

**JUDGME  
NT NO.  
03/2021  
FROM 09 June 2021**

**EXTRACT FROM THE MINUTES OF THE  
REGISTRY**

**COURT OF JUSTICE OF THE WEST AFRICAN  
ECONOMIC AND MONETARY UNION (WAEMU)**

**PUBLIC HEARING ON 09 JUNE 2021**

**Action for assessment of legality**

**Cabinet François SERRES**

**C/**

**Commission of the West African  
Economic and Monetary Union  
(WAEMU)**

**Composition of the Court :**

- **Mr Daniel Amagoïn  
TESSOUGUE, Chairman ;**
- **Mr Euloge AKPO, Judge-Rapporteur ;**
- **Ms Joséphine Suzanne EBAH  
TOURE Judge ;**
- **Victoire Eliane ALLAGBADA  
JACOB, 1<sup>er</sup> Advocate General ;**
- **Mr Hamidou YAMEOGO, Registrar.**

**The Court of Justice of the WAEMU, meeting in  
ordinary public session on the ninth (09) of June two  
thousand and twenty-one (2021), in which were  
seated :**

**Mr Daniel Amagoïn TESSOUGUE, Chairman ;  
Mr Euloge AKPO, Judge-Rapporteur ;  
Mrs Joséphine Suzanne EBAH TOURE, Judge ;**

**in the presence of Ms Victoire Eliane ALLAGBADA,  
First Advocate General;**

**with the assistance of Mr Hamidou YAMEOGO,  
Registrar ;**

**has rendered the following judgment:**

**BETWEEN :**

**Cabinet François SERRES**, represented by Maître  
François SERRES, residing at 10 rue Pergolèse, 75116  
Paris and electing domicile at Cabinet Lamine Faye,  
assisted by Maître Mohamed Lamine FAYE, lawyer at  
the Côte d'Ivoire Bar, residing at Abidjan-Plateau, 20,22  
Bd Clozel, Immeuble "les acacias", 7th floor, 01 BP 265  
Abidjan 01, Tel: + 225 202 257;

**Applicant, on the one  
hand ;**

**AND**

**The Commission of the West African Economic and  
Monetary Union (UEMOA)**, an intergovernmental  
organisation, created by Treaty on 10 January 1994 in  
Dakar (Senegal), located at 380, Avenue du Professeur  
Joseph KI-ZERBO, 01 BP. 543 Ouagadougou 01  
BURKINA FASO, Tel: + 226 25 31 88 73 to 76,  
Fax: + 226 25 31 88 72, E-mail:

commission@uemoa.int, Websites: [www.uemoa.int](http://www.uemoa.int) and  
[www.izf.net](http://www.izf.net), represented by its agent Mr Ibrahima  
SAMBE, technical adviser to the President of the  
Commission in charge of Legal Affairs and assisted by  
Maître Harouna SAWADOGO, Avocat à la Cour,  
member of the Burkina Faso Bar, immeuble Espace  
Fadima, Avenue du Président Aboubacar Sangoulé  
LAMIZANA, 01 BP 4091 Ouagadougou 01,  
Tel: +226 25306946- Fax (00226) 25 310852  
E- mail : [cab.hsawadogo@live.fr](mailto:cab.hsawadogo@live.fr) - IFU : 00005800 U ;

**Defendant, on the other  
hand ;**

## THE COURT

**VU** the Treaty of the West African Economic and Monetary Union dated 10 January 1994, as amended on 29 January 2003;

**HAVING REGARD TO** Additional Protocol No. 1 on the supervisory bodies of the WAEMU ;

**HAVING REGARD TO** Additional Act No. 10/96 of 10 May 1996 on the Statutes of the Court of Justice of the WAEMU ;

**HAVING REGARD TO** Regulation No. 01/96/CM of 05 July 1996 on the Rules of Procedure of the Court of Justice of the WAEMU;

**HAVING REGARD TO** Regulation n°01/2012/CJ of 21 December 2012 on the Administrative Rules of the Court of Justice of the WAEMU;

**HAVING REGARD TO** the Minutes No 02/2016/CJ of 26 May 2016 relating to the swearing in and installation of the members of the WAEMU Court of Justice;

**HAVING REGARD TO** Minutes No. 2019-08/AI/02 of 28 May 2019 on the appointment of the President of the Court and the distribution of functions within the Court;

**HAVING REGARD TO** the Minutes n°2019-09/AP/07 of 03 June 2019 relating to the installation of the President of the WAEMU Court of Justice;

**VU** Order N°021/2019/CJ of 20 November 2019 fixing the days of the Assemblies of the WAEMU Court of Justice;

**VU** the application dated 11 October 2017, registered at the Registry of the Court of Justice of the West African Economic and Monetary Union (UEMOA) on 13 October 2017, under number 17 R 002 ;

**VU** the minutes of the ordinary public hearing held on 11 November 2020 ;

**VU** the minutes of the ordinary public hearing held on 07 April 2021 ;

**VU** the minutes of the ordinary public hearing held on 19 May 2021 ;

**HAVING REGARD TO** Order No 17/2021/CJ of 25 May 2021 on the composition of the plenary session to sit in public hearing on 09 June 2021;

**HAVING REGARD TO** the summonses of the parties ;

**HEARD** the Judge-Rapporteur in his report;

**HEARD** Counsel for Cabinet François SERRES, in its oral observations;

**HEARD** Counsel for the UEMOA Commission, in its oral observations;

**HEARD** the First Advocate General in her conclusions;

**Having deliberated in accordance with Community law :**

## **I. FACTS AND PROCEDURE**

**Whereas**, with a view to revising Directive n°4/2005/UEMOA on procedures for the award, execution and settlement of public contracts and public service delegations in the WAEMU and Directive n°5/2005/UEMOA on the supervision and regulation of public contracts and public service delegations, On 23 February 2016, the UEMOA Commission published on the UEMOA website the notice of expression of interest No. 08/2016/AMI/DAGP/UEMOA, concerning the selection by UEMOA of a consultancy firm;

**That** after the deadline for submission of tenders, set for 21 March 2016, six (06) firms, including Cabinet François SERRES and the CLKA/GHELBE & GOURDON /Professeur Abou Saïb COULIBALY consortium, were shortlisted, without dispute, in accordance with Implementing Regulation No. 008/ COM/UEMOA of 12 November 2014, relating to the rules for the award, execution and acceptance of contracts of the organs of the UEMOA ;

**That** the shortlisted firms are then invited to submit their technical and financial proposals;

Only four firms, including the two mentioned above, were able to submit their proposals before the deadline;

**That**, once the bids have been opened, the Sectoral Contracts Committee of the Economic Policy Department (DPE) entrusts the evaluation of the bids to a three-member Technical Sub-Committee (SCT), which evaluates the bids on the basis of the following main criteria:

- relevant experience of the consultant for the assignment (20 points) ;
- conformity of the work plan and methodology (20 points) ;
- qualifications and skills of key personnel proposed for the assignment (60 points) (including legal expert: 30 points; public procurement specialist: 15 points; public finance expert: 15 points);

Cabinet François SERRES ranked first with 81 points, while the CLKA/GHELBE & GOURDON/Professeur Abou Saïb COULIBALY grouping ranked second with 75.3 points;

Having each obtained more than 75 points for their technical bids, only these two firms had their financial bids examined, which were as follows:

- Group CLKA/GHELBE & GOURDON and Professor Abou Saïb COULIBALY: 40,350,000 CFA francs;
- Cabinet François SERRES: 57,960,361 CFA francs.

The combined rating of the technical and financial bids gives the following results:

- 1<sup>er</sup>: Groupement CLKA/GHELBE & GOURDON and Professor Abou Saïb COULIBALY, with 82.73 points;
- 2<sup>ème</sup> : Cabinet François SERRES, with 77.59 points;

**That** the Technical Sub-Committee, which has carried out the evaluations, recommends to the Sectoral Commission on Procurement of the Department of Economic Policy (DPE) that the CLKA/GHELBE & GOURDON/ Professor Abou Saïb COULIBALY Group be selected as the successful tenderer for the said contract at a price of 40,350,000 CFA francs;

**That** these results are published on the website of the WAEMU Commission, bearing the date of 04 August 2017;

**That** the contract is signed with this successful tenderer on 31 August 2017;

**That**, considering itself wronged by this decision, Cabinet François SERRES lodged an appeal with the Commissioner of the DSAF by letter dated 17 August 2017, in which it requested the communication of the evaluation minutes and the re-evaluation of the technical bids of the last two firms remaining in the competition after the evaluation of the technical bids ;

**That** Cabinet François SERRES did not receive the Commission's reply until after the case had been referred to the Court of Appeal on its own initiative, on 18 October 2017 ;

**That** by application dated 11 October 2017, registered at the Court Registry on 13 October 2017, under number 17 R 002, Cabinet François SERRES, brought an action for assessment of legality against the decision, by which the WAEMU Commission awarded the contract to the Consultancy named Groupement CLKA/GHELBE & GOURDON/ Professor ABOU SAÏB COULIBALY ;

**That** this action is notified to the UEMOA Commission, defendant, by the Registry, by correspondence No 17/R002.1 of 13 October 2017 ;

**That** by correspondence dated 30 October 2017, the UEMOA Commission informed the Court of the appointment of Mr Ibrahima SAMBE, Technical Adviser to the President of the Commission, in charge of legal affairs, as its agent in the present case and of the appointment of Maître Harouna SAWADOGOO, lawyer registered at the Bar of Burkina Faso to assist it;

**That** by correspondence No 327/HS/KJO/17 of 03 November 2017, Maître Harouna SAWADOGO, counsel for the WAEMU Commission, requested an extension of time of one month, for the filing of the statement of defence;

**That** this extension of time was granted, pursuant to order no. 23/2017/CJ dated 10 November 2017;

**That** a bond, set by Order No. 01/2018/CJ of 16 January 2018, has been duly paid, in accordance with the receipt dated 30 January 2018, by Cabinet François SERRES, whose counsel is Maître Mohamed Lamine FAYE, Avocat au Barreau de Côte d'Ivoire;

**That**, after the parties had filed and been notified of their statements of defence, reply and rejoinder, the President of the Court of Appeal issued Orders No 008/2018/CJ and No 009/2018/CJ of 19 February 2018 respectively declaring the written procedure closed and appointing Mr Euloge AKPO as Judge-Rapporteur;

**That** on the report of the latter, the Court opens the oral proceedings which it closes, after the conclusions of the First Advocate General;

## **II. PRESENTATION OF THE PARTIES' CLAIMS**

### **A- THE APPLICANT'S CLAIMS AND ARGUMENTS**

Whereas Cabinet François SERRES, the applicant, claims that the Court should:

- to allow his application for an assessment of legality;
- declare that the Commission has failed to comply with the provisions of Article 76 of the Rules of Procedure by suspending the award procedure;
- relieve it, where appropriate, of a time limit on its action;
- declare that the rules governing the form and procedure of the contested consultation procedure have not been complied with;

- declare that the technical rating criteria and their weighting do not allow for a rating procedure that complies with the principles of equality of candidates and transparency;
- declare that there was a manifest error of assessment in the technical scores awarded by the evaluation committee, and consequently annul the award decision;
- Where appropriate, order a stay of execution on the signing of any contract between the Commission and the successful firm, or its cancellation;
- declare that the statement of defence was lodged out of time and draw all legal conclusions from this as to its admission to the proceedings;
- declare that the mechanism relied on by the Commission to reject the applicant's request contradicts the principles of good governance, transparency and equal treatment, as well as those promoted by the abovementioned conventions and texts concerning the protection of human rights, in particular in that this mechanism does not provide any effective guarantee of protection of the applicant's rights; in any event, it has not been shown that the applicant was aware of the results of the award from 04 August, as the Commission claims;
- find that the criteria and sub-criteria used to evaluate the tenders are either imprecise, without any real connection with the mission, or not mentioned in the request for proposal and therefore irregular, or that their weighting is not relevant;
- declare that the Commission made a manifest error of assessment of the tenders;
- rule that the application for assessment of legality is therefore well-founded and that, for the reasons given, the procedure for awarding the contract is irregular and that the contract signed with CLKA must be annulled;
- order, if necessary, that the evaluation be repeated by a technical sub-committee composed solely on the basis of the criteria set out in the request for proposal and strictly in line with the terms of reference (ToR) for the assignment;
- where appropriate, and in the event that the Court, although finding the action to be well founded, decides not to annul the contract, order the Commission to compensate Cabinet SERRES for the financial loss suffered by it in the sum of twenty million (20,000,000) CFA francs and for the loss in terms of images in the sum of ten million (10,000,000) CFA francs;

- order, in view of the publicity given in the African media to the award of the disputed contract, the publication of the operative part of the judgment on the Commission's website and in the public procurement journal of each WAEMU Member State;
- order the Commission to pay all the costs;

**Considering that** on the form and in reply to the observations of the WAEMU Commission, Cabinet François SERRES, in its reply dated 10 January 2018, requests to be relieved of the foreclosure of its action, on the grounds that its letter, dated 17 August 2017, simply referred to the date of 04 August 2017, the date of signature of the document which was not notified to it;

The Commission should justify the fact that the act is published on the website on the same day, especially since in this case 4 August is a Friday;

In any event, it cannot be inferred from his letter that he was aware of the results on 04 August 2017;

**That** the Commission should ensure the distribution of a document containing information under conditions that respect its rights;

**That** the two-month period referred to in Article 15 of the Rules of Procedure of the Court of Appeal is to be computed from the date of publication of the document, its notification to the applicant or, failing that, the date on which the applicant became aware of it;

**That** the regulation refers to publication of the act or its notification as two non-exclusive rules;

By referring to notification, the Regulation clearly emphasises the importance of this act as a guarantee of transparency and rights, providing information, verification and a statement of reasons;

**That** one rule does not have to take precedence over the other, especially when the date of publication has not been proven and notification has not been made;

**That** the reference to knowledge of the act may, where appropriate, compensate for the absence of notification, not of the act of publication itself, as the starting point for the time-limit, a fortiori because a tenderer cannot be expected to look at the Commission's website every day;



**That** Article 55 of the Regulation of 12 November 2014 provided that "unsuccessful tenderers have a period of five working days after the publication of the results to lodge their appeals" ;

**That** the said regulations do not provide for any notification to tenderers "who are informed of the rejection of their tenders on the UEMOA websites";

Tenderers must check the results of the procedures in which they are participating on the Commission's website every day;

It must be inferred that no effective and efficient appeal procedure is organised or made possible by the Commission;

**That** this would not be consistent with human rights jurisprudence, nor with the provisions of Article 7 of the African Charter on Human and Peoples' Rights, nor with the Directives and Principles on the Right to a Fair Trial in Africa, nor with the jurisprudence of the ECOWAS Court of Justice, nor with the jurisprudence of the French Constitutional Court and Council of State, nor the provisions of Article 8 of the Universal Declaration of Human Rights, nor the International Covenant on Civil and Political Rights, which recognise that everyone has the right to have his case heard, or the right to an effective remedy, which has the character of a fundamental freedom, etc. ;

**That** the principle of effectiveness requires that procedural rules should not render practically or excessively difficult the exercise of rights conferred on individuals by the legal order and that the International Court of Justice enshrines fundamental procedural guarantees as "*general principles of law*";

**Considering that** on the merits, Cabinet François SERRES, in its application dated 11 October 2017 and in its brief dated 10 January 2018, claims that its action is being brought pursuant to Additional Protocol No 1 relating to the supervisory bodies of the WAEMU, in particular Article 8 thereof which relates to the cases in which an action for assessment of legality may be brought;

**That** in the exercise of his ministry, the judge is called upon to review both the external and internal legality of the contested act, without forgetting to examine the relationship of conformity between the contested act and all the higher norms, i.e. the applicable body of law ;

**That** there is, on the one hand, a breach of the rules of form and procedure relating to the award of a contract and, on the other hand, a manifest error of assessment of the technical offers;

**That** the WAEMU Commission signed the contract with the contract holder on 31 August 2017, even though it was aware of the existence of a dispute relating to the procurement procedure, having already received his appeal, the subject of its correspondence, dated 17 August 2017;

**That** the Commission refused to communicate the reasons for its decision, in particular the minutes of the evaluation of the tenders or the award, and to explain the reasons for the rejection of its tender, despite the letters and reminders sent to it;

**That it was** only on 18 October 2017 that the Commission replied to its letter, dated 17 August 2017;

**That** there is a lack of rigour on the part of the Commission in the conduct of the pre-qualification procedure, in the choice of criteria or in their verification and consequently in the choice of legal entities selected;

**That** the methodology was not a fundamental criterion that differentiated the rating of the two competing firms, as the difference between the assessment of the qualifications and experience of the two fell from 100/60, at the pre-qualification stage, to 81/75.3 at the tender evaluation stage;

**That** certain criteria mentioned in the statement of defence were not referred to in the request for proposals, which is a ground for annulment of the procedure;

**Whether** this is the case for "general qualifications" or "experience in the legal field" for the legal expert, etc. ;

**That** the Commission has taken an approach that can only have the effect of favouring firms with little experience in the highly specialised field of this consultation;

**That** it criticises the conduct of the procedure itself and the misuse of procedure and powers by issuing irrelevant criteria and sub-criteria, having regard to the requirements of the Consultation set out in the terms of reference (ToR);

**That** the scoring methodology leaves a great deal of room for arbitrariness, which is likely to infringe the principles of equality of candidates and transparency of procedures;

**That** there was a manifest error of assessment, unfavourable to both its legal expert, its expert in procurement, and its expert in public finance, while there was a manifest error of assessment of experience, favourable to the consultant of the firm awarded the contract;

**That** the overly general and imprecise nature of the scoring criteria and their weighting, the failure to take account of specific experience in the evaluation criteria and sub-criteria, and the minimal difference between him and the successful tenderer, which cannot justify his score of 81, which appears too low, should be emphasised;

**That** "these violations of the procedure for awarding the contract" caused it to lose a contract, resulting in loss of earnings and financial loss;

**That** the fairness of the evaluation was affected by the use of criteria that had not been foreseen at the outset; **That** these breaches now deprive it of a reference in the matter and of the possibility of invoking it in future calls for tenders, whereas the winning firm will be able to invoke this reference, on the strength of having drawn up the new regulations;

That it suffered damage to its image as a result of the results being widely publicised in the African media.

## **B. THE DEFENDANT'S CLAIMS AND ARGUMENTS**

Whereas in its statement of defence and rejoinder, dated 06 December 2017 and 14 February 2018 respectively, the defendant WAEMU Commission claims that the Court should:

- as to form and as to substance: declare the action inadmissible on the grounds of foreclosure resulting from failure to comply with the two (02) month time-limit or, failing that, declare it devoid of purpose;
- In form and in the alternative: to declare inadmissible as they stand the applicant's claims for payment of sums of money in respect of the financial loss and damage to his image referred to and for publication of the judgment on the WAEMU website and in the public procurement journals of each WAEMU Member State;
- in the alternative, reject the application for assessment of legality as unfounded and order Cabinet François Serres to pay all the costs;

**Considering that** in support of its claims and in its statement of defence, dated 06 December 2017, the WAEMU Commission raises In limine litis the inadmissibility of the action brought by Cabinet François SERRES, on the grounds of foreclosure resulting from failure to comply with the time limit of two (02) months, provided for by Article 15 paragraph 2 of Regulation No 01/96/CM on the Rules of Procedure of the WAEMU Court of Justice;

**That** the referral to the court of ceans, on 13 October 2017, was made out of time, on the grounds that the award decision is dated 4 August 2017 and was published on the same day, on its website ;

**That** Cabinet François SERRES, in its appeal dated 17 August 2017, referred to the date of 04 August 2017 as the date on which it became aware of the results conveyed by the contested decision;

**That** the appeal had to be lodged no later than 4 October 2017;

**That** Implementing Regulation No. 008/COM/UEMOA of 12 November 2014, relating to the rules for the award, execution and acceptance of contracts by the bodies of the UEMOA, does not include any provision authorising the communication of the award report;

The text applicable to referrals to the WAEMU Court of Justice is Regulation No. 01/96/CM on the Rules of Procedure of the WAEMU Court of Justice, Article 15(2) of which states that the time limit for lodging an appeal begins to run from the date on which the appeal is lodged:

- publication of the deed ;
- of its notification to the applicant ;
- of the applicant's acquaintance with the document ;

Once the disputed act has been duly published, the other two means of information become inoperative;

**That** the result of the request for proposals relating to the call for tenders was "well and truly published on the UEMOA Commission's website on 04 August 2017" ;

**That** it is this date of publication which starts the time limit for bringing an action before the lower court;

In its defence and rejoinder, dated 06 December 2017 and 14 February 2018, the WAEMU Commission dismisses the applicant's claims on the following grounds:

- 1- Public contracts awarded internally by the WAEMU Commission are covered by implementing regulation No. 008/COM/UEMOA of 12 November 2014, which do not provide for the communication of tender award minutes, contrary to directives No. 04/005/CM/UEMOA and No. 05/2005/CM/UEMOA, adopted for the exclusive attention of Member States, with a view to their transposition into their domestic legal order ;

It follows that the Commission did not commit any error by failing to communicate the minutes of the award of the tenders;

- 2- Implementing regulation no. 008/COM/WAEMU requires a minimum waiting period of 10 working days from the publication of the results before the contract can be signed;

In this case, the Commission observed an effective waiting period of 19 working days;

- 3- The hierarchical administrative appeal lodged by the applicant on 17 August 2017 was lodged out of time;

**That** the Sectoral Contracts Committee based its assessment exclusively on the dossiers submitted by the various tenderers, in accordance with the criteria predefined in the dossier;

The Commission may not rely on any information other than that contained in the said files and collected by the applicant on the Internet;

**That** the technical and financial evaluations, as well as the score resulting from the combination of the two, are presented in various tables;

### **III. DISCUSSION**

#### **A- ON THE COMPETENCE OF THE COURT**

**Considering that** the jurisdiction of the Court of Appeal is enshrined in Article 8 of Additional Protocol No. 1 relating to the supervisory bodies of the WAEMU, Article 15 point 2, paragraph 2 of Regulation No. 1/96/CM on the Rules of Procedure of the Court of Justice of the WAEMU and Article 27 of Additional Act No. 10/96 of 10 May 1996 on the Statutes of the Court of Justice of the WAEMU;

**That** the question of jurisdiction in this case does not call for any particular comment;

It follows that the Court has jurisdiction to hear this case;

## **B- S U R L            A R E C E V A B I L I T Y**

### **1- On the admissibility of the Commission's response**

**Considering** that, according to Article 29 of Regulation No 1/96/CM laying down the Rules of Procedure of the Court, *"Within one month of service of the application, the defendant shall submit a statement of defence [...] This time-limit may be extended by order of the President at the reasoned request of the defendant"*;

**That** in the present case, the application was notified to the Commission by the Registry, by correspondence No 17/R002.1 of 13 October 2017 and the President of the Court of First Instance issued Order No 23/2017/CJ dated 10 November 2017 to grant the Commission an additional period of one month from that date ;

It follows that the Commission's statement of defence, "entitled statement in response", dated 06 December 2017, is admissible;

### **2- Admissibility of the applicant's action for assessment of legality**

**Considering** that the appeal for assessment of legality must comply with the formal requirements, in accordance with the provisions of Article 26 of Regulation No. 1/96/CM on the rules of procedure;

It appears that in the present case, the matter was referred to the court by a request which does not call for any particular comment as to form;

**Considering, however, that** in accordance with Article 15 point 2 in fine of the said Regulation, *"an appeal for assessment of legality must be lodged within two (02) months of the publication of the act, its notification to the applicant or, failing this, the day on which the applicant became aware of it"*;

**That**, in the present case, Implementing Regulation No. 008/COM/WAEMU of 12 November 2014 on the rules for the award, execution and acceptance of contracts by the bodies of the WAEMU provides in Article 55 that *"The successful tenderer shall be notified of the award. The other tenderers shall be informed of the rejection of their tender on the UEMOA websites and, where appropriate, their deposit shall be returned"* ;

**That** it appears that the Implementing Regulation does not therefore provide for notification to be given to a loser, but rather for publication on the body's website;

**That** in his ex gratia appeal addressed to the Commission on 17 August 2017, the applicant stated: "*Commissioner, I have the honour to appeal against the decision made by the Commission which in a document dated 4 August last gave notice of the results of the award of the contract relating to the revision of the WAEMU directives after evaluation by the Contracts Committee*" ;

No one is supposed to ignore the law;

**That** in applying for the contested call for tenders, Cabinet François SERRES is supposed to be aware that the provisions of Article 55 of Implementing Regulation No. 008/COM/WAEMU of 12 November 2014 require it to consult the WAEMU websites on a daily basis, given that only the successful tenderer will be notified of the award and that the other tenderers can only be informed of the rejection of their tenders by consulting the said sites ;

It is also clear from the evidence in the file that the applicant learned of the call for tenders by consulting the WAEMU website;

**That** it is clear that the applicant cannot be unaware that the document referred to in his correspondence, dated 17 August 2017, communicates the results;

**That** its posting on the UEMOA website constitutes publication of the said results and that 4 August 2017, which is the date that this document bears, is to be taken into account, for the computation of the time limits of possible jurisdictional appeals;

It goes without saying that the two-month period can only be counted from the date of 4 August 2017, which is considered to be the date of publication of the results of the call for tenders;

**That** the applicant wrongly did not believe that he had to refer the matter to the court before the expiry of the two-month period, i.e. by 04 October 2017 at the latest, even though he had the opportunity to lodge an informal appeal on 17 August 2017, even though such an informal appeal is not an obligatory prerequisite for lodging a judicial appeal to assess legality;

**That** the purpose of time limits for bringing actions is to ensure clarity and certainty in legal situations, preventing Community acts having legal effects from being called into question indefinitely and avoiding any discrimination or arbitrary treatment in the administration of justice;

**That** neither the judge nor the parties have access to the time limit for bringing an action for annulment, the plea of foreclosure being a plea of public policy;

**That** in this case there is no proof of the existence of any case of force majeure, or of any fortuitous event, or even of any excusable error that would allow the applicant to be relieved of the foreclosure;

**That**, consequently, Cabinet François SERRES, which lodged an application with the Court of Appeal on 13 October 2017 for an assessment of legality, is precluded from proceeding and its application must be declared inadmissible on the grounds of lateness;

### **C- O N T H E D E P E N S**

**Whereas** François SERRES has been unsuccessful in its claims and submissions;

Under Article 60 of the Rules of Procedure, *"any unsuccessful party shall be ordered to pay the costs"*;

It should be ordered to pay the costs.

### **P A R C E S M O T I F S**

**Ruling publicly, adversely, at first and last instance, in matters of Community law and in actions for assessment of legality;**

#### **IN THE FORM :**

- **Declares itself competent ;**
- **Declares the UEMOA Commission's statement of defence, "entitled statement in response", dated 06 December 2017, admissible;**
- **Declares the action brought by François SERRES inadmissible on the grounds of foreclosure;**
- **Orders Cabinet François SERRES to pay the costs.**

**Thus made, judged and pronounced in public hearing in Ouagadougou on the day, month and year above.**

**And signed by the Chairman and the Registrar.**

**Illegible signatures follow.**

**Ouagadougou, 09 June 2021**

**For the Registrar  
The Deputy  
Registrar**

**Hamidou YAMEOGO**