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Dossier ri° 4-99

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The President of the WAEMU Commission referred to the Court of Justice two applications, the first, No 99-048/PC/CJ of 02 November 1999, registered at the Registry on 05 November 1999 under No 04, the second, No 99-0129/PC/CJ of 9 November 1999, registered at the Registry on 10 November 1999 under No 05, the respective contents of which are as follows:

First request:

"Pursuant to Article 27(2) of its Statutes, I should like to submit to the Court, for its opinion and possible recommendations, the "Draft EU/MOA Parliamentary Treaty", approved by the Interparliamentary Committee, before referring it to the Council of Ministers and the Conference of Heads of State and Government of the Union".

Second request:

"In the above-mentioned letter, I submitted to the Court, for its opinion and recommendation, the document drawn up by the WAEMU Interparliamentary Committee (CIP) and entitled 'Projet de Traité du Parlement de l'UEMOA'.

^After examining the document and pursuant to Article 37, paragraph 2 of the WAEMU Treaty, the Commission adopted a draft Treaty.

*I would therefore be grateful if the Court could give its **opinion and** any recommendations it may have **on this draft** Treaty, as the first document can be considered as **having been** sent for information purposes".*

La Cour, sitting in a Consultative General Meeting under the chairmanship of Mr Yves D. YEHOUESSI, President of the Court of Justice of the UEMOA, its report, in the presence of followed by Messrs :

- Mouhamadou Moctar MBACKE, Judge of the
- Martin Dobo ZONOU, Court Judge of
- Youssouf ANY MAHAMAN, the Court
- Kalédji AFANGBEDJI, Judge of the
Court Advocate
General

and assisted by Mr Raphaël P. OUATTARA, Registrar of the Cour, examined in its sitting du 25 November 1999, the above-mentioned application.

L A C O U R

Vu le Traité de l'Union Economique et Monétaire Ouest Africaine (UEMOA) en date du 10 Janvier 1994 ;

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

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

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

Having regard to the Administrative Rules of the WAEMU Court of Justice dated 9 December 1996

Having regard to the requests for opinions dated 2 November 1999 and 9 November 1999 from the President of the WAEMU Commission, the contents of which are mentioned above;

I - PURPOSE OF THE REFERRAL AND ADMISSIBILITY

Although the Commission had received two drafts of the Treaty of the WAEMU Parliament, one drawn up by the Interparliamentary Committee, the other adopted by the Commission, under the terms of the applicant's second letter, the request for an opinion ultimately concerned the draft adopted by the Commission, the draft drawn up by the Interparliamentary Committee having to be regarded as having been communicated for information purposes.

In form, the application is admissible, being in conformity with the relevant provisions of the Treaty of the Union, the Statutes and the Rules of Procedure of the Court of Justice, in particular article 27 paragraph 2 of the Statutes.

II - GENERAL COMMENTS

A/ The request does not ask particular questions on specific points; rather, it seeks a general opinion on the draft Treaty submitted.

Generally speaking, this draft Treaty is inspired by the provisions of Articles 35 to 37 of the Treaty on European Union, relating to parliamentary control bodies.

Its presentation in the form of a Treaty is certainly in conformity with article 37 paragraph 2 of the Constitutive Treaty of the Union which stipulates that "*the draft Treaty establishing the Parliament of the Union shall be proposed by the Commission to the Assembly*". However, with regard to the creation of an important organ of the WAEMU, the Parliament, it is important to situate this organ in the institutional context of the Union.

of the WAEMU Constitutive Treaty. In effect, this Treaty constitutes the fundamental law, "the constitution of the Union, the highest standard of the Community, to which all the others are subject". standards must comply with.

As the Parliament is an organ of Union, it is important that the text creating it is incorporated into the Treaty establishing the Union. There are two possible ways of doing this

- to amend Section II of Chapter II of Title II of the Treaty establishing the European Community, relating to parliamentary control bodies, by means of a Treaty repealing and replacing the said Section,
- or create an additional Protocol on Parliamentary Control.

Such an initiative will place the parliamentary body on the same institutional footing as the Union's other essential bodies.

In order to achieve this institutional reclassification of the rule creating the Parliament, it will be necessary to have recourse to the general provisions of Article 106 relating to the revision of the Treaty on European Union instead of, as is done in Article 32 of the draft, instituting a revision system specific to the parliamentary body.

In any event, it would seem more judicious and consistent with the Union's institutional norms to revise certain provisions of the WAEMU Constitutive Treaty before implementing the draft submitted to the Court for its opinion.

B/ On analysis, it can be seen that the draft Treaty does not deal with the incompatibilities of the mandate of Member of Parliament with certain activities or functions exercised in the Member States. It is important that they should appear as statutory provisions in the body of the Parliament's Treaty.

III - SPECIFIC COMMENTS

0 Article 2

To write throughout the body of the draft: "the *Parliament*" instead of "the WAEMU Parliament", in order to comply with the definitions set out in the draft itself.

Proposed wording for Article 2 :

"The Parliament is composed of elected representatives of the peoples of the States brought together in the Community.

It shall exercise the powers conferred upon it within the limits set by this Treaty.

ö Article 4

Retain the term "Members of the WAEMU Parliament" after deleting "of the WAEMU" at the beginning of the article.

Proposed wording for Article 4

"Members of Parliament bear the title of : Members of the WAEMU Parliament".

4 Article 5

The formula of the Additional Act for determining the uniform electoral procedure does not seem to be a good one. If we refer to the system adopted by the European Union, the model uniform act on electoral procedure drawn up by the Council of Ministers was the subject of a recommendation to the Member States that they adopt it as a standard of domestic law, no doubt in order to preserve, through the flexibility of the procedure, certain political aspects specific to the culture of each State.

For example: voting or eligibility age, single-member constituency, majority or proportional systems, electoral calendar, etc.

Moreover, isn't there a risk that the wording of the Additional Act will be too rigid for such a subject, which is deemed to be subject to frequent amendments?

Lastly, as electoral matters may have constitutional implications at national level, they call for a degree of flexibility in their legal conception.

All in all, the wording of the directive seems worthwhile in this respect.

Moreover, wouldn't it be better to use the accepted term "mandate" instead of "duration".

Proposed wording for Article 5

"Deputies are elected by direct universal suffrage for a term of five (5) years, in accordance with an electoral procedure to be determined by a directive of the Council of Ministers after consulting Parliament".

0 **Article 6**

Replace the word "void" with *"prohibited"*.

Proposed wording for Article 6 :

"Any imperative mandate is prohibited".

o **Article 11**

This article should be read in conjunction with Article 23 of the draft, which deals with hearings of the Presidents of the Union's bodies: it would be preferable to merge these two articles into a single one, while ensuring the cohesion of the whole.

ü **Article 12**

The suspension of detention or prosecution usually takes place in the course of judicial proceedings conducted by the judicial authorities *-* S. Parliament may request either measure,

However, by virtue of the fundamental principle of the separation of powers recognised in the constitutions of the Member States, it is desirable to leave the assessment of Parliament's request to the judicial body to which the matter has been referred, which will be able to judge the appropriateness of the measure to be taken with a view to the proper administration of justice in the interests of the people and also of the parties to the proceedings, including, of course, the Member being prosecuted or detained.

Proposed wording for Article 12

"Members shall enjoy parliamentary unity in the territory of each Member State.

The "detention" or prosecution of an MP may be suspended if Parliament so requires.

In addition, Members enjoy the privileges and immunities provided for in Additional Protocol No. 03 of 10 May 1996 on the rights, privileges and immunities of the WAEMU".

ü **Article 15**

The phrase "general policy" used by the President of the Commission can be misleading in the Community context.

If we refer to Article 17 of the Treaty on European Union, the general policy of the Union is the responsibility of the Conference, a body higher than the Commission, which is the body responsible for implementing that policy; hence the relevance of the term "*presentation of the action programme*", which is the sole responsibility of the Commission.

The general policy of the Union could at most be presented by the President of the Council of Ministers in his or her capacity as representative of the Union body which is primarily responsible, as laid down in Article 20 of the Union Treaty, for implementing the general political guidelines of the Union, while the President of the Commission remains responsible for presenting its action programme within the limits of the Commission's own powers and those delegated to the Commission by the Council.

0 **Article 19**

Proposed wording for Article 19

Start the article with : "*The motion of censure shall be admissible only if it is tabled by at least one third (J/3) of the component Members of Parliament*". The rest of the article remains unchanged.

Furthermore, sanctioning the vote on the motion by inviting the Conference to resign does not appear to be in line with the status of Commissioners as laid down in Article 28 of the Treaty on European Union, which makes them independent mandate-holders who must not receive instructions or recommendations in the performance of their duties. In other words, the sanction of resignation can only come from the political and moral will of the Commissioners, who are reduced to this collective act of "self-revocation".

In the absence of such an attitude, which consists of drawing the consequences of this political disapproval, only the collective non-renewal by the Heads of State of the Commissioners' mandates remains the last resort.

9 Article 20

It is desirable to specify clearly the cases in which dissolution of Parliament is pronounced by the Conference.

If such a formula is to be adopted, it must be in highly exceptional cases, as the dissolution of Parliament is little known in Community law. The parallelism with national constitutional law is not obvious.

p Article 23

This article takes into account the provisions of Article 11 of the draft. Proposed wording for Article 23:

"Parliament may, on its own initiative or at their request, hear :

- the Chairman of the Board*
- the Chairman of the Commission*
- the Governor of the BCEAO*
- the President of BOAD*
- the President of the Regional Consular Chamber.*

Members of the Council and the Commission may be invited to attend Parliament's plenary sittings and committee meetings at the request of Parliament addressed to Morgan of which they are members.

The Chairmen and members of the above-mentioned bodies may be assisted by their staff when speaking in Parliament.

The practical terms and conditions of these interventions are specified in l Parliament's Rules of Procedure".

0 Article 29

Paragraph 4 of this article contradicts Article 26 of the draft, which stipulates that "Within the framework of participation in the decision-making process, Parliament shall express its views in the form of recommendations or opinions". The adoption of the budget is part of the decision-making process.

Furthermore, the expression "joint regulation of the Council and Parliament" is not known in WAEMU Community law. If this observation is accepted, paragraph 5 of the article becomes irrelevant.

4 Article 30

Same comments as for the previous article.

fi Articles 32 and 34

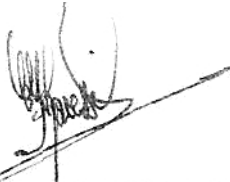
There will be no need for these two articles if, as proposed in the general observations, the draft Treaty submitted is integrated and made one with the WAEMU Constitutive Treaty, which has its own revision and ratification provisions.

These are the observations inspired by an examination of the draft Treaty submitted to the Court.

Ouagadougou, 25 November 19 g

And signed by the Chairman, the Reporter and the Registrar

14/11/2014



• Yves D. YEHOUESSI

Raphaël P. OUATTARA