

**EXTRACT FROM THE MINUTES OF  
THE REGISTRY**

**UEMOA COURT OF JUSTICE**

**PUBLIC HEARING OF 27 APRIL 2005**

**Ruling No.  
03/2005**

**Case**

**Composition:**

Mr Yves D. YEHOUESSI, Chairman  
Mr Mouhamadou NGOM, Judge-Rapporteur  
Mr Youssouf Any Mahaman, Judge  
Mr Daniel Lopes FERREIRA, Judge  
Ms Ramata FOFANA née OUEDRAOGO, Judge  
Mr Malet DIAKITE, First Advocate General  
Mr Raphaël P. OUATTARA, Registrar

Mr YAÏ Eugène, UEMOA Commissioner, of Ivorian nationality residing in Ouagadougou, who has elected domicile in the office of Maître Issouf BAADHIO, Lawyer at the Court, 01 B.P. 2100 Ouagadougou 01, **plaintiff**,

on the one hand ;

***Action for annulment***

***Additional Act No 06/2004 of 15 November  
2004***

And

- The Conference of Heads of State and Government of the WAEMU,
- The WAEMU Commission, each in the person of its Legal Representative, with an address for service at Ouagadougou - 01 BP. 543, represented by Agent Eugène KPOTA of the UEMOA Commission, who is assisted by the lawyers of the Société Civile Professionnelle d'Avocats SAWADOGO - SAMA-AOUBA, registered at the Bar of Burkina Faso, 01 BP. 4091 Ouagadougou 01 and Maître Abdoul Wahab Berthe, Avocat au Barreau du Mali, 748, Rue Raymond Poincaré, BP. 8025 - Bamako, **defendants**,

on the other hand ;

**THE COURT**

**HAVING REGARD TO** the application dated 22 November 2004, lodged on behalf of Mr YAÏ Eugène, UEMOA Commissioner, of Ivorian nationality, with an address for service at the Chambers of Maître Issouf BAADHIO, Avocat à la Cour, application registered at the Court Registry on 22 November

2004 under number 03/2004, asking the Court to annul Additional Act No 06/2004 of 15 November 2004 adopted by the current President of the Conference of Heads of State and Government of the WAEMU;

**HAVING REGARD TO** Additional Act n°06/2004 of 15 November 2004 appointing Mr Jérôme Bro GREBE as a member of the WAEMU Commission;

**HAVING REGARD TO** the letter of 19 November 2004 from the President of the Commission notifying Mr Eugène YAÏ of Additional Act n°06/2004 ;

**HAVING REGARD TO** the letters dated 25 November 2004 serving the request on the President of the Commission and on the Conference of Heads of State and Government of WAEMU, represented by its legal representative;

**HAVING REGARD TO** the letter of 29 November 2004 from the President of the WAEMU Commission appointing Mr Eugène KPOTA as Agent ;

**HAVING REGARD TO** the letter dated 29 November 2004 from the President of the Commission, appointing Mr Harouna SAWADOGO and Mr Abdoul Wahab BERTHE, respectively lawyers at the Court of Ouagadougou and the Court of Bamako (Mali);

**HAVING REGARD TO** the defendants' statement of defence dated 24 December 2004;

**HAVING REGARD TO** the applicant's reply of 24 January 2005;

**HAVING REGARD TO** the letter dated 25 January 2005 from the Registrar of the Court, granting an extension of time to Maître Harouna SAWADOGO, counsel for the defendants;

**HAVING REGARD TO** the rejoinder of Harouna SAWADOGO dated 24 February 2005;

**HAVING REGARD TO** the response of 10 March 2005 from Mr Issouf BAADHIO ;

**HAVING REGARD TO** the other documents produced and attached to the file;

**VU** the WAEMU Treaty, in particular Article 38 ;

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

**HAVING REGARD TO** Additional Act n°10/96 of 10 May 1996 of the Conference of Heads of State and Government on the Statutes of the WAEMU Court of Justice;

**HAVING REGARD TO** Regulation No. 01/96/CM on the Rules of Procedure of the WAEMU Court of Justice;

**HAVING REGARD TO** Order n° 01/2005/CDJ of 5 April 2005, on the composition of the plenary panel hearing the case of Eugène YAÏ against the Conference of Heads of State and Government and the WAEMU Commission;



Current Chairman of the WAEMU Conference of Heads of State and Government.

The applicant states that on Friday 19 November 2004, in the early afternoon, he was served, by confidential letter, with Additional Act n°06/04 appointing Mr Jérôme Bro GREBE as a member of the WAEMU Commission to replace Mr Eugène YAÏ.

It points out that the Additional Act dated 15 November 2004 is signed by Mr Mamadou TANDJA, President of the Republic of Niger, in his capacity as President of the Conference of Heads of State and Government of WAEMU, which, under the terms of Articles 17, 18 and 19 of the Treaty of 10 January 1994, has no powers of its own.

According to Mr Yaï, the last Conference of Heads of State and Government (before the adoption of the contested Additional Act) was an extraordinary summit convened in Niamey to take stock of demonetisation, and the agenda of this conference did not in any way include the renewal of the members of the WAEMU Commission on an individual or collective basis.

Mr Yaï added that his term of office was ongoing, that he had never resigned and that no proceedings had been brought before the Court of Justice to have him removed from office.

He therefore considers that the Assembly of Heads of State and Government cannot provide for his replacement, and that in this case, the Additional Act constitutes a pure and simple revocation and a twofold assault.

It seeks the annulment of the Additional Act No 06/2004 on the grounds of infringement of Articles 18, 19, 27 and 30 of the Treaty.

The action was served on the defendants on 25 November 2004 by letters from the Registrar of the Court.

By letter dated 29 November 2004, the President of the WAEMU Commission informed the Court of the appointment of its Agent in the person of Mr Eugène KPOTA, Legal Adviser to the Commission.

By a further letter dated 29 November 2004, Mr Harouna SAWADOGO informed the Court of his appointment to defend the interests of the defendants.

On the report of the Judge-Rapporteur, the First Advocate General having been heard, the Court decided to open the oral proceedings without prior measures of inquiry.

## **II. SUBMISSIONS OF THE PARTIES**

The applicant claims that the Court should:

**In form :**

- declare itself competent ;
- to receive Mr Eugène YAÏ in his action.

**Background:**

- dismiss the note relating to the conduct of Mr Eugène YAÏ, produced by the defendants, insofar as it is unsigned by its author and cannot be analysed as anything other than a leaflet;
  
- declare Mr Eugène YAÏ's action well-founded and consequently annul Additional Act No 06/2004:
  - principal claim: for lack of authority on the part of the President of the Conference of Heads of State and Government;
  
  - subsidiarily: for lack of power of the Conference of Heads of State and Government ;
  
  - in the alternative: for breach of Articles 27, 28 and 30 of the WAEMU Treaty;
  
- order the defendants to pay all the costs.

The defendants claim that the Court should:

**In the main proceedings and in form:**

- agree in limine litis to declare that the WAEMU Court of Justice does not have jurisdiction to assess the legality of Additional Act No 06/2004 of 15 November 2004 appointing Mr Jérôme Bro GREBE as a member of the WAEMU Commission;

**In the alternative:**

- declare the application for assessment of legality to be unfounded;

**As a result :**

- Dismiss all of Mr Eugène YAI's claims and pleas in law;
- order it to pay all the costs.

**III. PLEAS AND ARGUMENTS OF THE PARTIES****1) Jurisdiction of the WAEMU Court of Justice***A) Pleas in law and arguments of the defendants*

In their statement of defence dated 24 November 2004, the defendants submit that the action for assessment of legality against the Additional Act falls outside the jurisdiction of the Court of Justice since it is binding on it within the meaning of Article 19 of the Treaty. The Additional Act can be analysed as an act falling within the discretionary power of the Conference of Heads of State and Government of the Union.

According to the defendants, the Additional Act is binding on the Court of First Instance under the terms of Article 19 of the WAEMU Treaty, which provides that compliance with the Additional Acts is binding on the organs of the Union and on the authorities of the Member States.

In the defendants' view, the Court cannot assess the legality of an act that has authority over it without running the risk of violating the WAEMU Treaty.



They also assert that the Additional Act falls within the discretionary power of the Conference of Heads of State and Government, and that it is excluded from the scope of acts subject to appeal on grounds of legality.

They specify that the acts that may be challenged before the court of appeal are "regulations, directives and decisions of an organ of the Union" and that according to the former judge at the WAEMU Court of Justice, Mouhamadou Moctar MBACKE, in his book on the WAEMU Court of Justice "it is remarkable that the Additional Acts of the Conference are not included in the acts that may be challenged".

Lastly, the defendants consider that if the Court ensures that the law is observed in the interpretation and application of the Treaty of the Union, it is subject to the proviso that it is not itself in breach of the WAEMU Treaty.

*B) Pleas in law and arguments of the applicant*

Mr Eugène Yaï, who concludes that the Court of Justice has jurisdiction, points out that the Court is responsible for applying the rules of law when a dispute is brought before it.

He argues that this is the substance of Article 9 of the WAEMU Treaty, which provides that "when an action is brought before it for an assessment of legality, the Court of Justice shall declare null and void, in whole or in part, acts that are vitiated by formal defects, lack of competence, misuse of powers, or infringement of the Treaty of the Union or of acts adopted pursuant thereto".

He adds that any act that does not comply with the Treaty is liable to be annulled or declared invalid, and that to state forcefully that the Additional Acts are binding

to the organs of the Union, and therefore to the Court, does not confer any jurisdictional immunity on such acts.

According to Mr Eugène YAÏ, the assertions according to which additional acts fall within the discretionary power of the Conference of Heads of State and Government and that they have a regime similar to that of acts of Government, are totally erroneous. The Conference of Heads of State and Government has a rule of conduct to follow, dictated by Article 19 of the Treaty, namely that of not amending the Treaty. This restriction of the Treaty excludes any idea of discretionary power.

Mr Eugène Yaï also pointed out that there is no WAEMU text on the Court's lack of jurisdiction. For Mr Yaï, the most important text defining the jurisdiction of the Court of Justice is Additional Protocol No. I on the supervisory bodies of the WAEMU; this text is an integral part of the Treaty.

Under the terms of Article 1 of the said Additional Protocol, "the Court of Justice shall ensure that the law is observed in the interpretation and application of the Union Treaty".

Mr Eugène Yaï considers that this provision is sufficient to justify the Court's jurisdiction when it comes to verifying the legality of a text with regard to the WAEMU Treaty.

According to Mr Eugène Yaï, Article 8(2) of Additional Protocol No. 1 provides that "any natural or legal person may also institute proceedings to have the legality of an act of an organ of the Union reviewed as adversely affecting that person".

Mr Eugène Yaï added that, both on the basis of the texts defining the Court's jurisdiction and on the basis of Article 19 of the Treaty, the Additional Act cannot escape the jurisdiction of the Court of Justice.

Then there is the question of who should verify the conformity of the Additional Act with the Treaty?

For Mr Eugène Yaï, the answer is self-evident; it is the guardian of the interpretation and application of the Treaty, which under the terms of Article 1 of Additional Protocol No. 1 is the Court of Justice.

Mr Eugène YAÏ points out that as regards the contested Act, it should be noted that it is an individual Act, the individual Act being opposed to the regulatory Act.

It considers that it is a general principle common to all WAEMU States that any individual act that gives rise to a complaint may be referred to the administrative courts for censure. This is known as the "recours pour excès de pouvoir".

It specifies that, by virtue of this principle, any act of an organ that is prejudicial to a person may be referred to the WAEMU Court of Justice.

Mr Eugène YAÏ considers that the Court of Justice has jurisdiction to hear and determine and to annul the Additional Act n°06/2004 on subsequent legal grounds.

## 2) Background

### *A) Pleas in law and arguments of the applicant*

Mr Eugène Yaï first asks the Court to simply set aside the note relating to his conduct, which is an unsigned document.

Secondly, he points out that the contested Act is signed by Mr Mamadou TANDJA, President of the Republic of Niger "For the Conference of Heads of State".

He argues that under the terms of Article 19 of the WAEMU Treaty, Additional Acts are adopted by the Conference of Heads of State. From this he deduced that the President of the Conference of Heads of State therefore does not have the power to adopt an Additional Act.

He added that the mere fact of his existence and his status as a member of the Commission did not constitute a danger in itself justifying his dismissal under highly questionable conditions from both the formal and substantive points of view.

He pointed out that there was no legal basis for his dismissal and that the deed recording it was absolutely null and void.

In Mr Eugène Yaï's view, it is up to the defendants to provide evidence of a deliberation by the Heads of State and Government of the WAEMU for the adoption of Additional Act No 06/2004.

He added, before seeking the annulment of the Additional Act for lack of authority on the part of its author, that the latter, neither in his personal capacity nor as President of the Conference of Heads of State, had been given the power to enact an Additional Act.

He also pointed out that the Conference of Heads of State does not have the power to dismiss a WAEMU Commissioner.

According to Mr Eugène Yaï, under the terms of Article 27 paragraph 2 of the Treaty, "the term of office of the members of the Commission shall be four years, renewable, and the members of the Commission shall be irrevocable, except in the case of gross misconduct or incapacity".

Still according to the applicant, the normal term of office has not expired. He also stated that he had not resigned, was not incapacitated and was not the subject of any disciplinary proceedings based on gross misconduct, and that Additional Act no. 06/2004 was no more and no less than an act of dismissal.

He said that he was surprised to discover in the defendants' statement of case that he was allegedly professionally incompetent as a result of his conduct. He asserts that in such a case, the Conference of Heads of State and Government has no power to remove him from office, that power being vested, under Article 30 of the Treaty, in the Court of Justice, to which the matter is referred by the Council of Ministers.

It considers that the Conference of Heads of State has exceeded its powers by dismissing a Commissioner, and that his country of origin cannot validly request his dismissal without violating Articles 27, 28 and 30 of the Treaty.

He therefore seeks a declaration that Additional Act No 06/2004 of 15 November 2004, revoking his appointment as WAEMU Commissioner, is null and void.

*B) Pleas in law and arguments of the defendants*

In their statement of defence dated 24 December 2004, the defendants, who conclude that the applicant's claims should be dismissed, also point out that the contested Additional Act was adopted in strict compliance with the WAEMU Treaty.

They state that, contrary to the applicant's allegations, it is not necessary for a formal session of the Conference to be held in order for an Additional Act to be adopted and signed by all the Heads of State and Government.

They argue that the provisions of Articles 27 and 30 of the Treaty actually provide two grounds for dismissal, one based on gross misconduct and the other on incapacity.

They assert that in the absence of any reference to Article 30 of the Treaty, incapacity must be analysed as a ground for dismissal left to the discretion of the Conference of Heads of State and Government.

They consider that in this case, Mr YAI found himself in a situation of professional incapacity.

This incapacity is attested by the attached note and accompanying documents.

They state that it has been proven that Mr Yai's behaviour hinders the smooth running of the Commission. He lacks a sense of responsibility and team spirit and has insufficient control over his files, while maintaining difficult relations with his colleagues.

According to the defendants, it was essential for the Conference of Heads of State which appointed him to be able to terminate his mandate in order to allow the Commission to function normally.

They consider that, in the present case, the Conference endorsed a proposal for the dismissal of the Political Authorities of Mr YAI's country of origin, as it had done at the time of his appointment, thus respecting the principle of parallelism of forms.

Lastly, they request that Mr YAI's claims be dismissed.

In its reply dated 10 March 2005, the applicant reiterated the arguments already set out in its reply of 24 January 2005.

#### **IV. GROUNDS FOR THE JUDGMENT**

##### **1) In form**

###### *A) Jurisdiction of the Court of Justice*

The defendants point out that the action for assessment of legality against the Additional Act falls outside the jurisdiction of the Cour de céans in so far as it

is binding on it within the meaning of Article 19 of the WAEMU Treaty, which states that compliance with the additional acts is binding on the organs of the Union and on the authorities of the Member States.

They add that the Additional Act is excluded from the scope of acts subject to review for legality.

The applicant maintains, on the other hand, that any act which does not comply with the Treaty may be annulled or declared invalid. He states that the contested act is an individual act as opposed to a regulatory act.

Firstly, it should be recalled that Mr Eugène YAÏ had applied to the Court for a stay of execution following the application for annulment of the Additional Act n°06/2004 of 15 November 2004.

In Order No. 12 of 3 December 2004, staying the execution of the Additional Act No. 06/2004, the President of the Court of Cassation pointed out that "the Court of Justice shall ensure that the law is observed in the interpretation and application of the Treaty on European Union.

In this respect, the Court of Justice, a judicial control body, has the fundamental task of ensuring that Community acts referred to it comply with the WAEMU Treaty".

The President of the Court therefore declared himself competent to hear the application for suspension of operation of Additional Act No. 06/2004 of 15 November 2004.



This reminder having been made, it is appropriate to ask the questions of, firstly, what is the legal nature of the Additional Act and, secondly, whether or not the said act forms part of the category of challengeable acts?

In assessing the legal nature of the Additional Act, it should be noted that only WAEMU Community law uses the term "Additional Act".

In other words, it is a Community act specific to WAEMU Community law, adopted by the Conference of Heads of State and Government with a view to supplementing the Treaty without, however, amending it.

It is binding on the organs of the Union. However, it should be emphasised that by requiring the Supplementary Act not to amend the Treaty which it supplements, the Community legislator intended it to be consistent with the Treaty.

Moreover, the respect due to the Additional Act by both the bodies and the authorities of the Member States does not exempt it from compliance with the Treaty, the fundamental Act of the Union.

Finally, Article 6 of the Treaty, which proclaims the primacy of Community law over all national legislation, requires that **"acts adopted by Union bodies in pursuit of the objectives of this Treaty shall be adopted in accordance with the rules and procedures laid down in this Treaty"**.

The contested Additional Act is an individual act. It is the Act appointing Mr Jérôme Bro GREBE as Commissioner. Article 3 of the said Act specifies that all previous provisions

contrary, in particular those of Additional Act n°01/2003 dated 29 January 2003, relating to Mr Eugène YAÏ, are hereby repealed.

For the Cour de céans, it is therefore necessary to distinguish between two categories of additional acts:

- additional acts of a general or regulatory nature (e.g. statutes of the Court, texts relating to sectoral policies, etc.);
- individual additional acts (appointment of Members of the Court of Justice or Commissioners, etc.).

Moreover, under the terms of the second paragraph of Article 8 of Additional Protocol No. 1 on supervisory bodies, "any natural or legal person may also institute proceedings for an assessment of legality against any act of a body of the Union adversely affecting that person".

It also follows from Article 15-2<sup>e</sup> of the Rules of Procedure of the Court of Justice that "...any natural or legal person may bring an action for an assessment of legality against any act of a body of the Union adversely affecting that person".

The purpose of an action for annulment is to ensure that the law is observed in the interpretation and application of the Treaty. It would be contrary to this objective to interpret restrictively the conditions of admissibility of the action by limiting its scope to the categories of acts referred to in Article 15(2)<sup>e</sup> of the Rules of Procedure of the Court of Justice.

The Court is obliged to ensure compliance with Community law, as is clear from Article 1<sup>er</sup> of Additional Protocol No 1:

**"The Court shall ensure that the law is observed in the interpretation and application of the Union Treaty".**

In the light of these provisions of both Additional Protocol No. 1 and the Rules of Procedure, it should therefore be stated that the legality of the Additional Act in question may be reviewed by the Community judicature.

The Conference of Heads of State and Government is an organ of the Union. Additional acts of the Conference of Heads of State and Government of individual concern may be challenged before the WAEMU Court of Justice.

It is settled doctrine and case law that **"an action for annulment may be brought generally against all acts having binding legal effects that are likely to affect the interests of the applicant by significantly altering his or her legal position, irrespective of what they are called"**.

In all cases, the applicant's personal legal situation must be particularly affected.

In the present case, it is clear that the appointment of Mr Jérôme Bro GREBE is likely to be prejudicial to Mr Eugène YAÏ and that it has resulted in his dismissal.

In any event, the Court's jurisdiction to review legality cannot be limited to the acts referred to in Additional Protocol No. 1 and the Rules of Procedure.

Finally, it follows from all these considerations that the Court of Justice has jurisdiction to assess the legality of Additional Act No 6/2004 of 15 November 2004.

*B) Admissibility of the action*

With regard to the admissibility of the action, it should first be noted that :

- that the application has been submitted in accordance with the requirements of Article 26 of the Rules of Procedure;
- that the applicant has fulfilled the security obligation set by Ordinance no. 11/2004 of 30 November 2004.

As regards the time limit, the appeal was registered at the Court Registry on 22 November 2004; it is well within the time limit prescribed by Article 8(3) of Additional Protocol No. 1 relating to the supervisory bodies of the WAEMU.

In view of the foregoing, the appellant's action as brought must be declared admissible in form.

**2) At the back**

*A) On the note relating to Mr YAÏ's conduct*

Mr Eugène YAÏ first asks the Court to set aside the note relating to his conduct, an unsigned document.

The defendants, who are resisting this request, point out that in the present case the applicant found himself in a situation of professional incapacity, as evidenced by the attached note.

It should be noted that as the procedure currently stands, Mr YAÏ is not being brought before the Court of Justice following a request by the Council of Ministers, to sanction his failure to comply with the duties associated with the exercise of his functions as a member of the Commission.

In these circumstances, his request should be granted and the note relating to his conduct should be set aside.

*B) On the power of the author of the contested Act*

The applicant submits that the contested Additional Act is signed by Mr Mamadou TANDJA, President of the Republic of Niger "For the Conference of Heads of State", whereas the competent body was the Conference itself.

The Deed contains the following particulars:

"For the Conference of Heads of State and Government the  
President  
Mamadou TANDJA "

It also follows from the contested act that it is the Conference of Heads of State and Government of WAEMU that is the author and not its President.

In the light of these observations, the plea raised lacks relevance and must be rejected.

*C) On the lack of power of the Conference of Heads of State and Government and the violation of Articles 16, 27, 28 and 30 of the Treaty*

The applicant first argues that the Conference of Heads of State does not have the power to dismiss a WAEMU Commissioner.

He added that under the terms of Article 27 paragraph 2 of the Treaty, "The term of office of the members of the Commission shall be four (4) years renewable. During their term of office, the members of the Commission shall be irrevocable, except in the event of gross misconduct or incapacity".

He points out that as the normal term of office has not expired, the Additional Act is no more and no less than an act of dismissal.

The defendants, who conclude that the applicant's claims should be dismissed, point out that the contested Additional Act was adopted in strict compliance with the WAEMU Treaty.

They consider that in this case, Mr YAÏ found himself in a situation of professional incapacity, as attested by the attached note.

According to the defendants, the Conference of Heads of State and Government endorsed a proposal for the dismissal of the Political Authorities of Mr Eugène YAÏ's country of origin, as it had done at the time of his appointment, thus respecting the parallelism of forms.

With regard to this plea, it should be noted that no WAEMU text gives the Conference of Heads of State and Government the power to dismiss a Commissioner.

In addition, under the terms of article 16 of the Treaty, the organs of the Union **"shall act within the limits of the attributions conferred upon them by the WAMU Treaty and the present WAEMU Treaty and under the conditions provided for by these Treaties"**.

Having regard to those provisions, it must be held that the contested Additional Act does not comply with the law of the Treaty.

Next, the applicant points out that the defendants formally state that they revoked it at the request of the Ivorian State.

He maintains that, as a WAEMU Commissioner, he is, under the terms of Article 28 of the Treaty, independent of his country of origin.

He considers that the Member States, including his country of origin, are bound to respect his independence, and that his country of origin cannot validly request his dismissal before the end of his term of office.

It is clear from the first recital in the preamble to the contested measure that by letter dated 28 October 2004, Côte d'Ivoire proposed the appointment of Mr Jérôme Bro GREBE as a member of the WAEMU Commission to replace Mr Eugène YAÏ.

Under the terms of Article 27(2) of the Treaty, **"during their term of office, the members of the Commission shall be irrevocable, except in the case of serious misconduct or incapacity"**.

Article 30 states that **"removal from office shall be ordered by the Court of Justice at the request of the Council, as a penalty for failure to comply with the duties attaching to the performance of the duties of a Member of the Commission"**.

In this case, Mr Eugène Yai's term of office has not yet expired and he has not resigned.

As the procedure currently stands, neither the Board nor the Court of Appeal has been asked to rule on Mr Yai's dismissal.

In any event, Mr YAI cannot be dismissed either by the authorities of his country of origin or by the Conference of Heads of State and Government.

Consequently, it must be held that the contested Additional Act does not comply with the provisions of the Treaty and that it must be annulled for breach of the law.

## **V. Costs**

It follows from the provisions of Article 60 of the Rules of Procedure of the Court that any unsuccessful party shall be ordered to pay the costs.

However, under the terms of Article 61 of the said Rules, in disputes between the Union and its servants, the costs incurred by the bodies of the Union shall be borne by them, without prejudice to the provisions of paragraph 5 of Article 60 of the said Rules.



As the defendants have been unsuccessful in their submissions, they should be ordered to pay all the costs in accordance with the above provisions.

### **For these reasons**

The Court, sitting in open court, in matters of Community law :

**\* In form :**

- declares itself competent to assess the legality of Additional Act No 06/2004 of 15 November 2004;
- declares Mr Eugène YAI's action admissible;

**\* Substance:**

- Dismisses the unsigned note on the conduct of Mr Eugène YAI;
- Declares that Additional Act n°06/2004 of 15 November 2004 appointing Mr Jérôme Bro GREBE was adopted in violation of Articles 16, 27, 28 and 30 of the WAEMU Treaty;
- consequently declares it null and void;

- order the defendants to pay all the costs.

Delivered in open court on the day, month and year indicated above.

Signed by the Chairman and the Registrar.

Illegible signatures follow.

For a certified copy delivered to the Court Registry, on 29 April 2005, for the first to Maître Issouf BAADHIO, Avocat à la Cour.

**Raphaël P. OUATTARA**