

OPINION n°001/98

Opinion of the Court of 10 September 1998 on the conformity of the delegation of signature given by the President of the Commission to his Director of Cabinet with WAEMU texts.

Summary of the opinion

A signature is delegated when an administrative authority instructs a member of staff to sign certain administrative acts on its behalf, in its stead.

For an administrative act signed by delegation to be legal, three conditions must be met:

- 1. The delegation must have been authorised by a basic legal standard;*
- 2. there must be a valid act of delegation in application of the basic standard;*
- 3. the limits set by the authorising instrument must have been complied with.*

AVI SN° 001/1998

of 10 September 1998

File No. 01-1998

REQUEST FOR AN OPINION FROM MR MOUSSA TOURE,
PRESIDENT OF THE UEMOA COMMISSION
ON DECISION NO. 90/96/PCOM OF 11 SEPTEMBER 1996 BY
WHICH HE GAVE HIS CHIEF OF STAFF,
Mr ANTOINE SARR, DELEGATION OF SIGNATURE IN RESPECT OF A
CATEGORY OF ACTS, DOCUMENTS AND DOCUMENTS

The President of the Commission referred the matter to the Court of Justice pursuant to the provisions of Article 16(4) of Additional Act No 10/96 on the Statute of the Court of Justice of the WAEMU by letter No 98-035/PC/CJ of 30 April 1998, registered at the Registry of the said Court on 4 May 1998 under No 1/98, which reads as follows:

"By decision no. 90/96/PCOM dated 11 September 1996, a copy of which is attached, I delegated authority to Mr Antoine SARR, my Directeur de Cabinet, to sign the following documents on my behalf:

- *travel orders for Commission officials and contract staff ;*
- *correspondence of an administrative or financial nature, with the exception of that addressed to the Union's bodies and to members of the Commission;*
- *purchase requisitions ;*

- *order forms ;*
- *expenditure commitment forms ;*
- *expenditure settlement forms ;*
- *payment orders.*

In this case, it concerns a limited list of day-to-day management acts, for the signature of which I felt it appropriate to call on the support of one of my closest colleagues, without relinquishing either my own competence or my power of control.

This is why the aforementioned decision, which merely delegates signature and not power, specifies that Mr Sarr's signature must be preceded by the words: "For the President of the Commission and by delegation, the Directeur de Cabinet".

However, having received reactions to the effect that Mr SARR could not sign some of the acts mentioned in the said decision, and in the context of Article 27, in fine, of the Statutes of the Court, I would like to submit it to your jurisdiction for its opinion.

I remain at the Court's disposal for any further information it may require.

Yours sincerely

Moussa TOURE "

The Court, sitting as a Consultative General Assembly, under the chairmanship of Mr Yves D. YEHOUESSI, President of the WAEMU Court of Justice, on the report of Mr Kalédji AFANGBEDJI, Advocate General at the said Court, and in the presence of the latter and of Messrs:

- Arsène Assouan USHER, Court Judge
- Mouhamadou Moctar MBACKE, Court Judge
- Martin Dobo ZONOU, Court Judge
- Youssouf ANY MAHAMAN, Court Judge
- Malet DIAKITE, First Advocate General

examined the above-mentioned request for an opinion dated 30 April 1998 at its meeting of 10 September 1998.

THE CONSULTATIVE GENERAL MEETING

The Treaty of the West African Economic and Monetary Union (WAEMU) signed on 10 January 1994;

Vul'Acte additionnel n° 10/96 portant Statuts de la Cour de Justice de l'UEMOA ;

See Regulation No. 01/96 on the Rules of Procedure of the Court of Justice of the WAEMU;

Vule Règlement Administratif de la Cour de Justice de l'UEMOA en date du 09 décembre 1996 ;

Viewed at the request 98-035/PC/CJ of 30 April 1998 from
the President of the WAEMU Commission;

I. ON THE SHAPE

Article 15-7 (3^e) of the Rules of Procedure of the Court of Justice states that

"When a matter is referred to it by the Commission, the Council of Ministers, the Conference of Heads of State and Government or a Member State, the Court may give an opinion on any difficulty encountered in applying or interpreting acts governed by Community law".

The application having met all the formal requirements laid down by the Court's Rules of Procedure and Administrative Rules is therefore admissible.

II. ON THE BACKGROUND

Critical appraisal of the delegation of signature, subject of Decision No. 90/96/PCOM dated 11 September 1996.

Under French administrative law, a signature is delegated when an administrative authority instructs an administrative agent to sign certain administrative acts falling within its remit on its behalf, in its place and stead.

The delegation simply substitutes a signature without formally amending the instrument.

The delegating authority retains the power to sign the documents for which it has delegated signature.

For an administrative act signed by delegation to be legal, three conditions must be met:

- 1) Firstly, the delegation must be authorised by a basic legal standard;
- 2) Secondly, there must be a valid act of delegation in application of the basic rule;

3) Lastly, the limits set by the delegation authorisation must have been respected.

The first condition means that the delegation must have been authorised by law. However, the Head of State may, without legislative authorisation, authorise Ministers and Secretaries of State to delegate their signature by decree.

This means that a delegation of signature must always be authorised by law or, exceptionally, by decree.

By the second condition, the law authorises the delegation of signature by determining the beneficiaries and the matters or acts to which it relates.

The third condition requires strict compliance with the limits within which the authorisation to delegate signature was given.

The delegation of signature, as defined in French administrative law, is contained in the principles of administrative law which govern the operation of the public services of the Member States of the Union, principles from which the administrative or financial regulations of the bodies of the Union emanate.

On reading the decision by which the President of the Commission delegated his signature to his Director of Cabinet, it becomes clear that this delegation concerns acts which are in the group of those which he uses to carry out budget expenditure operations by virtue of the powers conferred on him by Article 23 and Article 28 paragraph 1 of Regulation No 03-95/CM/UEMOA on the Financial Regulations of the Organs of the Union, which articles stipulate respectively:

"The President of the Commission commits and settles budget expenditure and orders its payment.

"No expenditure may be paid unless it has first been committed, liquidated and authorised by the Chairman of the Commission".

Examination of these Financial Regulations shows that there is no provision authorising the Chairman of the Commission to delegate his signature to any member of staff under his authority.

It follows that the act of delegation of signature by the President of the Commission did not, in the absence of authorisation, fulfil the conditions required by the rules of WAEMU Community law.

With regard to correspondence of a purely administrative nature addressed to natural or legal persons other than the Bodies of the Union and the Members of the Commission, no provision of the Rules of Procedure or of any other regulation of the Commission authorises the President of the Commission to delegate his signature to his Directeur de Cabinet or to any agent under his authority.

As a result :

⇒ With regard to

- travel orders for Commission officials and contract staff ;
- correspondence of a financial nature, with the exception of that addressed to the bodies of the Union and to Members of the Commission;
- purchase requisitions ;
- purchase orders ;
- expenditure commitment forms ;
- expenditure settlement forms ;
- payment orders;

Regulation No. 03-95/CM/UEMOA on the Financial Regulations of the organs of the Union, which is applicable in this case, does not provide for the delegation of signature.

⇒ Concerning:

correspondence of a purely administrative nature addressed to natural or legal persons other than Union Bodies and Commission Members, where the delegation of signature is not provided for in the Internal Rules or any other Commission regulation.

III - CONCLUSION

The Court was of the opinion that :

In the current state of WAEMU Community law, the President of the Commission is not authorised to delegate his signature to his Directeur de Cabinet.

And have signed ;

The Chairman

The Clerk