

NOTICE N°01 /2024 OF 10 JANUARY 2024

REQUEST FOR AN OPINION SUBMITTED BY THE MINISTER FOR THE ECONOMY AND FINANCE OF THE STATE OF MALI ON THE CONFORMITY OF THE TRANSPOSITION OF DIRECTIVE NO. 04/2009/CM/UEMOA OF 27 MARCH 2009 INSTITUTING A ONE-STOP SHOP FOR FINANCIAL STATEMENTS IN UEMOA MEMBER STATES INTO MALIAN TAX LEGISLATION

The Malian Ministry of the Economy and Finance referred the matter to the WAEMU Court of Justice by letter No 00021/MEF-SG dated 27 January 2022, which reads as follows:

"Mr President,

I have the honour of presenting to you :

■ *Article 2 of Directive n°04/2009/CM/UEMOA of 27 March 2009, instituting a one-stop shop for filing financial statements in the Member States of the West African Economic and Monetary Union (UEMOA), provides for a one-stop shop for filing financial statements (GUDEF), placed under the supervision of the Ministry in charge of Finance;*

■ *Article 3 of the same directive states that: "GUDEF is a support structure for the national SYSCOA system, with the task of :*

✓ collect the annual financial statements of companies operating in the State ;

✓ verify that the financial statements produced by companies are complete and have been

approved in advance. The stamp must be affixed either by a member of ONECCA (national order of chartered accountants and chartered accountants) of the State concerned, or by a company's salaried accountant acting on behalf of his sole employer, or by any natural or legal person authorised by the Member State to stamp the financial statements of companies and organisations;

■ *That it is clear from the explanatory memoranda of the transposition arising from the Tax Annex to Order No 2020-001-P/CNSP of 04 September 2020 that:*

✓ *the documents used to establish the taxpayer's tax base must be kept in accordance with the rules and standards set out in the Uniform Act on Accounting and Financial Reporting adopted by the Organisation for the Harmonisation of Business Law in Africa (OHADA);*

✓ *In practice, most taxpayers prepare several financial statements. As a result, the financial statements that they file with the tax authorities are often not those communicated to the financial institution or to the partners. In order to combat this multiplicity of financial statements, which is a source of tax evasion and avoidance, it is proposed to introduce a requirement for prior approval of financial statements for companies that are not required to be certified by an auditor, regardless of their tax regime;*

✓ *this preliminary procedure must be carried out by a chartered accountant or a certified accountant registered with the national order of chartered accountants and certified accountants;*

■ *For these reasons, Article 3 of the above-mentioned Directive, concerning the approval of financial statements, has been transposed into the tax legislation of the Republic of Mali by Article 60 of the Book of Tax Procedures (LPF), which provides: "The taxpayers referred to in Article 57 of this Book are required to*

provide, at the same time as their declaration, a detailed list of their overheads by category, three copies of their financial statements with their tax identification number, the harmonised reporting packages in accordance with the standards of the Uniform Act on Accounting Law and Financial Information adopted within the framework of the Organisation for the Harmonisation of Business Law in Africa (OHADA), and the supplier and customer statements in an electronic version that can be used by the tax authorities.

Companies whose financial statements are not certified by an auditor are subject to the procedure of prior approval of the said financial statements by a chartered accountant or a chartered accountant registered with the National Order of Chartered Accountants and Chartered Accountants of Mali.

The details of this procedure are defined by Order of the Minister of Finance...";

■ *That the Malian Association of Professional Accountants and Chartered Accountants (AMPCE), whose members are not registered on the ONECCA roll (and are therefore excluded), did not support the transposition of the directive, claiming that it did not confer the monopoly of affixing the visa on accountants and chartered accountants registered on the ONECCA roll.*

I therefore request that the Court issue an opinion, pursuant to the provisions of Article 27 of Additional Act No 10/96 on the Statutes of the Court of Justice of the West African Economic and Monetary Union, on the conformity of the transposition of the Directive into Malian tax legislation.

Minister Alousséni

SANOU

Chevalier de l'ordre national".

The Court sitting in Consultative General Assembly under the chairmanship of **Mr Mahawa Sémou DIOUF**, President of the WAEMU Court of Justice, on the report of **Mr Abdourahamane GAYAKOYE SABI**, Judge-Rapporteur, in the presence of :

- **Mrs Joséphine Suzanne EBAH TOURE, Judge ;**
- **Mr Kuami Gameli LODONOU, First Advocate General ;**
- **Mr Ladislau Clemente FERNANDO EMBASSA, Judge ;**
- **Mr Jules CHABI MOUKA, Judge ;**
- **Mr Kalifa BAGUE, Advocate General ;**

And assisted by **Maître Boubacar TAWEYE MAIDANDA**, Registrar of the Court providing the secretariat, in the presence of **Mr Ervé DABONNE**, Auditor at the Court, examined at its sitting of 10 January 2024, the above application.

THE CONSULTATIVE GENERAL MEETING

HAVING REGARD TO the Treaty of the West African Economic and Monetary Union (WAEMU) of 10 January 1994, as amended on 20 January 2007;

HAVING REGARD TO Additional Protocol No. 1 relating to the supervisory bodies of the WAEMU ;

HAVING REGARD TO Additional Act n° 10/96 on the Statutes of the WAEMU Court of Justice dated 05 July 1996;

Having regard to Additional Act n°01/2023/CCEG/UEMOA of 10 January 2023 renewing the term of office and appointing members of the Court of Justice of UEMOA;

HAVING REGARD TO Regulation n°01/96/CM of 05 July 1996 on the Rules of Procedure of the WAEMU Court of Justice;

VU Regulation No. 01/2022/CJ of 15 April 2022 repealing and replacing Regulation n°01/2012/CJ of 21 December 2012 on the Administrative Rules of the Court of Justice of the WAEMU;

VU Minutes No 2023-01/AP/01 of 1^{er} February 2023 relating to the swearing-in of the members of the WAEMU Court of Justice;

VU Minutes No. 2023-02/AI/01 of 1^{er} February 2023 concerning the appointment of the President of the Court and the distribution of functions within the Court.
within the said Court ;

HAVING REGARD TO the Minutes n°2023-03/AP/02 of 02 February 2023 relating to the installation of the President of the WAEMU Court of Justice;

HAVING REGARD TO the request for advice N° 00021/MEF-SG of 27 January 2022 from the State of Mali;

HAVING REGARD TO the written observations No. 2022-120/DAVC/PCC/UEMOA of the WAEMU Court of Auditors dated 03 May 2022;

HAVING REGARD TO Order n°07/2023/CJ of 20 February 2023 appointing a Rapporteur ;

HAVING REGARD TO the other documents in the file ;

I. COMMENTS FROM THE BODIES

The Commission and the WAEMU Court of Auditors were notified of Mali's request for an opinion on 11 and 10 March 2022 respectively. The Court gave them two (2) months from the date of notification to formulate any observations they might have.

The Court of Auditors responded to the notification by sending its observations by letter dated 03 May 2022.

It points out that Directive No 04/2009/CM/UEMOA of 27 March 2009

establishing a Single Window for filing financial statements in UEMOA Member States serves primarily to ensure **t h e** unity, homogeneity and uniformity of the financial statements of UEMOA Member States.

comparability of annual financial statements produced by entities required to file them.

It specifies that it is in order to achieve these objectives that Article 3 of the Directive has given GUEDEF the task of collecting and verifying the annual financial statements before they are filed with the recipient departments, ensuring that they are complete and have been stamped beforehand. It goes on to say that this stamp must be affixed either by an approved member of ONECCA in the State concerned, or by a company's salaried accountant acting on behalf of his sole employer, or by any natural or legal person authorised by the Member State to stamp the financial statements of companies and organisations.

After assessing the terms of the transposition of the directive into Malian law, the Court of Auditors considered that the State of Mali had correctly internalised directive No. 04/2009/CM/UEMOA.

II. EXAMINATION OF THE APPLICATION

IN THE SHAPE

By the aforementioned application, the Minister for the Economy and Finance of the State of Mali is asking the WAEMU Court of Justice, pursuant to the provisions of Article 27 of Additional Act No 10/96 on the Statutes of the Court, to issue an opinion on the conformity of the transposition that it has made of the Directive in question, in its tax legislation and in particular in Article 60 of the Book of Tax Procedures (LPF).

It is important to remember at the outset that, pursuant to Articles 42 and 43 of the WAEMU Treaty, a directive is one of the norms derived from Union law. Once adopted by the Council of Ministers, which has this prerogative, it must be transposed into the domestic legislation of the Member States for it to acquire the force of law.

Transposition is the compulsory act by which a WAEMU Member State incorporates into its legal system a rule of law required to meet the objectives of an EU directive.

In order to meet this obligation, the State of Mali has incorporated the provisions of the aforementioned directive into its tax legislation, in particular Article 60 of the Book of Tax Procedures.

However, this transposition has been a source of conflict with part of the accounting profession, leading the State of Mali, through its Minister of Economy and Finance, to refer the matter to the Court of Justice for an opinion on the conformity of the transposition of the directive.

However, the Court's jurisdiction to give opinions pursuant to Article 27 of the abovementioned Additional Act is limited solely to the interpretation or application of acts of Community law.

The Court therefore has no jurisdiction to assess the conformity of the transposition of a directive as requested by the State of Mali.

At the very most, it should be added that in the light of Article 26 of the WAEMU Treaty and Decision No. 05/2019/COM/UEMOA adopting the guide on methods and techniques for transposing WAEMU directives and the model act of notification, and in particular Sheet 12, points 12.1 and 12.2; that the control of the application of the Community directive by its transposition into the national law of the States of the union, falls within the power of the WAEMU commission which exercises it by means of the obligatory communication which is made to it by the Member States, of the text of the provisions of national law which they adopt in the field governed by the directive which is the subject of the transposition.

CONCLUSION

It follows from the foregoing that the WAEMU Court of Justice, sitting in a consultative general assembly, declares that it does not have jurisdiction to rule on the request for an opinion submitted by the Minister of the Economy and Finance of the State of Mali, relating to the conformity of the transposition of Directive No 04/2009/CM/WAEMU of 27 March 2009 establishing a one-stop shop for filing financial statements in the WAEMU Member States into Malian tax legislation.

Signed by the Chairman, the Reporter and the Registrar.

The

ChairmanThe Rapporteur

Mahawa Sémou DIOUF

Abdourahamane GAYAKOYE SABI

The Registrar

Boubakar TAWEYE MAIDANDA