

**ADDITIONAL ACT NO. 10/96 ON THE STATUTE OF THE COURT OF JUSTICE OF THE WEST
AFRICAN ECONOMIC AND MONETARY UNION**

TITLE I: GENERAL PROVISIONS

Article 1:

For the purposes of these Articles of Association, :

UEMOA: West African Economic and Monetary Union.

Court : Court of Justice of the West African Economic and Monetary Union.

Commission: Commission of the West African Economic and Monetary Union.

Article 2:

The Court of Justice, established by the Treaty of the West African Economic and Monetary Union (WAEMU) and the Additional Protocol n°1, shall exercise its functions in accordance with the provisions of the aforementioned texts and the present statutes.

Article 3:

The seat of the Court shall be in Ouagadougou. The Court may however, in case of imperative necessity, sit and exercise its functions in any other place in the territory where the seat is located or in that of a WAEMU Member State.

TITLE II: STATUS OF MEMBERS OF THE COURT

Article 4:

The Court of Justice is composed of members appointed for a renewable term of six (6) years by the Conference of Heads of State and Government.

They shall wear a suit to the hearing, the characteristics of which shall be determined by a regulation implementing these Articles of Association.

Article 5:

The members of the Court are chosen from among persons offering all the guarantees of independence and legal competence necessary for the exercise of the highest judicial functions.

Article 6:

Before taking up their duties, the members of the Court take an oath in open court in the following terms: "I solemnly swear that I will perform my duties as a member of the Court of Justice of the West African Economic and Monetary Union with complete independence and impartiality, in a dignified and loyal manner, and that I will maintain the secrecy of the deliberations".

Minutes shall be taken of the swearing-in ceremony.

Article 7:

The members of the Court appoint the President of the Court from among their number for a term of three years. The President-designate is formally installed. The members of the Court divide among themselves the duties of Judges, First Advocate General and Advocates General.

Article 8:

The Members of the Court shall enjoy immunity from jurisdiction. They shall continue to enjoy such immunity, even after they have ceased to hold office, in respect of words spoken or acts done by them in the exercise of their functions.

The full Court may waive the immunity of one of its members. Where immunity has been waived and criminal proceedings have been instituted against the accused, the latter may only be tried in each of the WAEMU Member States by the court with jurisdiction to try magistrates belonging to the highest national judicial function.

Article 9:

Members of the Court may not hold any political, administrative or judicial office or engage in any other occupation incompatible with the independence and impartiality required by their office.

This may be waived by decision of the Court, the member concerned not taking part in the deliberations. In case of doubt, the Court shall give its ruling at the request of a Member State or of a Union body.

Article 10:

The members of the Court reside at the seat of the court.

However, on a transitional basis and with the exception of the President, they may, for a period of three years, reside in the State of which they are nationals.

Article 11:

Apart from regular renewal, succession and death, the duties of members of the Court end individually by resignation.

In the event of the resignation of a member of the Court, the letter of resignation is addressed to the President of the Court for transmission to the President of the WAEMU Council of Ministers. The latter notification results in a vacancy. However, the resigning member continues to sit until his successor takes office, if his presence does not hinder the proper functioning of the Court.

Article 12:

A member of the Court may only be relieved of his duties or declared stripped of his rights to salaries, allowances and pensions if the General Meeting of the Court finds that he no longer fulfils the conditions required or no longer meets the obligations arising from his office. The person concerned shall be heard in oral or written explanation but shall not take part in the deliberations.

He may be assisted by one of his peers or by counsel.

The Meeting shall be held without the presence of the Registrar. The secretariat shall be provided by a member of the Court designated by the President of the Court.

The decision to relieve a member of the Court shall be notified to him by the President of the Court.

The notification implies a vacancy. The President of the Court shall inform the President of the WAEMU Council of Ministers in writing of the decision to relieve.

Article 13:

A Member of the Court whose term of office ends before the expiry of his term shall be replaced for the remainder of his term.

TITLE III: ORGANISATION OF THE COURT

Article 14:

The Court is a permanent court.

Article 15:

The Court shall exercise its functions :

- at the Plenary Meeting
- in the Council Chamber
- at the Consultative General Meeting
- at the Internal Assembly

Article 16:

The Plenary Assembly is a judicial panel made up of all the judges in the presence of an Advocate General. It is the Court's ordinary bench.

The Court sitting as a Plenary Assembly may only validly deliberate in an uneven number and with a minimum of three judges.

The Court sits in the Council Chamber with the same number of judges as in the Plenary Assembly when the case submitted is of such a nature as to jeopardise public order, public peace and public safety.

The Consultative General Assembly comprises all the members of the Court, the secretariat being provided by the Registrar. In this configuration, the Court issues opinions and recommendations on the report of a member designated by the President, when the matter is referred to it by a competent WAEMU body.

The Internal Assembly is made up of all the members of the Court, who may be joined by members of staff or their representatives. It meets when convened by the President and decides on the Court's administrative regulations and on the procedures for applying its general regulations and discipline.

Article 17:

The Court shall fix the date and duration of the judicial holidays, as well as the modalities of its functioning during this period.

Article 18:

Members of the Court may not take part in the settlement of any case in which they have previously acted as agent, counsel or advocate for one of the parties, or on which they have been called upon to give an opinion as a member of a court, a commission of enquiry or in any other capacity.

If, for any special reason, a member of the Court considers that he or she cannot take part in the judgment or in the examination of a particular case, he or she shall notify the President of the Court.

If the President considers that a Member of the Court should not, for any special reason or on grounds of legitimate suspicion, sit or give his opinion in a particular case, he shall so inform the Member concerned.

In the event of any difficulty concerning the application of this Article, the Court shall give a ruling.

A party may not invoke either the nationality of a member of the Court or the absence from the Court of a member of its nationality in order to request a change in the composition of the Court.

Article 19:

The Court appoints its Registrar for a period of six years, renewable once.

Article 20:

The Registrar shall take an oath before the Court to perform his duties faithfully, discreetly and conscientiously and not to divulge any secret coming to his knowledge in the course of or in connection with the performance of his duties.

Minutes shall be taken of the swearing-in ceremony. Article 21:

The President of the Commission may have the Court appoint one or more Deputy Registrars to assist the Registrar and placed under his or her hierarchical authority.

Before taking up their duties, the Deputy Registrar(s) shall take an oath under the same conditions and in the same terms as the Registrar.

Minutes shall be taken of the swearing-in ceremony. Article 22:

Under the authority of the President of the Court, the Registrar is responsible for the receipt, transmission and service of documents and for their safekeeping.

Article 23:

The Registrar shall attend the sittings of the Court, with the exception of the case provided for in Article 12 and of the deliberations of the Court.

Article 24:

The Registrar is responsible for the Court's archives and publications. He has custody of the seals.

He shall reside at the seat of the Court. Article

25:

Officials and other staff are attached to the Court to ensure its smooth running. They report to the Registrar and are placed under the authority of the President.

Article 26:

Within the limits of the posts authorised by the Union budget and on a proposal from the Court, the President of the Commission may appoint auditors to the Court; the Court will also lay down their status.

Auditors to the Court may be called upon, under conditions to be determined by the Rules of Procedure, to take part in the hearing of cases before the Court and to collaborate with the Judge-Rapporteurs.

Auditors are chosen from among persons of good character, offering every guarantee of independence and possessing the necessary technical qualifications.

They shall take an oath before the Court to perform their duties impartially and conscientiously and to preserve the secrecy of their deliberations.

Minutes are drawn up.

TITLE IV: JURISDICTION OF THE COURT

Article 27:

The Court shall have jurisdiction in particular over :

- actions for failure to fulfil obligations by Member States, in accordance with Articles 5 et seq. of Additional Protocol No 1 ;
- actions for annulment of regulations, directives and decisions of WAEMU bodies as provided for in Articles 8 et seq. of Additional Protocol I;
- liability claims in accordance with Article 15 of Additional Protocol 1 ;
- disputes between Member States relating to the WAEMU Treaty, if such disputes are submitted to it by virtue of a compromise ;
- disputes between UEMOA and its agents as provided for in Article 16 of Additional Protocol No. 1;
- of the preliminary ruling provided for in Article 12 of Additional Protocol No. 1.

The Court may issue opinions and recommendations on any draft texts submitted by the Commission.

The WAEMU Council of Ministers, the Commission or a Member State may seek the opinion of the Court on the compatibility of an existing international agreement or one under negotiation with the provisions of the WAEMU Treaty.

Referred to by the Commission, the Council of Ministers, the Conference of Heads of State and Government of the WAEMU or a Member State, the Court may issue an opinion on any difficulty encountered in the application or interpretation of acts governed by Community law.

TITLE V: PROCEEDINGS BEFORE THE COURT

Article 28:

The official working language of the Court is French. However, the Conference of Heads of State and Government may add other official languages.

Article 29:

States and the organs of WAEMU shall be represented before the Court by an agent appointed for each case; they may appoint a lawyer registered at a bar in one of the Member States either to assist the agent appointed or to represent him.

The other parties must be represented by a lawyer registered at a bar of one of the said States. Before the Court, agents and lawyers shall enjoy the rights and guarantees necessary for the independent exercise of their functions, under conditions to be determined by the Rules of Procedure.

Article 30:

The procedure before the Court consists of two phases: a written phase and an oral phase.

The written procedure includes the communication to the parties as well as to the UEMOA bodies whose decisions are contested, of applications, statements of case, defences, observations and possibly replies, as well as all supporting documents or certified copies thereof.

Communications shall be made by the Registrar in accordance with the conditions and time limits laid down in the Rules of Procedure.

The oral procedure includes the reading of the report submitted by the Judge-Rapporteur, the hearing by the Court of the agents and lawyers and the Opinion of the Advocate General and, where appropriate, the hearing of witnesses and experts.

Article 31:

Cases are referred to the Court either by petition or by notification of a compromise to the President.

The application must contain the full name and elected domicile of the applicant, where applicable, the full name and address of the agent and of the lawyer appointed, the capacity of the signatory, the name of the defendant, the subject matter of the dispute, the submissions and a summary of the facts and pleas in law.

In addition to the original, the application shall be drawn up in as many certified copies as there are parties to the proceedings. It must be accompanied, where applicable, by the document whose annulment is sought.

The Registrar shall transmit to the respondent as soon as possible a certified copy of the application; upon receipt, the respondent shall inform the Court of the full name of its agent or lawyer.

The requesting party, with the exception of Member States and organs of WAEMU, is required to deposit at the Registry of the Court, against receipt, a security, the amount of which is fixed by deliberation of the Court.

If the application is rejected, the security shall be forfeited to WAEMU. Article

32:

If the application does not comply with the provisions of Article 31, the Registrar shall invite the applicant to put his application in order within a period which may not exceed two (2) months.

Article 33:

The Court may, by way of a preliminary ruling, order measures of inquiry after hearing the Advocate General.

Article 34:

With regard to defaulting witnesses, the Court shall have the powers generally accorded to courts and tribunals in such matters and may impose pecuniary penalties in accordance with the conditions laid down in the Rules of Procedure.

Article 35:

Each Member State shall regard any violation of oaths by witnesses and experts as a corresponding offence committed before a national court ruling in civil matters. If the Court of Justice so decides, the Member State shall prosecute the offenders before the competent national court.

Article 36:

Hearings are public. However, the Court may decide otherwise on its own initiative or at the request of one of the parties, for serious reasons.

Article 37:

During the hearings, the Court may hear experts, witnesses and the parties themselves; however, the latter may only plead through their representatives.

Article 38:

The Advocate General shall deliver his Opinion before the oral procedure is closed by the President.

Article 39:

Minutes shall be taken of each hearing and signed by the Chairman and the Registrar.

Article 40:

Deliberations are and remain secret.

Article 41:

The judgments are reasoned. They mention :

- the full name of the Chairman,
- the full names of the judges who deliberated,
- the full name of the Advocate General
- the full name of the Registrar,
- indication of the parties,
- the full names of the parties' agents or lawyers,
- the parties' submissions,
- the fact that the Advocate General has been heard,
- summary of the facts,
- the reasons,
- the system.

Article 42:

Judgments are delivered in open court. They are signed by the President and the Registrar.

Article 43: The Court shall rule on costs.

Article 44:

The President of the Court, or, where appropriate, the Judge who replaces him, may rule by summary procedure, by order, on submissions seeking either a stay of proceedings, or the application of provisional measures in accordance with the provisions of Article 19 of Additional Protocol No. 1, or the suspension of enforcement of decisions of the Court.

The details of this summary procedure will be laid down in the Rules of Procedure. The order made by the President or his substitute shall be provisional only and shall in no way prejudice the decision of the Court in the main proceedings.

Article 45:

Member States and bodies of the Union may intervene in disputes submitted to the Court. The same right belongs to any other person having an interest in the solution of a dispute submitted to the Court, with the exception of disputes between Member States, between WAEMU bodies or between Member States on the one hand, and WAEMU bodies on the other hand.

The submissions in the application to intervene may have no purpose other than to support the submissions of one of the parties.

Article 46:

If the defendant, who has been duly summoned, fails to file written submissions, the judgment is rendered by default. The judgment may be appealed within 30 days of its notification.

The opposition shall not suspend the execution of the judgment unless the Court decides otherwise and may order provisional measures in accordance with the provisions of Article 19 of Additional Protocol I.

Article 47:

Member States, the organs of WAEMU and any other natural or legal persons governed by private law may, in the cases and under the conditions determined by the rules of procedure, lodge third-party proceedings against judgments given without their having been called to the case if such judgments are prejudicial to their rights.

Article 48:

In the event of difficulty as to the meaning and scope of a judgment, it is for the Court to interpret it at the request of a party or a WAEMU body showing an interest.

Article 49:

An application for revision of the judgment may be made to the Court only on the ground of the discovery of a fact which is of such a nature as to be a decisive factor and which, before the delivery of the judgment, was unknown to the Court and to the party seeking revision.

An application for review must be made at the latest within three months of the day on which the applicant became aware of the new fact on which the application is based.

The revision procedure is initiated by a judgment of the Court expressly noting the existence of the new fact, recognising it as having the characteristics that give rise to the revision and declaring the application admissible on this ground. No application for revision may be made after the expiry of a period of five years from the date of the judgment.

Article 50:

Claims against UEMOA in respect of non-contractual liability shall be barred after three years from the occurrence of the event giving rise thereto.

The limitation period is interrupted either by the application made to the Court or by the prior request that the victim may make to the competent WAEMU body.

Article 51:

The Rules of Procedure of the Court provided for in Article 21 of Additional Protocol No. 1 shall contain, in addition to the provisions of these Statutes, all other provisions necessary to apply and supplement them as required.

TITLE VI: FINAL PROVISIONS

Article 52:

These Articles of Association shall be published in the Official Bulletin of the WAEMU and shall come into force upon their publication. In witness whereof, have hereunto set their hands this 10th day of May 1996.

For the Republic of Benin
S. E. Mathieu KEREKOU
President of the Republic

For Burkina Faso
S. E. Blaise COMPAORE
President of Faso

For the Republic of Côte d'Ivoire
S. E. Henri Konan BEDIE
KOFFIGOH
President of the

For the Republic of Mali
S. E. Alpha Oumar KONARE
President of the Republic

For the Republic of Niger
S. E. CL. Ibrahim Mainassara BARE
President of the Republic

For the Republic of Senegal
HIS EXCELLENCY Abdou DIOUF
President of the Republic

For the Republic of TOGOLA
HIS EXCELLENCY Joseph Kokou
RepublicPrime Minister