of co-operation among Member

[40] Parsons "Revisiting the Single European Act (and the common wisdom on globalisation)" (2010) at 706 – 734.

[41] Clough and Ravenhill "Regionalism in Southern Africa 1982) 23.

[42] Gibb R "Southern Africa in transition: prospects and problems facing regional integration" (1998) at 287-306.

[43] Khama *Africa Research Bulletin* (1979) at 51.

[44] Olivier "Southern African Development Community" (1999) at 15.

[45] The SADC Treaty was signed at Windhoek, Namibia, on 17 August 1992, entering into force on 30 September 1993. The Treaty was amended at Blantyre, Malawi, in August 2001. A consolidated version of the Treaty and all its amendments can be accessed on the SADC official website http://www.sadc.int (accessed 10 July 2013).

[46] Art 14 *SADC Treaty*.

[47] Ch 3, Arts 4 and 5 *SADC Treaty*.

[48] Art 6 *SADC Treaty*.

[49] Ch 4 Arts 37 and 38 *SADC Treaty.*

[50] Ch 5 Arts 9 and 16A *SADC Treaty.*

States[51], co-operation with other international organisations[52] , financial issues[53], dispute settlement,[54] and, lastly, sanctions, withdrawal and dissolution.[55] The SADC Treaty makes provision for the formulation of subsidiary legal instruments such as protocols giving specific mandates to various SADC institutions. A total of twenty three protocols have so far been formulated.[56]

In 2010, the SADC celebrated its 30-year anniversary at the SADC Heads of State and Government Summit in Windhoek, Namibia. Prior to that, the year 2008 was a milestone for the SADC bloc when a concrete step towards deeper integration was achieved by the launch of a FTA.[57] However, the planned launch of a Customs Union failed to materialise in 2010.

## 4 THE EU AND THE SADC: INSTITUTIONAL COMPARISON

Before venturing into a comparison of the institutional structure, it is important and necessary to look briefly at how the EU model of regional integration operates in practice. The EU operates at many levels that link the sub-national, the national and supra-national with an institutional framework.[58] The institutional framework includes the European Commission, the European Parliament, the Court of Justice, the European Council and the Council of the European Union. Besides the EU framework being in the driving seat, there is an array of policies that are implemented by Member States.[59] The European Commission plays a pivotal leading role as well as a co-ordination role in initiating new policy initiatives.[60] The central question being addressed by this comparison of the SADC and the EU is whether SADC should have imported the EU model in its entirety: the entire panoply of institutions, organisations and policies. Can or must all these be adopted? Part of the answer to this question is "no", because the SADC Treaty has already established institutions that are driving the integration process. However, the SADC will have to import substantial elements of the EU model if the desired results are to be achieved. EU institutions are at the centre of treaty interpretation, implementation and reform. Consequently, the SADC should be able to implement a similar approach. Caution should be observed, too, in giving an opinion on this as one may suggest a pick and choose strategy, forgetting that the functions of the EU institutions as a whole are pivotal to these institutions. The EU works well because

[51] Art 21 *SADC Treaty*.

[52] Art 24 *SADC Treaty.*

[53] Ch 9 Arts 25 to 27 and Ch 10 Arts 28-30 SADC Treaty.

[54] Art 32 *SADC Treaty*.

[55] Ch 13 Arts 33 to 35 *SADC Treaty.*

[56] See list of protocols available on the SADC official website http://www.sadc.int (accessed 30 May 2013).

[57] For a comprehensive discussion of the history of the SADC, see Saurombe A *Regionalisation through economic integration in SADC* (2011).

[58] Monar "Institutionalising freedom, security and justice" (2005) at 187.

[59] Marks "Structural Policy and Multilevel Governance in the EC at.394.

[60] Armstrong "The role of evolution of European Community regional policy" at 60. See also generally Thielemann "Institutional change and European governance: An analysis of partnership" (2000) 181-198.

of the driving force of its institutions. There are also other questions to be answered. At what stage does one adopt an ever-evolving system like the EU has become? Additionally, can it be argued that the evolution in the EU is being influenced by conditions inherent in the EU itself? If so, it means that the picture will be different in another setting. It has been argued that:

> These institutions and the policies and political processes have evolved in gradual and complex processes of regional integration that are difficult to capture in a simple model that is easily replicated and duplicated in other situations and region.[61]

This assessment shows that the EU regional integration experiences are complicated and are difficult to copy in a different setting. Moreover, African Regional Trade Agreements (RTAs) are best understood as flexible legal regimes particularly given their commitment to variable geometry and multiple memberships.[62] The discussion now shifts to a comparative analysis of the important institutions of both the SADC and the EU. It is important to note here that the comparison seeks to analyse identical institutions as they may appear in either organisation. However, in the absence of identical institutional entities, those with similar functions and characteristics will be discussed and compared.

## 4.1 The European Council and the SADC Summit of Heads of State and Government

It was easy to pair these two institutions since both are made up of the Heads of state and government in the EU and the SADC, respectively. However, their functions may differ from time to time, resulting in reference to them being made under other different institutional comparisons. The European Council is in the driving seat in defining the general political direction and priorities of the EU.[63] The European Council has no formal legislative power and is mostly concerned with defining general political guidelines for the EU. The SADC Summit plays a more central role in the organisation, taking a leadership role not just in the political affairs of the region, but also in respect of all facets of the organisation. The whole SADC institutional structure is completely under the control of the SADC Summit, including the economic and political direction of the organisation.[64] In contrast, it remains difficult to reduce European decision making to a single institution.[65] An experience and model similar to those of the SADC can be found in the African Commission on Human and Peoples' Rights, which allows a focus on reconciliation and consensus as a means of settling disputes rather than upon contentious procedures, and is more in keeping with African culture.[66] This is in sharp contrast to the European Council, where even in areas where they have agreed to decide

[61] Moravcsik "Preferences and power in the European Community: A liberal intergovernmentalist approach" (1993) at 524.

[62] See generally Gathii JT *African regional trade agreements as legal regimes* (2013).

[63] See consolidated versions of the Treaty of the European Union (*TEU)* and the *Treaty* on the Functioning of *the European Union* (TFEU).

[64] Art 10 *SADC Treaty* (1992).

[65] Peterson J & Boberg E *Decision-making in the European Union: Palgrave Macmillan* (1999).

[66] Davidson S *Human rights* (1993).

by a qualified majority, the governments remain marked by a spirit of unanimity. Since the mid-1990s, between 75 and 85 per cent of decisions within the Council have been made through a unanimous vote.[67]

The SADC Summit has been in place since the formation of the regional body during the Frontline States years, the progression towards the Southern African Development Co-ordination Conference (SADCC) and the current SADC with the Regional Indicative Strategic Development Plan (RISDP) and Protocol on Trade. The SADC Summit commissioned the strategic priority to implement the RISPD and it continues to provide leadership for the SADC at the highest level. This differs from the European Council, whose prominence only came to the fore in 1961 when informal summits between the leaders of the European Community were initiated as a result of the then French President Charles de Gaulle's resentment of the domination of supra-national institutions. This was in reaction to the domination of the integration process by the European Commission. This was not the case for the SADC where in fact the SADC Summit formulates the integration process and all other facets of the SADC Treaty. The inaugural European Council meeting was held in Dublin on 3 October and 3 November 1975,[68] years after the European integration had started; however, the same cannot be said of the SADC Summit, whose composition was the first to exist in Southern African regionalism under the SADC initiative. Although it can be described as the driver of EU integration, the European Council does so without any formal powers. However, it does give important impetus to the influence of the national leadership of its composition. National leaders give it the executive power of the Member States and the direct result is great influence outside established areas, for example foreign policy.[69] However, with powers over the supranational executive of the EU, as well as other additional powers and influences, the European Council has been described as the supreme political authority.

The above discussion shows that the European Council is an embodiment of controlled power while the SADC Summit as an institution with too much power. This clearly will not work for regional integration in the SADC. There has to be a measure of control in the SADC as is exercised in the EU. According to Volcansek:[70]

> [T]here are bound to be problems in state to state negations to resolve disputes and the obvious is, of course, that no resolutions may be possible. A second in the hierarchy among nations that prevents some from bargaining or asserting their claims on an equal footing.

This is the scenario in the SADC where the Heads of state and government at SADC Summit level cannot face up to each other in resolving conflicts. By contrast, EU Member States are forced to respect the principles of democracy and the rule of law under the watchful eye of their partners; consequently, there is less risk of them slipping into

[67] Mttila & Lane "Why unanimity in the Council? A roll call analysis of Council voting" (2001) at 31.

[68] Art 2 *Treaty of Lisbon* (2007) officially introduced the term "European Council" as a substitute for the term "council". The Lisbon Treaty officially made the European Council a formal institution and created the present permanent presidency. Former Prime Minister of Belgium, Herman Van Rompuy, was elected its first permanent President.

[69] Peers S "Free movement of capital: Learning lessons or slipping on spilt milk?" (2002).

[70] Volcansek "Courts and Regional Integration" (2002) at 82.

authoritarianism.[71] According to Article 4(c) of the SADC Treaty, Member States are obliged to respect principles of human rights and democracy but in reality this has not been done.

### 4.2 The Council of the European Union and the SADC Council of Ministers

The Council of the European Union (EU Council) is officially known as the Council, but it is most commonly referred to as the Council of Ministers. This institution shares a similar name with the SADC Council of Ministers. However, as this brief comparison will show, the EU Council is more advanced and well-defined in its functions while the SADC Council of Ministers works in the shadow of the SADC Summit. The EU Council represents the governments of Member States in the institution's legislature and is composed of 27 national ministers.[72] However, numbers may vary depending on the topic under consideration; for example if it is a discussion on agricultural policy, the EU Council will consist of 27 national ministers whose portfolios include this policy area. The European Commissioner for the related portfolio contributes but has no voting powers.

This approach differs from that of the SADC where the SADC Council of Ministers is made up of foreign affairs ministers only or finance ministers from the Member States. The diverse nature of the EU Council makes practical sense in that its composition is streamlined according to the purpose of the portfolios. The SADC Council of Ministers scenario of having foreign affairs ministers making decisions on all aspects of regional integration will not produce the optimal and desired results. In trying to streamline the activities of the EU Council and avoid the overload experienced in the SADC Council of Ministers, the EU Council is divided into several different council configurations according to Article 16(6) of the Treaty of the EU, which provides:

> The Council shall meet in different configurations, the list of which shall be adopted in accordance with Article 236 of the Treaty on the Functioning of the European Council. The General Affairs Council shall ensure consistency in the work of the different Council configurations. It shall prepare and ensure the follow-up meetings of the European Council, in liaison with the President of the European Council and the Commission.

In its functions, each EU Council configuration deals with a different functional area, for example, agriculture and fisheries. In its formation the EU Council has put together ministers from each state government responsible for the specific area. The 10 formations in the EU Council are as follows: General affairs; foreign affairs; economic and financial affairs; agriculture[73] and fisheries; justice and home affairs; employment; social policy; health and consumer affairs; competitiveness; transport, telecommunication and energy; environment; and finally, education, youth and culture.

[71] Weiler "To be a European citizen: Eros and civilization" (1998) at 495.

[72] Marks, Hooghe & Blank "European Integration from the 1980s: State-Centric v. Multi-level Governance" at 341–378.

[73] Häge "Committee Decision-making in the Council of the European Union" (2007) at 299.

Although the SADC has 23 Protocols almost equally mirroring this kind of approach, the institutional arrangement and exclusive functions as provided for by the EU Council is lacking in the SADC approach. The voting aspect in the EU Council is very diverse, with certain situations demanding majority voting and others unanimity. In terms of power and procedure, both the EU Council and European Parliament share legislative and budgetary powers equally.[74] In some cases the EU Council may initiate new EU law. The main purpose of the EU Council is to act as one of the two chambers of the EU's legislative branch, the other chamber being the European Parliament. This makes sense in that even in national parliaments the ministers always work closely with the parliament and are accountable to it. However, since there is no parliament in the SADC, the SADC Council of Ministers is accountable to the SADC Summit. The division of the EU's legislative authority between the EU Council and the European Parliament is unique and results in a balance of power. As the relationships and powers of these institutions have developed, various legislative procedures have been created for adopting laws, with the key procedure being that the consent of the EU Council and the European Parliament has to be sought before the law can be adopted.

### 4.3 The European Commission and the SADC Secretariat

The decision to compare the two institutions, the European Commission and the SADC Secretariat, was informed by the fact that both are responsible for the day-to-day running of their respective organisations. They are also executive bodies responsible for overseeing the implementation of decisions made by the organisations. The European Commission is sometimes perceived as a Secretariat, following the outlines established by De Gaulle.[75] However as this discussion will show, there are several differences that portray the SADC Secretariat as a much weaker institution, whereas the European Commission is able to exercise its role in the EU owing to the executive power given to it by the Treaties.[76] The European Commission is generally considered the most original of the EU's institutions.[77] The SADC Secretariat, in contrast, is small and poorly staffed.[78] Moreover, SADC Secretariat has continued to be weakened by significant institutional problems, particularly the lack of managerial expertise to tackle the multitudinous facets of regional integration.[79] In comparison, the European Commission accounts for two-thirds of the 30 000 European civil servants.[80] Monnet[81] writes in his memoirs:

> Some hundreds of European civil servants would suffice to set thousands of national experts to work and have the powerful machinery of enterprise and governments used for the treaty's missions.

[74] Hoskyns C and Michael N *Democratizing the European Union: Issues for the twenty first century: Perspectives on democratization* (2000) at 45.

[75] See generally, Magnette P *What is the European Union? Nature and prospects* (2005).

[76] See generally Denousse "Community competences: Are there limits to growth?" (1994).

[77] Vos "Reforming the European Commission: What role to play for EU agencies?" (2000) at 111.

[78] Giuffrida & Muller-Glodde "Strengthening SADC institutional structures – capacity development is key to the SADC Secretariat effectiveness" (2008) at 1-30.

[79] Marais H *Reinforcing the mould: The character of regional integration in Southern Africa* (1998).

[80] Stevens A & Stevens H *Brussels bureaucrats? The administration of the European Union* (2001)

[81] Monnet J *Memoirs* (1978) at 85.

The limited power on the part of the SADC Secretariat clearly transmits to the lack of progress in various critical areas of the organisation. Important for this article is the realisation that the SADC Secretariat faces challenges in implementing the SADC regional integration agenda and the RISDP, which is considered to be the blueprint that the SADC must follow for the region's liberation from poverty.[82] Some commentators[83] have argued that the restructuring of the SADC Secretariat has only been completed in a "formal" sense and that the "engine room of the organisation" (the SADC Secretariat) remains particularly weak in its strategy development and policy formulation capacity, as well as in its human and financial capacities. Under the current structure and circumstances,[84] the SADC Secretariat has been unable to execute its mandate as provided for in the SADC Treaty, especially that of undertaking strategic planning and management. For example, there is poor communication between the SADC Secretariat and National Contact Points and haphazard distribution of responsibilities and obligations. There is also a rapid increase of sectors, resulting in a plethora of priorities and activities dependent on limited resources, which has led to a proliferation of meetings and an increase in associated costs. In comparison, the European Commission has legitimacy owing to its "inseminating effect" on Member States' national political systems.[85] It even consults[86] private actors to avoid being accused of partiality.

In emphasising the influence and strength of the European Commission; former Belgian Prime Minister, Guy Verhofstadt, suggested changing the name "European Commission" to "European Government", saying that the term "commission" was ridiculous.[87] The role of the Commissioners is clearly defined like that of ministers in a national cabinet. In such an arrangement, the level of responsibility is easily ascertained. Furthermore, it was the EU Commission that saved the EU from near collapse, when during the presidency of Mr Delors it rescued the European Community from the doldrums after he arrived when Euro-pessimism was at its worst. He promoted the idea of the first single market and, in his second term, he pushed ahead with the far more ambitious goals of economic, monetary and political union. This cannot be said of the SADC Secretariat; although it runs the day-to-day activities of the organisation, the power to drive regional integration still lies with the political leadership that is exercised by the SADC Summit. This comparison highlights the need

[82] Mkapa BW "Speech" (Speech by his Excellency the President of the United Republic of Tanzania and Chairperson of the SADC at the launch of the SADC Regional Indicative Strategic Development Plan AICC Arusha 12 March 2004).

[83] On the need to strengthen SADC National Coordination and Implementation Structures in line with SADC priorities, see Saurombe "The role of SADC institutions in implementing SADC treaty provisions dealing with regional integration" (2012).

[84] SADC 2001 *SADC Extraordinary Summit, Windhoek, Republic of Namibia: Draft Annotated Agenda* 9 March 2001.

[85] Radaelli "Policy Transfer in the EU: International Isomorphism as a Source of Legitimacy" at 25-43.

[86] Armstrong "Rediscovering civil society: The European Union and the White Paper on Governance" (2002) at 102-132.

[87] Verhofstadt G *The United States of Europe Federal Trust for Education & Research* (2006) at 69.

for the SADC to have an ideal institution running the day-to-day activities of the organisation outside the influence of the SADC Summit.

The work to produce the RISDP had to be commissioned by, and its final implementation will depend on, the SADC Summit. In reality, politics in the SADC always supersedes other areas. For that reason, it is not surprising that the launch of the SADC FTA in 2008 was overshadowed by the talks on the Zimbabwean crisis, leading to the implementation of the Global Political Agreement. The EU Commission was set up as an institution to wean the EU from the authority of individual governments. It was meant to be a supra-national authority with members proposed by all the governments of the Member States but bound to act independently. This is in contrast to the EU Council, which represents governments, the European Parliament, which represents citizens, and the Economic and Social Committee, which represents organised civil society. According to Article 17 of the Treaty on the European Union the responsibilities of the EU Commission are as follows:

> [To] ensure the application of the Treaties and of measures adopted by the institutions pursuant to the Treaties. It shall oversee the application of Union law under the control of the Court of Justice of the European Union.[88]

In addition to these responsibilities and by virtue of the coming into force of the Treaty of Lisbon, the EU Commission can now exercise executive power. This executive power is shared with the EU Council.[89] One of the strengths of the EU Commission is that it can initiate legislation, something other institutions cannot do. Although EU Council and the European Parliament may request legislation, in most cases the EU Commission initiates the basis of these proposals. This monopoly is designed to ensure co-ordinated and coherent drafting of EU Law. However, this has been criticised in some circles: it is felt that the European Parliament should have the right to do so, since this is the practice in national parliaments. This argument may be unnecessary since the EU Council and the European Parliament may request the EU Commission to draft legislation and the EU Commission does not have the power to refuse such a request.[90] Formally, however, the EU Commission alone is authorised to submit decision making proposals to the EU Council and the European Parliament. In another further development under the Lisbon Treaty, EU citizens are now able to request the EU Commission to legislate in an area if they can provide a petition supported by one million signatures. In the final analysis, the EU Commission's power and influence are very relevant in proposing law that is centred on economic regulation, and, owing to the size of the European market, the effect is even felt in the global market.[91] As recently as 2007, the EU Commission initiated moves for creating European criminal law when criminal law proposals on intellectual property rights directives were put forward.[92] This work can also be done by the SADC Secretariat if it is given the correct mandate supported by legal instruments.

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[88] For a descriptive analysis of the functions of the EU Commission see Hix S *Political System of the European Union* (1999) at 32.

[89] Hix (1999) at 33.

[90] Peterson J & Michael S *Institutions of the European Union* (2006) at 152.

[91] Peterson and Micheal (2006).

[92] See *Directive* 2004/48/*EC* of the *European* Parliament and of the Council of 29 April 2004 on the

In an effort to make sure that there is compliance with the legislation passed by the EU Council and the European Parliament, the EU Commission has the responsibility to ensure the implementation of the legislation. This is done through the Member States or through its agencies. This is not the position in the SADC where power is centralised in the SADC Summit. The EU Commission is tasked with the responsibly to ensure that the treaties and laws are upheld, while the EU Council can take a Member State or any other institution to the Court of Justice in a dispute. The Commission's role in representing the EU externally is similar to that of the SADC Secretariat. The EU Commission represents the EU in bodies like the WTO. The SADC Secretariat, meanwhile, has been instrumental in the signing of a number of partnership and funding agreements on behalf of the SADC; for example, the signing of the Agreement with the Community of Portuguese Speaking Countries(CPLP). However, the SADC Member States still represent themselves individually in forums like the WTO.

## 5 CONCLUSION

This article has exposed the vast institutional differences between the SADC and the EU, ideally showing that it would be an error to believe that one could merely transfer the EU model of regional integration to another regional context such as Southern Africa.[93] The process of institution building, law making, policy integration and market creation in the EU has produced a European model of internationalisation with distinctive characteristics.[94] This has not happened in the SADC, and Oppong has concluded that effective economic integration in Africa is not only hindered by purely socio-economic, political and infrastructural problems but by the state of existing laws.[95] Thus, the SADC's economic integration processes, and community-state, inter-state and inter-community legal relations are situated on an unstable legal framework, and attempts to provide a legal framework have been incomplete and, sometimes, grounded on questionable assumptions.[96]

This spells out the difference between the two organisations and it is no wonder that the SADC is always plagued by the illegitimacy criticism. The EU experience sends a clear message: any state actor interested in retaining sovereignty and limiting transnational incursions into domestic affairs should eschew a separate and formal mechanism for resolution of disputes in regional trade arrangements at a supra-national level.[97] The powers of EU institutions are equally balanced, making sure that there is clear oversight among institutions. This is not so in the SADC, where, as this article has shown, the SADC Summit possesses absolute power over all other institutions. When institutionalisation is contemplated, the lessons of the EU are

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enforcement of *intellectual property rights. See generally* Orlando "'Piracy' provisions under the Enforcement Directive and patent infringement" (2007) at 642–643.

[93] Bösl A *Monitoring Regional Integration in Southern Africa: Yearbook* (i) (2011) at 1

[94] Laffan "The European Union: A distinctive model of internationalisation" (1998) at 253.

[95] Oppong RF *Legal aspects of economic integration in Africa* (2011).

[96] Oppong (2011) at 1.

[97] Volcansek "Courts and Regional Integration" (2002) at 5.

instructive.[98] Of great significance is the oversight role the EU institutions exercise on one another. In the final analysis, if the desire to follow the European model of regional integration is the preferred choice, the SADC should consider amending the SADC Treaty to provide a legal basis for such an undertaking.

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[98] Volcansek (2002). at 5.

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