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Introduction

There are two major entities in the West African region which aim to integrate national economies into a trading bloc with a view to fostering and accelerating the economic and social development of the member countries, enhancing the living standards of the peoples. These are the Economic Community of West African States (ECOWAS) and the West African Economic and Monetary Union (WAEMU) commonly known by its French acronym UEMOA. While most people in the region know about ECOWAS whose name is embossed on every West African passport and which has distinguished itself in its peace-keeping missions, a vast majority of people in the region, especially in the English-speaking countries, do not seem to have heard about UEMOA. This is all the more so as UEMOA is not on the list of the Regional Economic Communities (RECs) recognized by the African Union[i], although it has all the features of an economic union – free movement of persons, goods, services and capital; rights of residence and establishment; common external tariff; common currency.

In order to have a full understanding of the process of economic integration in the West African region, it is important to acquire some knowledge, not only about ECOWAS law, but also about the law of

UEMOA. This is because the growth and development of that process depend on the extent to which the conflicting or divergent rules of the two Organisations relating to market integration are approximated. This paper aims to provide basic information about the law of this important, but less known, economic Community/Union in the region. It will consider some aspects of the institutional and legal frameworks the understanding of which is deemed necessary for collaborative efforts.

Establishment of UEMOA and the principle of primacy

Soon after their independence, five former French colonies namely Cote d’Ivoire, Dahomey (Benin), Niger, Senegal and Upper Volta (Burkina Faso), each of which already had a bilateral economic and monetary agreement with the former colonial power, France, decided to enter into a monetary cooperation agreement among themselves, and between themselves as a group and the aforesaid former colonial power. This led to the conclusion, in May 1962, of the Treaty establishing the West African Monetary Union (UMOA) and of a monetary cooperation agreement between the group and France. The essential element of the UMOA Treaty is the continued recognition of the CFA franc[ii] as the common currency of the Member States, the issuance of which is entrusted to a common Central Bank, the Central Bank of West African States (commonly known by its French acronym BCEAO). Togo and Mali joined the group subsequently, the former in 1963, the latter in 1984.

Desirous to extend their solidarity to the economic sphere, the Member States signed, in January 1994, the treaty setting up the West African Economic and Monetary Union. The treaty entered into force in August 1994 following its ratification by all the signatory states[iii]. It did not

supersede the UMOA Treaty; it rather supplemented and strengthened it. Article 112 of the UEMOA Treaty provides that the Conference of Heads of State and Government will adopt, in due course, a treaty merging the two instruments. Pending the merger of the two Treaties, UMOA Treaty remains in force with some amendments and governs the monetary policy of the Union. In May 1997, although a Portuguese-speaking country, Guinea Bissau joined UEMOA[iv], bringing the number of the Member States to eight. All the eight countries are also members of the Economic Community of West African States (ECOWAS). UEMOA headquarters is in Ouagadougou in Burkina Faso.

UEMOA Treaty is directly applicable in the Member States and overrides any national law inconsistent with it, by virtue of the “monist” constitutions of the Member States.[v] Besides, Article 6 of the Treaty expressly provides that legally binding acts adopted by the organs of the Union pursuant to the Treaty take precedence over prior or subsequent national laws inconsistent with them, while Article 7 enjoins the Member States to take all necessary measures to ensure the fulfilment of the Treaty obligations and to abstain from any measures that may impede the application of the Treaty and of the acts adopted pursuant to it. This, of course, entails amending, repealing or “disapplying” – if a question concerning it arises in a national court -, any existing law which conflicts with UEMOA law, and enacting laws in future in such a way that they do not conflict with the Community law – a further confirmation of the primacy of UEMOA law over national laws of the Member States **in the areas which come within the scope of application of the Treaty.**

Objectives of UEMOA

The objectives of the Union are listed under Article 4 of the Treaty. They include:

- The strengthening of the competitiveness of the economic and financial activities of the Member States in an open and competitive market and a rationalized and harmonized legal environment;
- The establishment of a common market based on the free movement of persons, goods, services, capital, the rights of residence and establishment, a common trade policy and a common external tariff;
- The coordination of national policies through the implementation of common actions and eventually common policies in the areas of human resources, town and country planning, transport and telecommunications, environment, agriculture, energy, industry and mines.

Thus, the Union aims at the achievement of full economic integration covering all the sectors of the economy. A significant amount of secondary legislation has been adopted in the form of additional acts, regulations, directives and decisions to give effect to the provisions of the Treaty and of its annexes.

Unlike the position in other African economic communities, the right of establishment and the right to provide services are expressly granted to liberal professionals such as medical doctors, architects, chartered accountants and lawyers (Article 4c of the Treaty and, respectively, Directive No.06/2005/CM/UEMOA, Directive No.07/2005/CM/UEMOA, Regulation No.05/2006/CM/UEMOA and Regulation No.10/2006/CM/UEMOA). They are thus entitled to practise their professional activities in any of the Member States in a self-employed or

salaried capacity provided that they are registered with the competent authority in their home Member State and accomplish, in the host Member Country, certain formalities specified by the Treaty. The rights of free movement are also expressly extended to students in public institutions of higher education and professional training. Measures adopted to ensure the effective exercise of these rights include equal treatment of students with regard to conditions for access to the institutions, and to tuition fees, as well as mutual recognition of diplomas, degrees and certificates awarded by these institutions (Additional Protocol N° 2, Article 1; Directive N° 1/2005/CM/UEMOA).

Derogations from the principle of free movement

Member States are allowed, under the terms of the Treaty provisions, to limit the exercise of the freedoms where this is objectively justified. For instance, with regard to the free movement of persons, Article 94 allows Member States to place restrictions on the exercise of the freedom by nationals of other Member States or enterprises controlled by them when this is justified on grounds of public order, public security, public health or any other grounds of general interest. Concerning the free movement of goods, Article 79 provides that Member States can prohibit or restrict importation, exportation or transit of goods on grounds of public morality, public order or public security; protection of health or life of persons and of animals; preservation of the environment, protection of national treasures having artistic, historic or archaeological value, and the protection of industrial and commercial property. These prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

Article 86 allows Member States to take “protection measures to address serious difficulties in one or several sectors of their economies”, under the conditions which shall be laid down by the Council. Subsequently, Regulation n° 14/98/CM/UEMOA was adopted to flesh out this Article.

Institutions of UEMOA

The main institutions are as follows: The Conference of Heads of State and Government, the Council of Ministers, the Commission, the Parliament, the Court of Justice and the Court of Auditors. Each of them acts within the limits of the powers conferred on it by both the UMOA and the UEMOA Treaties and under the conditions set out therein. There are also advisory bodies as well as specialized independent institutions. The latter group includes the BCEAO and the West African Development Bank (BOAD), both of which are organs of UMOA. Given the limited scope of this article, we shall examine briefly only the Court of Justice.

Court of Justice of UEMOA

The Court was established under the Additional Protocol n° 1, pursuant to Article 38 of the UEMOA Treaty. Its statute forms the subject of Additional Act n° 10/96. The role of the Court mirrors that of the European Court of Justice i.e. to ensure that the law is observed in the interpretation and application of the Union Treaty, guaranteeing proper functioning of the Union. Accordingly, it has jurisdiction to hear and determine:

a) infringement actions brought by a Member State – or the Commission

– against another Member State which has failed to fulfil a Treaty obligation;

b) actions for review of the legality of a binding act of any of the organs of the Union, brought by a Member State, the Council, the Commission or an individual (natural or legal person); the proceedings must be instituted within two months of the publication of the measure, or of its notification to the plaintiff, or of the day on which it was brought to their knowledge.

c) actions for damages for non-contractual liability in respect of any damage caused by any organ of the Union or by its agents in the performance of their duties

d)actions for a preliminary ruling brought by a national court

e) actions relating to disputes between Member States if such disputes are referred to it by virtue of an arbitration clause

f) actions between the Union and its staff

The Court also has unlimited jurisdiction in disputes relating to the Union’s competition law; it delivers opinions and recommendations on any draft text submitted to it by the Commission. The Council, the Commission or any Member State can seek an opinion from the Court concerning the compatibility, with the Union Treaty, of an existing international agreement or an international agreement being negotiated.

The reader may have noticed from the above heads of jurisdiction that there is no reference to actions relating to disputes between a Member State and an individual. This is because UEMOA Court does not have jurisdiction to hear and determine actions relating to such disputes. The Court itself has affirmed this (see, for instance, *Sonitel SA; Sahel – Com*

SA v L’Etat du Niger, arret N° 01/2010; El Hadji Aboubacar v Etat du Niger, arret N° 01/2013). A cursory look at its case law shows that most of the cases are between an organ of the Union and individuals. It also shows that, although it has no human rights mandate, when reviewing the legality of an act adopted by an UEMOA organ, in proceedings brought by an individual, the Court also pronounces on any allegation of human rights violation raised in the action (see, for instance, *Les Héritiers de feu Abdou Karim Fall, Actionnaires de la Société TOTAL Senegal SA v Le Conseil Regional de l’Epargne Publique et des Marchés Financiers (CREPMF)).*

The Court is thus a mechanism of judicial control. It ensures that the Member States fulfil the obligations which they voluntarily assumed under the Treaty and the acts adopted pursuant to the Treaty; it clarifies the scope and meaning of applicable law.

Promotion and dissemination of UEMOA law

Community law is a new legal system. It has specific principles, which differ from those of ordinary international law and which every “economic community” must apply to be able to function properly.

In order to promote and disseminate the Community law in UEMOA Member Countries, two major programmes have been put place. First, UEMOA law is taught – together with “OHADA law”[vi] – in several universities across the sub-region, especially at the post graduate level. Besides, the *“Ecole Régionale Supérieure de la Magistrature”* – the regional Law School based in Porto Novo in the Republic of Benin, which provides advanced legal training to top-level legal professionals under

the aegis of “OHADA” – also offers courses in the Community law. Secondly, the UEMOA Court of Justice organises annually a series of national seminars on UEMOA law for legal professionals, civil servants concerned, the press, the Chamber of Commerce and Industry and economic operators. In 2017 five such seminars were organized in Niamey, Lomé, Abidjan, Ouagadougou and Dakar. Speaking on the occasion of the seminar organized in Abidjan in April 2019, the Ivorian Minister of Economy and Finance underscored the need for such seminars, and, having observed that the level of intra-UEMOA trade was not as high as one would expect, stated that enhancing integration process would enable the Member States to have access to a larger market “provided that the rules of free movement are well known” (see the Ivorian daily “Fraternité Matin” of April 24, 2019, page 13) In other words, mastery of the rules of free movement is an indispensible condition for the enhancement of the integration process.

Conclusion

It emerges from this overview that UEMOA is a fully-fledged economic Community. It applies the basic principles of “community law” such as the cornerstone principle of primacy of the latter over inconsistent national law in the areas covered by the treaty, or the principle according to which national courts are responsible for the application of community law at national level. Besides, there is a clear separation of functions between the Community Court of Justice and the national courts of the Member States, eliminating the risk of tension between the two judicial authorities. UEMOA law is vigorously promoted and disseminated by both the institutions of higher education and the Court of Justice. All this seems to have contributed to the success of the Community in terms of economic integration.

This having been said, it may not be unnecessary to point out that, although UEMOA Members are also Members of ECOWAS and the two Organisations have similar objectives and similar institutional frameworks, their rules do not always seem to harmonise with each other. The result is the coexistence, in the same geographical area, of two sets of sometimes divergent or conflicting rules, which creates difficult problems on the ground, slowing down the process of integration at the regional level. If intra-ECOWAS trade is to be accelerated, it is most desirable that an in-depth study of some of the basic legal instruments of both institutions relating to the establishment of a common market be carried out with a view to eliminating or reducing the divergences. Furthermore, it is necessary that national or regional training seminars on “community law” be organized jointly from time to time, focusing on purely technical issues. This would enable the experts of the Joint Technical Secretariat of the two Commissions to have the same approach to “community law”, facilitating their collaborative efforts.

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[i] The Regional Economic Communities recognized by the African Union are as follows: the Arab Maghreb Union (UMA), the Common Market for Eastern and Southern Africa (COMESA), the Community of Sahel-Saharan States (CEN-SAD), the East African Community EAC), the Economic Community of Central African States (ECCAS), the Economic Community of West African States (ECOWAS), the Intergovernmental Authority on Development (IGAD) and the Southern African Development Community (SADC).

[ii] The acronym CFA stands for “Communauté Financière Africaine” (African Financial Community) in UMOA countries, and “Cooperation

Financière en Afrique” (Financial Cooperation in Africa) in “UMAC” countries (Central Africa) – see Article 4 of UMOA Treaty and Article 9 of the Monetary Cooperation Convention between Member States of the Bank of Central African States and the Republic of France). Created in 1945, CFA originally stood for (Franc des) Colonies Françaises d’Africa” (African French Colonies); in 1958, it became (Franc de la) Communauté Française d’Afrique.

[iii] Notice that under UEMOA law – as well as under the East African Community law or the EEC/EU law – a treaty takes effect upon its ratification by **all** the signatory states ensuring that it is uniformly applied across the Community. Under ECOWAS law, on the other hand, it takes effect upon ratification by a certain number of signatory states; this could jeopardize uniformity (see also Note n° ii in our piece *“The Role of National Courts and Tribunals in the Enforcement of Community Law (2)”*.

[iv] Article 103 of UEMOA Treaty provides that any West African country can join the Union, while Article 104 states that any African country can request to take part in one or several policies of the Union as an associate member.

[v] According to “monist” constitutions, duly ratified or approved treaties or agreements are, upon publication, incorporated into the domestic legal system without further enactment and take precedence over conflicting national law, subject, in regard to each treaty or agreement, to its application by the other party (see Article 55 of the French Constitution; Article 79 of the Senegalese Constitution; Article

87 of the Ivorian Constitution or Article 147 of the Beninese Constitution, to mention but a few). One can say in this connection that the EEC/EU adopts a “monist” approach: as explained in our paper referred to above, under the Community law, a treaty enters the domestic legal systems of all the Member States upon its entry into force without any further enactment being required for its incorporation.

[vi] A body of business law designed for all the countries of the CFA Zone plus Comoros and the Republic of Guinea within the context of an organization known as the “Organisation pour l’Harmonisation en Afrique du Droit des Affaires” (Organisation for the Harmionisation of Business Law in Africa) abbreviated “OHADA”.

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