

COURT OF JUSTICE

from

THE WEST AFRICAN ECONOMIC AND
MONETARY UNION (WAEMU)



OPINION N°01/2017

REQUEST FOR AN OPINION FROM THE CONSEIL REGIONAL DE L'EPARGNE PUBLIQUE ET DES MARCHES FINANCIERS (REGIONAL COUNCIL FOR PUBLIC SAVINGS AND FINANCIAL MARKETS) ON THE SCHEME TO TAKE OF FINANCIAL PENALTIES ON THE UMOA REGIONAL FINANCIAL MARKET

The President of the Conseil Régional de l'Epargne Publique et des Marchés Financiers (CREPMF) referred the matter to the WAEMU Court of Justice by letter no. 2014/DA/PCR/0760 dated 02 September 2014 and then reintroduced by letter no. 2014/DA/PCR/0783 dated 19 September 2014 received at the WAEMU Court of Justice on 09 and 29 September 2014 and which reads as follows:

"Mr President,

I have the honour to come herewith, further to my previous correspondence dated 02 September 2014, in which, I requested the legal opinion of your Body, on the draft texts drawn up with a view to the operationalisation of non-criminal pecuniary sanctions likely to be applied on the Union's regional financial market.

In this context, I would like to inform you that the Regional Council for Public Savings and Financial Markets (CREPMF), at its 58^{ème} ordinary session held on 31 July 2014 in Abidjan, sought the legal opinion of the WAEMU Court of Justice on the mechanism and procedure envisaged by the CREPMF for imposing non-criminal financial penalties.

In particular, your Body will have to shed light not only on the form and substance of the proposed mechanism, but also to enlighten the CREPMF on the best possible procedure for sanctions in the light of the CREPMF's status on the one hand and the proper administration of the prerogatives vested in it by the basic texts on the other, in order to avoid conflicts of interest and, above all, possible criticism or challenges from both the judge and the parties in the process of imposing the said sanctions. On this subject, the question would be to know:

- *Can the Executive Committee, extended to include the Magistrate member of the CREPMF, take such decisions?*
- *Can the CREPMF set up an internal Sanctions Committee or Commission made up of certain other members of the college?*
- *Should a Committee or Commission be set up, made up of members who are not part of the CREPMF and totally independent of it?*

The draft financial sanctions on the WAMU regional financial market, which is in the process of being adopted, provides for sanctions to be imposed by the Sanctions Committee (the adjudicating body), made up of members of the Executive Committee of the Regional Committee, extended to include a member of the judiciary.

The aim is to separate the prosecution function from the judging function, with the Regional Committee remaining the prosecuting body.

Thank you, in advance, for your customary solicitude. Yours sincerely

PJ :

- The preliminary draft decision amending Articles 32 and 33 of the Annex to the Convention setting up CREPMF and
- The preliminary draft decision setting out the terms and conditions for the application of financial penalties.

The Court sitting in Consultative General Assembly under the chairmanship of Mrs Joséphine Suzanne EBAH/TOURE, President of the WAEMU Court of Justice, on the report of Mr Salifou SAMPINBOGO, Judge-Rapporteur, in the presence of :

- Ms Victoire Eliane ALLAGBADA JACOB, Advocate General ;
- Mr Bawa Yaya ABDOULAYE, First Advocate General ;
- Mr Mahawa Sémou DIOUF, Judge ;
- Mr Daniel Amagoin TESSOUGUE, Judge ;
- Mr Euloge AKPO, Judge ;
- Mr Augusto MENDES, Judge ;

And assisted by Maître Hamidou YAMEOGO, Deputy Registrar of the Court, examined the above application at its sittings of 31 January 2017 and 07 February 2017.

THE CONSULTATIVE GENERAL MEETING

Having regard to the Treaty of the West African Economic and Monetary Union (WAEMU) dated 10 January 1994 as amended on 29 January 2003;

Having regard to the Treaty of the West African Monetary Union (WAMU) as amended on 20 January 2007 ;

Having regard to Additional Protocol No. 1 on the supervisory bodies of the WAEMU ;

Having regard to Additional Act n°10/96 on the Statute of the WAEMU Court of Justice dated 05 July 1996 ;

Having regard to Regulation n°01/96/CM on the Rules of Procedure of the WAEMU Court of Justice dated 05 July 1996;

Having regard to Regulation n°01/2010/CJ of 02 February 2010 repealing and replacing Regulation n°01/2000/CDJ of 06 June 2000 relating to the Administrative Rules of the Court of Justice of the WAEMU ;

Having regard to requests for opinion n°2014/DA/PCR/0760 dated 02 September 2014 and n° 2014/DA/SJ/PCR/0783 dated 19 September 2014 from the Chairman of the CREPMF;

Having regard to the written observations of Burkina Faso dated 31 December 2014;

Having regard to the written observations of the WAEMU Court of Auditors dated 05 December 2014;

ON THE SHAPE

Article 27 paragraph 4 of the Additional Act No. 10/96 of 10 May 1996 on the Statute of the Court and Article 15-7 of Regulation No. 01/96/CM of 05 July 1996 on the Rules of Procedure of the Court give the Court consultative powers to issue opinions and recommendations on any draft text submitted by the bodies and organs listed exhaustively.

The Conseil Régional de l'Épargne Publique et des Marchés Financiers (Regional Council for Public Savings and Financial Markets) was created by an agreement dated 03 July 1996 following a decision by the Council of Ministers of the West African Monetary Union (WAMU) held in Dakar. It is responsible, on the one hand, for organising and supervising public offerings and

to authorise and supervise participants in the regional financial market.

The President of the Conseil Régional de l'Épargne Publique et des Marchés Financiers (CREPMF) (Regional Council for Public Savings and Financial Markets) has referred the matter to the Court for a legal opinion on the draft texts drawn up with a view to making operational the non-criminal financial penalties that may be applied on the Union's regional financial market.

In addition to comments on the form and substance of the proposed sanctions, the CREPMF would like to know:

- Can the Executive Committee, extended to include the Magistrate member of the CREPMF, take such decisions?
- If the CREPMF can set up a Sanction Committee or Commission from among its members, which would be made up of certain other members of the college?
- Should a committee or commission be set up, made up of members who are not members of the CREPMF and who are totally independent of it?

Article 5 of the Treaty of the West African Monetary Union (UMOA), amended on 20 January 2007, states that the CREPMF is an organ of the UMOA and article 2 specifies that the said Treaty is supplemented by the Treaty of the West African Economic and Monetary Union (UEMOA). As Additional Protocol No. 1 on Auditors is an integral part of the WAEMU Treaty, it follows that the Court of Justice and the Court of Auditors are common to the WAEMU and UEMOA Treaties. Pending the merger of the said Treaties as planned, the application of the President of CREPMF must be declared admissible.

While any WAEMU organ, as well as the WAMU organ, may submit a request for an opinion to the Court, the subject matter of the request must not exceed the jurisdiction of the organ in question.

According to the letter from the Chairman of the CREPMF, the request for an opinion concerns two draft decisions, one amending articles 32 and 33 of the Annex to the Convention establishing the CREPMF and the other setting out the procedures for applying financial penalties.

After examination, it emerges that the requested modifications concern the constituent act of the CREPMF and can be analysed as a legislative work which does not fall within the prerogatives of the CREPMF but rather of the Council of Ministers, which is the body authorised to make the said modifications and to refer a request for an opinion to the Court of Justice.

Consequently, the CREPMF is exceeding its remit when it requests an opinion amending the Agreement relating to its creation.

CONCLUSIONS

Consequently, the Court, sitting as a Consultative General Meeting, issues the following opinion:

The CREPMF has no jurisdiction to refer to the Court of Justice a request for an opinion amending its constituent instrument.

So does and pronounced at General Meeting General Meeting Meeting in Ouagadougou on the day, month and year indicated above.

And have signed :

The
Rapporteur

PresidentThe Judge-

Joséphine Suzanne EBAH TOURE

Salifou SAMPINBOGO

The Registrar P. I.

Hamidou YAMEOGO