DELEGATED CONTRACTING AUTHORITY IN FRANCOPHONE SUB-SAHARAN AFRICA:
A Comparative Analysis

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Introduction

Delegated contracting authority (*maîtrise d'ouvrage déléguée*, hereinafter the "Delegated Contracting Authority") has progressively established itself in the delivery of infrastructure projects across francophone sub-Saharan Africa. Its underlying logic is straightforward: a contracting authority lacking the technical or financial capacity to carry through a complex operation entrusts a third party with acting in its name and on its behalf, thereby gaining in efficiency and pace what it concedes in direct operational control. Directive 02/2014/CM/UEMOA of 28 June 2014 (the **Directive**) sought to systematise the arrangement at regional level, pursuing, as its preamble states, the acceleration and securing of public infrastructure delivery, the strengthening of disbursement capacity and the consolidation of project performance.[1]

The Directive is an instrument of the West African Economic and Monetary Union (the *Union économique et monétaire ouest-africaine*, or WAEMU), an integration body uniting eight francophone States: Benin, Burkina Faso, Côte d'Ivoire, Guinea-Bissau, Mali, Niger, Senegal and Togo. WAEMU directives, akin to those of the European Union, bind Member States as to the result to be achieved while leaving them a measure of latitude as to form and method. Three layers of rule therefore overlay the regimes here considered: the WAEMU directive itself, the national measures of transposition and, alongside both, the OHADA framework, which harmonises commercial and security law across seventeen African States.

Twelve years after its adoption, textual harmonisation has not yielded normative convergence. Transposition has produced markedly contrasting national architectures: Côte d'Ivoire articulates Delegated Contracting Authority with construction law in such a way as to expose the delegate to the constructors' liability regime; Burkina Faso concentrates delegations in the hands of public agencies; Senegal has fashioned a hybrid regime housed within the Construction Code itself.

Although outside the WAEMU area, Gabon, having built its rules upon cognate categories, offers a useful counterpoint: its convergences with the WAEMU regimes attest to the structural foundations of the figure, while its silences disclose the choices specific to the regional model.

Delegated Contracting Authority is not, however, the exclusive preserve of public procurement law. In several of the legal orders examined here, the same category resurfaces in private construction law, where the change of setting

[1] WAEMU Council of Ministers Directive No 02/2014/CM/UEMOA of 28 June 2014 on delegated project management (*maîtrise d'ouvrage déléguée*). See also Regulation No 04/2014/CM/UEMOA on procedures applicable to public procurement and public service delegations within WAEMU.

recasts the questions of qualification and liability, drawing the agent into the orbit of decennial liability and inviting comparison with the contractual mechanisms familiar to international major-projects practice, and in particular with the EPCM contract (*Engineering, Procurement & Construction Management*).

The present study confronts the regional and national texts both with their internal coherence and with the demands of major-projects practice. It draws principally upon the rules in force in Côte d'Ivoire (*Decree 2019-268*), Burkina Faso (*Decree 2017-0051*) and Gabon (*Public Procurement Code, articles 31 to 36*), with incidental reference to Senegal (*Law 2023-20, articles L.61 to L.62*) and Togo (*Decree of 8 July 2019*). The analysis is divided into three parts: the regime of Delegated Contracting Authority in public procurement, as systematised by the Directive and transposed by Member States (Part I); the position of Delegated Contracting Authority in private construction law (Part II); and the qualification of the EPCM contract in the light of the categories of private and construction law (Part III).

Part I: Delegated Contracting Authority in Public Procurement

Agent and not contractor: a sui generis administrative agency

The texts characterise the Delegated Contracting Authority as an agent. Article 2 of the Directive describes the delegate as acting *"au nom et pour le compte"* of the contracting authority (in its name and on its behalf), and Article 21 records that delegation *"takes the form of a mandate entrusted to a third party"*.[2] The national transpositions and the Gabonese Code adopt the same characterisation.

This convergence rests upon a shared technical core: agency understood as the vehicle of representation in the performance of legal acts; the confinement of the delegate's liability towards the project owner to the functions personally entrusted to it; and, in parallel, the delegate's personal liability to third parties for its own faults, delicts and quasi-delicts committed in the course of the mission. These features are to be found in all the regimes here considered. Far from inventing them, the Directive merely systematised them at regional level. That Gabon, although not bound by the Directive, shares the same architecture confirms the structural, rather than community-driven, character of this convergence.

The characterisation calls for one further refinement. The Delegated Contracting Authority mandate is not the agency of articles 1984 et seq. of the French Civil Code.[3] Civil agency rests upon a private relationship, freely revocable in principle, having for its object the performance of legal acts in the name and on behalf of the principal. While it shares this representative essence, the Delegated Contracting Authority mandate departs from the private model at the appointment stage, the agent being selected through the

[2]Directive, articles 2 and 21. Article 2 defines the delegated project owner as the legal person acting *"au nom et pour le compte"* of the contracting authority, that is, in its name and on its behalf.
[3]On agency in civil law: French Civil Code, article 1984; Malaurie, Aynès and Gautier, *Contrats civils et commerciaux*, §§ 625 et seq. The preliminary draft reform of special contracts (Stoffel-Munck Commission, public consultation July 2022 to January 2023) preserves a similar formulation at draft article 1984.

application of public procurement rules.[4] Faced with the same difficulty, French administrative law has elaborated the *mandat administratif* as an autonomous doctrinal category.[5] The legal orders examined here do not invariably adopt that label, yet they all situate the Delegated Contracting Authority mandate within the same logic.

Because the agent acts in the name and on behalf of a public entity, its acts are deemed to be those of that entity, with the consequence that the agent is itself bound by the procurement rules to which the principal is subject.[6]

Liability confined to the attributions effectively exercised

Article 25, paragraph 2 of the Directive limits the Delegated Contracting Authority's liability to the *"proper performance of the functions personally entrusted to it"*, a principle reaffirmed at Article 51. The national transpositions and the Gabonese regime reproduce the formula verbatim. The reiterated use of the adverb *"personally"* captures the substance of the rule: the delegate's liability towards the project owner is circumscribed by the functions actually entrusted to it.

Two distinctions are in order. First, this confinement is not to be conflated with the representative effect of the mandate: legal acts performed by the delegate within the limits of its mission bind the contracting authority directly vis-à-vis third parties, by the ordinary mechanism of representation, the rule of confinement governing only the internal allocation between principal and agent. Second, confinement does not displace the delegate's personal liability to third parties for faults committed in the course of the mission.

The mechanism transposes into public procurement law the rule according to which an agent's powers are to be strictly construed.[7] As Canedo observes, the agent *"is bound by the terms and limits of its mandate, that is to say by the will of the principal it represents"*, with the consequence that only the principal is engaged by acts performed within those limits.[8]

The corollary is a fragmentation of the liability chain. Where the works develop a defect, the parties must determine whether the loss flowed from a supervisory failure on the part of the delegate, an execution failure on the part of the contractor or a design failure on the part of the design supervisor. The

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[4]*Conseil d'État*, 5 March 2003, annulling article 3, 7° of the 2001 Public Procurement Code (M. Canedo, *Le mandat administratif*, LGDJ, 2001, no 5). See also *Tribunal des conflits*, 5 March 2012, no 3843, *Sté Baryflor v Sté EDF*: the agent is bound by the procurement rules applicable to the principal.

[5]M. Canedo, *Le mandat administratif*, LGDJ, 2001; A. Roussel and Ch. Nicolas, "Le mandat administratif à son crépuscule", AJDA 2018, p. 267. The *Tribunal des conflits* tightened the notion in *Commune de Capbreton* (*Tribunal des conflits*, 11 December 2017, no 4103). See F. Lombard, "Que reste-t-il de la théorie du mandat administratif?", RTD Com. 2018, p. 72.

[6]CE sect., 18 December 1936, *Prade*; CE, 2 June 1961, *Leduc*; *Tribunal des conflits*, 16 May 1983, *SA Compagnie toulousaine de transports publics*; *Tribunal des conflits*, 11 December 2017, no 4103, *Commune de Capbreton*.

[7]French Civil Code, article 1989. On strict construction: M. Mekki, *Le mandat*, §§ 33 to 34. See *Cass. 1re civ.*, 6 March 1996, D. 1997, p. 223, obs. Amar-Layani: *"Le mandataire ne peut rien faire au-delà de ce qui est porté dans son mandat"*. In French public procurement law: articles L.2422-5 and L.2422-7 of the Public Procurement Code.

[8]Canedo, *op. cit.*, no 13: *"Le mandataire est lié par les termes et les limites de son mandat, autrement dit par la volonté du mandant qu'il représente"*. Malaurie, Aynès and Gautier, *op. cit.*, § 629; French Civil Code, article 1989.

remedies, well rehearsed in international project practice though too often neglected on African transactions, are familiar: a precise interface matrix between delegate, design supervisor and contractors, articulated duties of reporting and warning, and an insurance package mirroring the contractual allocation. In their absence, the interstices between adjacent contractual scopes become the locus both of dispute and of evidential difficulty when matters go awry on site.

Formalism ad validitatem

Each regime imposes formal requirements upon the delegation agreement, sanctioned by nullity. Article 27 of the Directive lists eight categories of mandatory clauses, on pain of nullity.[9] The Gabonese Code does likewise at Article 35.[10] The national transpositions vary in their reach: nine categories in Côte d'Ivoire, seven in Burkina Faso.

The *ad validitatem* formalism draws upon two sources. In civil law, agency is consensual in principle, although formal requirements may be imposed *ad validitatem* by statute or by virtue of the parallelism of forms, which subordinates the form of the agency to that of the act it is intended to accomplish.[11] In public procurement law, the formalism serves a distinct purpose: transparency and the control of public expenditure require the delegation agreement to specify, with precision, the functions delegated, the financial envelope, the modalities of control and the basis of remuneration. The convergence of these requirements across the regimes examined constitutes the third pillar of the common foundation.

Three convergences thus emerge: characterisation as agent, confinement of liability, and formalism on pain of nullity. Each draws upon the shared civilian tradition and upon functional requirements common to public procurement. The Directive systematised them at regional level. Its proper contribution, and the locus of divergence between regimes, lies in the more specific mechanisms now to be examined.

Remuneration of the Delegated Contracting Authority

Côte d'Ivoire stands apart on the question of remuneration. Article 42 of Decree 2019-268 prescribes a tariff scale and caps total remuneration at 10% of the value of the works exclusive of tax, save where ministerial authorisation is granted.[12] The Directive, the Burkinabe regulations and the Gabonese Code go no further than to require that remuneration reflect the scope of the mission and the projected cost. None imposes a cap.

The disparity has tangible consequences. In civil law, agency is presumed gratuitous absent any contrary stipulation,[13] although case law admits a presumption of onerousness where the agent acts in a professional capacity.[14]

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[9] Directive, article 27.
[10] Gabonese Public Procurement Code, article 35.
[11] On the *ad validitatem* formalism of agency and the parallelism of forms: Mekki, *op. cit.*, § 30. In administrative law: Canedo, *op. cit.*, no 6; French Public Procurement Code, articles L.2422-5 et seq. Malaurie, Aynès and Gautier, *op. cit.*, § 629.
[12] Ivorian Decree No 2019-268, article 42.
[13] French Civil Code, article 1986.
[14] On the agent's remuneration: Mekki, *op. cit.*, § 50; French Civil Code, articles 1986 and 1999.

Public procurement law is governed by stricter rules of pricing. The Ivorian cap of 10% may dissuade international consultants from accepting complex mandates involving a multiplicity of providers, particularly where the coordination effort would warrant a proportionally higher fee. Burkina Faso caps advances at 30% of the projected budget, a figure equally adopted by Togo.

Incompatibilities

The regimes diverge sharply on the question of incompatibilities. Burkina Faso displays a pattern of public-agency concentration. In law, the decree opens delegation to private operators; in practice, the executing agencies that exercise Delegated Contracting Authority prerogatives are designated by decree under Article 28, with the result that AGETIB and ACOMOD-Burkina absorb the bulk of delegations. The model carries two risks: a distortion of competition and, where the delegation extends to technical supervision of the works, a functional conflation with design supervision that the single incompatibility provision at Article 52 does not adequately police.

Côte d'Ivoire devotes three articles to the question (Articles 24 to 26), reaching as far as *"linked undertakings"*, that is, legal persons that directly or indirectly hold or control one of the parties to the Delegated Contracting Authority contract, or that are themselves held or controlled by it. The Ivorian decree does not, however, define *"control"* for the purposes of this incompatibility, leaving open whether the notion is to be appraised by reference to OHADA company law (and in particular Article 174 of the Uniform Act on commercial companies and economic interest groups) or by autonomous public-procurement criteria.

Articles 31 to 36 of the Gabonese Code contain no express provision on incompatibilities. Such silence does not necessarily betoken the absence of a rule: general principles, and in particular the prohibition upon the agent's conflict of interests, may ground an incompatibility outside any specific text.[15]

Control exercised by the public entity

The texts list comparable bundles of delegable functions, but they diverge upon the question of supervision. Burkina Faso accords the broadest latitude: Article 21, paragraph 3 permits the project owner to delegate its prerogatives *"without condition"* or *"subject to its agreement"*. Gabon adopts a different course: Article 33 of the Public Procurement Code makes the signature of contracts by the Delegated Contracting Authority conditional upon *"approval of the choice of holder by the Contracting Authority"*, an *a priori* control that the WAEMU regimes do not require, and which constitutes a condition of validity rather than a discretionary mechanism. The Directive (Article 24) and the Burkinabe decree (Article 21) recognise a comparable device, namely non-objection to the choice of contractors, but in both, the project owner remains free to waive it. Gabon admits of no such waiver.

The mechanism invites a broader observation: it approximates the no-

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Presumption of onerousness in the case of professional agency: *Cass. 1re civ.*, 11 February 1981, no 79-16.473.

[15]In French civil law: French Civil Code, article 1596 and, more generally, article 1161; in French public procurement law: Public Procurement Code, article L.2422-11.

objection procedures imposed by multilateral lenders, under which the World Bank or the African Development Bank conditions award upon prior review. A Delegated Contracting Authority operating on a Bank-financed project under the Gabonese regime therefore confronts two layers of preliminary scrutiny, one statutory and the other contractual, whose articulation must be carefully sequenced if procurement is not to be unduly delayed.

On supervision more broadly, the Directive constructs a dual oversight: financial, through prior approval of the budget and control of the delegate's expenditure (Articles 24 and 29); and technical, through accreditation of the delegate's capacities and monitoring of the delegated functions (Articles 22 and 25). Côte d'Ivoire and Togo carry the dual oversight over; Burkina Faso does not, its regime providing for control mechanisms (Articles 37 to 39) without the accreditation layer. Nor does Gabon, which subjects the selection of the Delegated Contracting Authority to the procurement rules governing intellectual services contracts but stops short of imposing a prior accreditation procedure. Across the WAEMU area, accreditation thus constitutes the most significant marker of divergence.

Part II: Delegated Contracting Authority Outside the Field of Public Procurement

Delegated Contracting Authority does not, in every legal order under consideration, remain confined to public procurement. In Côte d'Ivoire and Senegal, the category has likewise been received in private construction law, and the change of setting recasts the questions of qualification and liability.

Three distinct regimes for decennial liability

Delegated Contracting Authority in private construction law in Côte d'Ivoire and Senegal raises the question of how the delegate's status interacts with the national regimes of decennial liability. The texts in force reveal that each jurisdiction has fashioned its own response, with materially distinct consequences for the Delegated Contracting Authority.

In Côte d'Ivoire, the 2019 Construction and Housing Code defines the *"constructor of the work"* autonomously at Article 3: any architect, engineer, contractor, developer or technician bound to the project owner by a *contrat de louage d'ouvrage* (a works contract), as well as any person who, after completion, sells a work it has built or had built.[16] The Code contains no equivalent of the French mechanism re-characterising the agent as a constructor: an agent whose mission is comparable to that of a contractor for works simply does not appear in the text. The Ivorian decennial regime exists, but it captures only constructors within the meaning of Article 3.[17] The reading we propose is accordingly unambiguous: under Ivorian law, the Delegated

[16]Law No 2019-576 of 26 June 2019 establishing the Construction and Housing Code (Côte d'Ivoire), article 3: a *"constructeur de l'ouvrage"* is *"any architect, engineer, contractor, developer or technician bound to the project owner by a* contrat de louage d'ouvrage *or by specifications declared compliant by the relevant services of the Ministry of Construction and Urban Planning. Any natural or legal person who sells, after completion, a work it has built or had built"*. The definition contains no equivalent of article 1792-1, 3° of the French Civil Code.

[17]Construction and Housing Code (Côte d'Ivoire), articles 238 to 240 (decennial liability), article 536 (sanctions). The Ivorian decennial regime is autonomous and does not reproduce articles 1792 et seq. of the French Civil Code, although it shares with them the broader architecture of a presumption of strict liability of constructors.

Contracting Authority cannot be re-characterised as a constructor on the sole ground that its mission incorporates material acts of supervision or control.

In Senegal, the Construction Code addresses the question head-on. Article L.47 imposes strict liability upon the constructor.[18] Article L.48 thereafter targets the agent whose mission is assimilable to that of a contractor for works, but subjects it to a regime distinct from the French solution: a *"contractual liability of the same nature as that of constructors in the event of breach of the duty to advise or of the obligation to inform, give notice or supervise"*.[19] The Senegalese legislator has thus opted for a fault-based liability: the claimant must establish breach of the delegate's duties of advice, information or supervision. The regime is not one of presumed liability, but rather an intermediate construction, calibrated between the French re-characterisation mechanism and outright exoneration.

In Burkina Faso, the 2006 Urban Planning and Construction Code imposes decennial liability upon the contractor in respect of the works executed. The Delegated Contracting Authority, defined as *"the exclusive agent of the project owner"*, falls outside the scope of those subject to decennial liability.[20] No statutory mechanism re-characterises the agent as a constructor.

French law furnishes a useful counterpoint. Article 1792-1, 3° of the French Civil Code deems a constructor any person who, while acting in the capacity of agent, performs a mission comparable to that of a hirer of work (*locateur d'ouvrage*). Recent case law of the *Cour de cassation* has steadily lowered the threshold for such re-characterisation, to the point of treating an asset management company tasked with *"supervising the architect's work"* as a constructor.[21] The mechanism remains, however, peculiar to French law and admits of no automatic reception in the legal orders examined here, each of which has fashioned its own qualification regime.

Drafting consequences for the delegation agreement

The drafting response is well established. The delegate's mission must be confined, strictly, to legal acts (procurement, financial management, supervision in the sense of monitoring), to the express exclusion of technical acts falling within design supervision or technical control. The civilian

[18]Senegalese Construction Code (Law No 2009-23), article L.47: *"Tout constructeur d'un ouvrage est responsable de plein droit [...] des dommages [...] qui compromettent la solidité de l'ouvrage ou qui [...] le rendent impropre à sa destination. La responsabilité [...] s'étend à toute personne qui vend, après achèvement, un ouvrage qu'elle a construit ou fait construire."*
[19]Senegalese Construction Code, article L.48: *"Le mandataire, dont la mission est assimilable à celle d'un locateur d'ouvrage, encourt une responsabilité contractuelle de même nature que celle des constructeurs en cas de manquement au devoir de conseil ou à l'obligation d'informer, de renseigner ou de contrôler."* The provision establishes a fault-based liability regime, conditional upon proof of breach of specific duties. It is fundamentally distinct from the French mechanism at article 1792-1, 3° of the Civil Code, which creates a presumption of strict liability.
[2020]Law No 017-2006/AN of 18 May 2006 establishing the Urban Planning and Construction Code of Burkina Faso, articles 43 and 44. The contractor bears decennial liability for the works executed. The Delegated Contracting Authority, defined at article 2 as *"the exclusive agent of the project owner"*, does not fall within the perimeter of debtors of the decennial liability.
[21]See *Cass. 3e civ.*, 10 October 2012, no 11-17.627; *Cass. 3e civ.*, 13 April 2023, no 22-11.024; *Cass. 3e civ.*, 5 December 2024, no 22-22.998 (note S. Bertolaso, *Resp. civ. et assur.* 2025, comm. 39); *Cass. 3e civ.*, 3 April 2025, no 23-21.080. The case law is specific to French law and is not intended for reception in the legal orders examined here, each of which has its own qualification regime.

distinction between agency, which bears upon legal acts, and the *contrat d'entreprise*, which bears upon material or intellectual services, remains the classical criterion of qualification.[22]

The acts liable to draw the Delegated Contracting Authority across into the constructors' camp are readily identifiable: the validation of execution drawings, the issuance of orders to proceed, the effective direction of the worksite and participation in taking-over. The delegation agreement should address them expressly, not because re-characterisation necessarily exists in current local law, but because clarity in the allocation of responsibilities remains, in any event, an imperative of project management.

Part III: Delegated Contracting Authority and the EPCM Contract: Functional Convergence and Qualification Instability

Qualification questions acquire particular acuity when Delegated Contracting Authority is set against the EPCM contract. EPCM is widely deployed in African mining and energy projects, as illustrated by Simandou, the Nacala Corridor Railway and Port Project in Mozambique, the Tasiast expansion in Mauritania and Ambatovy in Madagascar. The comparison is meaningful, however, only on condition that one is precise as to its object: in those operations, the EPCM provider is engaged by a project company, and not by the State.

The EPCM contract entrusts a provider with design, the management of procurement and the supervision of construction, without transferring direct responsibility for the execution of the works. Practice distinguishes two models. Under the first, known as the representation model, the provider acts in the name and on behalf of the project owner, the works contracts being concluded by the project owner or in its name. Under the second, the provider contracts in its own name and itself organises the contractual relationships with the works contractors. Everything that follows depends upon the model the parties have chosen.

Functional convergence between Delegated Contracting Authority and EPCM

When the EPCM contract is built upon the representation model, it converges, functionally, with Delegated Contracting Authority. In both, the provider acts on behalf of the project owner, organises the contracts necessary to the project, coordinates their performance and does not, in principle, bear the material risk of executing the works. International commentary indeed describes the EPCM contract, in this configuration, as a form of project management agency.[23]

There follows the question whether, in legal orders where Delegated Contracting Authority has been received in private construction law, an EPCM provider structured upon the representation model would face qualification risks comparable to those of the Delegated Contracting Authority, and in

[22] See Malaurie, Aynès and Gautier, *op. cit.*, § 703.
[23] Ph. Loots and D. Charrett, *Practical Guide to Engineering and Construction Contracts*, CCH, 3rd ed., 2009; J. Jenkins, *International Construction Law*, Informa, 2014, p. 247; D. Charrett, *Contracts for Construction and Engineering Projects*, Informa, 2nd ed., 2022, ch. 12.

particular the risk of re-characterisation as a constructor for the purposes of decennial liability. The answer turns on the applicable law. In Côte d'Ivoire, the absence of any statutory re-characterisation mechanism means that, in principle, no such assimilation occurs. In Senegal, the answer is more nuanced: an agent whose mission approaches that of a contractor for works may incur fault-based liability for breach of its duties of advice, information or supervision.

The unstable qualification: agency or contract for works

The EPCM contract is not, however, reducible to a single figure: its qualification depends closely upon its drafting. Where it leads the provider to conclude the works contracts in the name and on behalf of the project owner, it tends towards a representation agency. Where, by contrast, it places the provider at the centre of the contractual chain, in its own name, it tends towards a *contrat d'entreprise*, or, more precisely, towards an innominate project management contract.

Recent standard forms reflect this duality. The IChemE Blue Book of 2023, the first formalised EPCM standard at market scale, places the provider under an obligation of means (*reasonable skill and care*), caps liability and confines it to the provider's own services, to the exclusion of execution defects on the part of the contractors. The Blue Book additionally introduces a net contribution clause, limiting the consultant's liability to its proportionate share of fault. This drafting choice does not depart from international commentary: it favours one of the two available constructions, that of the autonomous provider, as distinct from the pure representative, and is best read as a deliberate effort to stabilise the project manager's contractual position without saddling it with the execution risk that remains attached to the works contractors.

The preparatory work of the FIDIC drafting committee, on the indications presently available, leans the other way, towards a model closer to representation. The value of the comparison lies precisely in this oscillation: the EPCM contract hesitates between two logics, the one representative and the other entrepreneurial, whereas Delegated Contracting Authority under public law sits more firmly within the first.

Towards an autonomous functional qualification

Neither WAEMU regional law nor any of the national laws examined has elaborated a legal category capable of fully capturing the hybrid figure of the project manager who, without bearing the execution risk, exercises a decisive influence upon the conduct of the operation. The IChemE Blue Book and the FIDIC works seek to bridge that gap by contractual means. The question acquires a public-law dimension, however, the moment a public entity decides to deploy, for a public procurement operation, a structure functionally close to EPCM. The mixed character of EPCM services, which combines intellectual design, logistical coordination and technical supervision, then renders the dominant characterisation difficult to identify. A further complication arises from the multilateral lenders, whose Procurement Regulations distinguish *consultant services* from *non-consulting services* upon criteria that do not map

cleanly onto national-law categories.[24]

Conclusion

The comparative examination of Delegated Contracting Authority in francophone sub-Saharan Africa confirms both a common foundation and substantial divergences. Directive 02/2014/CM/UEMOA has, beyond doubt, established a common bedrock in public procurement, organised around the agency characterisation, the confinement of liability and *ad validitatem* formalism. National transposition has, however, produced appreciably different normative architectures; and the reception of Delegated Contracting Authority in private construction law in Côte d'Ivoire and Senegal has drawn the agent into the orbit of construction law without the national decennial regimes converging upon a common position. The comparison with the EPCM contract underscores the magnitude of the difficulty: depending on whether the consultant is structured as a representative or as an autonomous provider, the characterisation oscillates between agency and *contrat d'entreprise*, with consequences that neither the regional texts nor the national laws yet treat satisfactorily.

Absent a legislative reform addressing, in a single movement, the recognition of a functional category of project manager, the regime of liability and insurance applicable to the delegate operating in the private sector, and the articulation between public procurement law, construction law and international contractual standards, Delegated Contracting Authority will remain a legally fragmented instrument. Its effective use will depend less upon a harmonised framework than upon the contractual ingenuity of the practitioners who structure the projects.

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[24] World Bank, *Procurement Regulations for IPF Borrowers*, 5th ed., November 2020, Section III; African Development Bank, *Procurement Policy and Methodology for Bank Group Funded Operations*, 2015.