

APPRAISING THE LEGAL ISSUES WITH THE 'ECO' CURRENCY*

Abstract

The intending introduction of "Eco" as a unified currency in ECOWAS is expected to bring varying considerable changes in the region. While English and Portuguese ECOWAS are independent and enjoy certain level of autonomy in its monetary and fiscal policies from their erstwhile colonizers, the French ECOWAS has a unified monetary and fiscal policy with overbearing influence of France. 'Eco' if accepted will make respective member States to lose their autonomy over their legal tender and certain degrees of legal changes in their respective laws. The laws will have some form of similarity irrespective of the State if the unified 'Eco' will be operational. Can these ECOWAS States completely give up their autonomy in monetary policies in the face of quest for a unified 'Eco' currency? What legal implications will this have on ECOWAS States with less population and economy? Will the unified currency help in achieving the desired integration in the sub region? The paper found that a central bank for the ECOWAS region is a prerequisite for the successful implementation of the unitary monetary policy. It further found that the existence of dichotomy in policy between the Anglophone and Francophone ECOWAS Member States was a clog which must be resolved before the proposed currency can see the light of day.

Key Words: "ECOWAS", "Eco", "Treaties", "Economic Independence", "Anglophone" and "Francophone"

1. Introduction

Globalization has indeed affected the political economics of the world with attendant rapid legal thoughts and jurisprudence with far reaching effects. Certain ideas and thoughts hitherto unknown are now readily applied in diverse States due to rapid legal changes. African continent is not left out. Economic Community of West African States (ECOWAS) is a sub-regional organization in Africa established in 1975¹. The protocols that launched ECOWAS were adopted in Lome, Togo on Nov 5, 1976. In July, 1993 an ECOWAS Revised Treaty was endorsed and adopted by ECOWAS Heads of States and Governments in Cotonou, Benin Republic.²

ECOWAS has 15 member States. These include Benin, Burkina Faso, Cape Verde, Cote D'ivore, The Gambia, Ghana, Guinea Bissau, Liberia, Mali, Nigeria, Senegal, Sierra Leone and Togo. Of these States eight are French-speaking, five English-speaking and two Portuguese-speaking. All the countries are founding members except Cape Verde that joined

* EWUZIE ALPHONSUS MADUKA; LL.M, B.L, LL. B

Lecturer, Department of International Law & Jurisprudence Nnamdi Azikiwe University, Awka

¹This was originally called the Treaty of Lagos. It was signed May 28, 1975 assinde Eyadema and Yakubu Gowon, President of Togo and Nigeria respectively.

² ECOWAS Revised Treaty: <https://www.ecowas.int> accessed 17th February, 2020.

in 1977.³ These member States cannot exist in isolation from the world. Though the primary aim of ECOWAS is couched in the preamble to the Revised Treaty, Article 3 of the Revised Treaty succinctly provides as follows:

The aims of the community are to promote co-operation and integration, leading to the establishment of an economic union in West Africa in order to raise the living standards of its peoples, and to maintain and enhance economic stability, foster relations-among member States and contribute to the progress and development of the African continent.⁴

Part of the ways through which these aims can be achieved is through trade co-operation in the region. Having this in view Article 55 (iii) of the Revised Treaty readily provided for a monetary union. It has been said that the primary aim of establishing ECOWAS was to promote economic integration across all fields of economic activities.⁵ This is certainly laudable with objective of increased GDP within the member States. The Community has to do more than establishing bodies or committees. Policies must be crafted; Treaties and laws must be enacted, and implemented if the aims are anything to be achieved.

It is the crafting and drafting of Treaties by ECOWAS and re-enactment of those Treaties as laws in the respective member States⁶ and its actual implementation that will bring about the actualization of the aims of the body. Has ECOWAS taken any step to craft and draft any Treaty or law specifically targeting the introduction and subsequent implementation of the 'Eco' as a unified currency for the region?

ECOWAS has an estimated population of 398,006,449⁷. Nigeria accounts for more than half of the entire ECOWAS population. This clearly shows that the population is not evenly distributed⁸. The single monetary policy will be of immense benefit to Nigeria.

Nigeria as a member State has the man power and economic strength and will have diverse benefits from the 'Eco' if put to use. This means greater productivity and availability of resources. Can Nigeria in the face of this quest for a unified currency give up her Naira? Considering the strength of Nigeria in terms of economy, population, technical manpower, etc there may be need for greater benefits than just economic integration. Countries with lesser population and economy may tend to lose ultimately in the unified currency considering that they may not be able to compete favourably in the market upon harmonization of free movement of persons. More so, the free movement of people within ECOWAS may overshadow certain States that even their culture; the root of their very existence may gradually be overthrown.

2. Legal Anchor for 'Eco' Currency

The Revised Treaty provides for completion of economic and monetary union among other things through adoption of a common policy in all fields of socio-economic activity..., the

³ Mauritania though signed the ECOWAS Revised Treaty 1993 left the Organisation in 2002.

⁴ ECOWAS Revised Treaty 1993 Article 3.

⁵ M C Ogwezzu; 'An Appraisal of ECOWAS Regional Energy Investment Initiative', *Nig Law Journal* Vol. 20 No. 1 2017 p. 487

⁶ Section 12(I) of the Constitution of Federal Republic of Nigeria 1999 as Amended requires any Treaty to which Nigeria is a signatory to be legislated upon as if it's a Nigerian made law. Until such Treaty is passed as law in Nigeria it cannot be implemented as Nigeria made law.

⁷ <https://www.worldometers.info> Accessed 17th February, 2020

⁸ The free movement of people and trade may reasonably generate fear and may lead to xenophobia. Certain States may virtually take over businesses and trade in some other States and may even determine and or influence the politics and policies of those States having been in control of the means of production.

total elimination of all obstacles to the free movement of peoples, goods, capital and services and the right of entry, residence and establishment.⁹ This is a policy statement and primary legislation by the body as contained in the ECOWAS Revised Treaty. This policy and primary legislation has been endorsement in the prescribed manner by the member States through their respective Heads of States and Government and has been adopted by the States. However, it cannot have the force of law until it is domesticated by the member States. A policy statement contained in the Revised Treaty cannot be enforced in any of the member States until domesticated unless there is a provision in the Treaty that such policy or primary legislation will have express application in all the member States, otherwise no member State will be coerced to apply and enforce it within their respective domain.

The idea of 'Eco' as a single currency was muted in 2003 to be launched in 2005. However, the launch date has suffered several setbacks in 2005, 2010, 2014 and January, 2020. A new date for its launch has been fixed for July, 2020. The Revised Treaty further provides for the harmonization of monetary, financial and fiscal policies, the setting up of a West African Monetary Union, the establishment of a single regional Central Bank and creation of a single West African Currency.¹⁰ The fixing of the July 2020 date appears impracticable as no formal Treaty has been endorsed and adopted and the very institutions to regulate the 'Eco' has not been put in place towards its implementation. Which Treaty and or policy will guide the rolling out of the 'Eco' in July, 2020? What manner of regulation will member States adopt towards its implementation? Which Central Bank will make rules and regulations towards 'Eco' currency regulation? This date has further suffered a setback as a result of the ongoing global corona virus pandemic.

To achieve these, the Treaty enjoined member States to study monetary and financial developments in the Union, harmonize their monetary, financial and payment policies, promote the role of commercial banks in intra-community trade financing, establish a community Central Bank and a common currency.¹¹ One pertinent question remains to be answered. How many of these steps as provided in Article 51 of the Revised Treaty have been taken and implemented? While studies may be on-going by member states in studying monetary and financial developments and other fiscal policies, nothing seems to have been done about the main issues of the Treaty that will set the pace for the monetary union. Ample provisions were really made in the Revised Treaty of ECOWAS 1993 but the commonweal seems to be lacking in the way to realizing the very aims of the organization.

3. 'Eco' and the Huddles

For 'Eco', the proposed unified legal tender for the ECOWAS region to come into operation certain steps ought to be taken first. The ECOWAS secretariat and ECOWAS Bank for Investment and Development are two main institutions through which the body implements policies.¹² There is no ECOWAS Central Bank yet. The organization is working through Committee of West African Central Banks comprising the Governors thereof.¹³ This Committee of Central Banks is expected to prepare its own rules of procedure. Each member of this committee still owes allegiance to her State and not to ECOWAS. Any member of the Committee can be withdrawn/removed at will not been a staff of ECOWAS but was a member of the Committee of Central Banks by reason of appointment as the governor of Central Bank of her State. No State/organization can have a defined and definite monetary policy without a Central Bank or body saddled with such responsibility. The idea of a

⁹ ECOWAS Revised Treaty 1993 Article 55 (I), (II) & (III). President Buhari of Nigeria may have solace in this provision of the Article to open Nigerian boarder to the cattle realers to c.....to Nigeria.

¹⁰ Article 55(iii) *ibid*.

¹¹ Article 52 *ibid*

¹² <https://www.cbn.gov.ng/monetary-policy/ecowas> accessed 18 February, 2020.

¹³ Article 52(I) Revised Treaty, ECOWAS

working committee of Central Banks is meant to pave way for ECOWAS Central Bank. Having not established the ECOWAS Central Bank, can these rules of procedure even if made be implemented by the member States? I think not. There is yet no Treaty of ECOWAS backing up any rule of procedure made by the Committee of Central Banks to be implemented eventually. In the absence of such a Treaty or policy and domestication of such policy as a law, can the member States apply and enforce the policy statements within its territory?

The establishment of ECOWAS Central Bank ought to precede the introduction of 'Eco' as a legal tender. Where no Central Bank has been established for ECOWAS, what institutions or body will be responsible for monetary and fiscal policies and regulation of 'Eco' in the sub-region? The Committee of Central Banks of member States cannot effectively handle the affairs of ECOWAS Central Bank. The ECOWAS Bank for Investment and Development has a different responsibility and cannot assume the responsibility of a Central Bank. This step ought to be taken before 'Eco' can validly take shape.

The setting up of ECOWAS Central Bank requires the signing of Treaty between these 15 member States. This Treaty or law¹⁴ will be the basis of authority upon which the Central Bank can anchor for its operation. Today no such Treaty or law exists. Besides before its application and implementation in Nigeria that Treaty must be domesticated for it to become law.¹⁵ The law so enacted will also pass the same process of law making in Nigeria for it to be applied and enforced in Nigeria.

4. The ECOWAS Dichotomy

The dichotomy is not cultural or religious or language. The dichotomy relates to autonomy and affinity the member States have with their erstwhile colonizers. It further relates to the State's very political economics and fiscal policies.¹⁶ How much of autonomy does these member States enjoy in their monetary and fiscal policies? These dichotomies have brought some divide within the ECOWAS. It has been established as part of and within Union member States the West African Economic and Monetary Union (WAEMU) in 1994. This has as its members the eight French West African Member States of ECOWAS. This was established for the purpose of economic integration among countries that share the CFA franc as a common currency. Guinea Bissau as a non-francophone State became the eighth member State on 2nd May, 1997. In 2001, the West African Monetary Institute was established with Nigeria, Ghana, Liberia, Sierra Leone and Guinea as member states with same aim of economic integration through single currency.

The formation of these two bodies in the divide of the allegiance of the States to her former colonizers save for the Portuguese States is a subtle dichotomy that will ultimately affect the long desired unified currency. The efforts put in these two formal organizations within ECOWAS States could have been channeled in pursuit of the unified monetary policy with attendant manifest results. The focus ought to be on how to achieve the aims of the body other than setting up of bodies within the Community along affinity of member States to their erstwhile colonizer.

5 The 'Eco' Obvious Setback

¹⁴ This is but a formal Treaty to be executed by Heads of States and Government of member States of ECOWAS.

¹⁵ Section 12(I) of the Constitution of Federal Republic of Nigeria 1999 as Amended requires any Treaty to which Nigeria is a signatory to be legislated upon as if it's a Nigerian made law. The endorsement of such a Treaty would also mean harmonization of banking legislation in the region^{15a}. These steps are far from being realized. See <https://www.thisdaylive.com/index.php/2020/02/16> accedes 16th February, 2020.

¹⁶ Most French Africa have pact with France some of the provisions in the facts are so burdensome that these states seem not to be having reflections it appears on freedom of the States. Some of the provisions of the fact are as follow

The ‘*Eco*’ was meant to be a unified legal tender for the entire ECOWAS region. However on 21st December, 2019 WAEMU announced that it will be introducing ‘*Eco*’ in July, 2020.¹⁷ This intention of the WAEMU to replace CFA franc with ‘*Eco*’ was surprising to other member States of ECOWAS. How could the WAEMU adopt ‘*Eco*’ as a currency single-handedly without consultation with other member States? Could that not still be the sign that WAEMU member States are not economically independent yet? It should be recalled that CFA franc was introduced into French colonies in 1945 and has been the legal tender in all the Francophone States in West Africa.

This intended introduction of ‘*Eco*’ in WAEMU States is a clear picture of setback in the ECOWAS aim of economic integration and unified currency. This is contrary to manifest declarations of monetary union of ECOWAS.¹⁸ The intending introduction of a unified currency adopting ‘*Eco*’ as the name by the WAEMU may likely be the very source of ‘*Eco*’ demise for ECOWAS if urgent steps are not taken by the remaining member States who lack the zeal to actualize the aim of the Body.

6. ‘*Eco*’ Usage Conditions for Member States

Member States are enjoined not to enact legislation and/or make regulations which directly or indirectly discriminate against the same or like products of another member States. Take appropriate measures to harmonize and standardize their customs regulations and procedures.¹⁹ Some of these conditions are contained in the Revised Treaty. This purely relates to economic gain for the region. For the economic gain to be harnessed economic integration must take place reasonably within the region. The harnessing of the economic gain requires standardization earlier mentioned. In a bid to have a standard in connection with custom duties in the ECOWAS region the ECOWAS customs officials met in Lagos on 29th November, 2016 to review the Community’s Customs Code. This Code will contain the general rules and procedures for the implementation of common tariff and other policy measures.²⁰ The Customs Code when signed must have to be domesticated in Nigeria for it to become law and applicable in Nigeria.²¹

It ought to be pointed out that there is no law or specifically Treaty backing this Custom Code. There is also no institution or arm in ECOWAS saddled with the responsibility of enacting laws or formulating Treaties for the good use of ECOWAS member States either for the purposes of actualizing the ‘*Eco*’ or for sundry purposes save the Heads of States and Government. The Customs’ Code that will contain the general rules and procedures for implementation of tariff within the region will also suffer the same fate. It cannot be applied and enforced by member States over and above its domestic law. Until such a law is passed, assented to by Heads of States and Government it may well be described as one of the good intentions of ECOWAS.

The ECOWAS Revised Treaty made ample provisions for real economic integration in the area of trade and customs harmonization.²² However some key demands by the West African Monetary Institute (WAMI) for joining ‘*Eco*’ include the following; a budget deficit of less than 3 percent; an inflation rate of less than 10 percent, etc. How many of these

¹⁷ <https://www.cnb.com/2020/01/17>, The Ivorian President Alassane Ouattara alongside French President Emmanuel Macron made the announcement

¹⁸ Article 51(I) and 55(I)(iii) *ibid*

¹⁹ Article 44, 45 & 46 of ECOWAS Revised Treaty

²⁰ www.ecowas.net, Accessed 21/2/2020. These regulations when adopted will form part of the secondary legislation of ECOWAS

²¹ Such provisions as it appears in S.12 (I) of Nigeria Constitution may be contained in some constitutional provisions of other member States of ECOWAS

²² Article 35,36,37,38,40 of ECOWAS Revised Treaty dealt with these trade liberalization & custom duties exclusively

member States have met these conditions?²³ The ‘Eco’ if put to use will bring varying unification in diverse areas in the region. There will to some extent be uniform laws in banking, monetary, financial and fiscal policies. The custom code will further bring about legal harmony in dealings in importation and export of goods. ‘Eco’ will showcase the West African sub-region as a common market more or less with established institutions. The less strong economies will draw ample life from other States in the Union and boost their economies thereby. There will also be harmony in technical experts’ employment and transfer between one State and another. Considering the fact that there will be uniform rules and regulations and free movement of people with minimal restrictions the desired integration in the sub-region will be achieved beyond measure. The huddles ought to be dealt with first and eliminated.

7. Enabling Legislation

For any Treaty or Charter or Convention to become applicable in Nigeria as if it is an Act made by the National Assembly of Nigeria such Treaty or Charter or Convention must be domesticated.²⁴The domestication brings such Treaty or Charter or Convention into the province of Nigerian law. Without such domestication the Treaty will only exist in principle and will be of no effect, though executed by the President of Nigeria. In Ghana, the President has ample powers to conclude Treaties subject to ratification by an Act of Parliament or a resolution of Parliament.²⁵Though there are laudable provisions in the ECOWAS Revised Treaty same may not be implemented in Nigeria until domesticated.²⁶

The ECOWAS need to take a step further through her Heads of States and Governments to form institutions with responsibility of drafting laws or policies and having them executed by the Heads of States and Governments. The Institutions as set up will further have a duty to educate member States of the expected or foreseeable benefits of implementing such policies or laws by ECOWAS and encourage member States to domesticate them. It is through this process that ECOWAS may begin to bring itself nearer to having a unified currency for the sub-region.

It ought to be pointed out that the making of Treaty by the President with any other country or body must be guided by foreign policy objectives of the State involved. Though this is the prerogative of the President without the National Assembly in Nigeria but without further step over that Treaty it remains inchoate for use and cannot be implemented in Nigeria. Thus it has been said that a Treaty is like the man in Genesis, after it is made in the executive image and its likeness, the National Assembly must bless it with the breath of life.²⁷

8. The Euro Process

The European Union introduced euro on January 1, 1999, as its common currency. The euro was not readily used by all member States as a means of exchange. It was initially limited to exchange rates between countries in the Union. Euro became used as every day currency in January 1, 2002²⁸. The ECOWAS needs to draw from the experience of the euro introduction and usage. It is difficult to understand how ‘Eco’ will be introduced and become a means of exchange immediately between the member States. Inference ought to be drawn from the

²³ Nigeria had a budget of ₦8.83 Trillion in 2019. It recorded a deficit of ₦4.62 Trillion within the same period. www.pulse.ng, <https://www.businessamlive.com>. Assessed 16/3/2020. This is a far cry from the budget deficit requirement for ‘Eco’ use.

²⁴ Nigeria Constitution of Federal Republic of Nigeria, 1999 s.12 (I).

²⁵ The Constitution of Ghana 1992 Article 75 Article 106 of same Constitution has similar provision as Section 12 of 1999 Constitution of Nigeria as Amended.

²⁶ Similar provisions also exist within the EU except there is express provision that such Treaty will have direct application in EU member States.

²⁷ T Abayomi, ; *Constitutional Powers & Duties of the President*, (Lagos: Adroit Pegasus Associates, 2002) p

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²⁸ Europa.eu assessed 2/4/2020.

process of introduction of the euro and the point at which it became legal tender for the member States that have accepted it. The EU has established institutions and yet it did not just introduce and start using the euro immediately. A time frame was allowed to consider if there will be hitches in the way of its introduction and usage.

It should be noted that before the EU came to the point of euro it has had several challenges. Beginning from European Economic Community to the time of oil crises and European Monetary Union System the journey was not all smooth sailing. The main idea was to have stable economies within member states. At a point European Exchange Rate Mechanism was introduced. All these were meant to have coordinated monetary policies between EU countries. It was not until the 'Delors Report'²⁹ that EU had a clear picture of how European Monetary Union could be achieved. The report did not specify the time frame within which the target will be achieved. It rather made recommendations which were followed.

It is pertinent to emphasize that there is yet more work to be undertaken if '*Eco*' is anything achievable in the near future despite the intended introduction of '*Eco*' by WAEMU States in July, 2020. A Commission may need to be set up. It is either the Heads of States and Governments themselves or another body is set up to study and make recommendations for the '*Eco*' introduction and usage. The stage of things and developments at ECOWAS are practically insufficient to bring her desired '*Eco*' into fruition.

9. The Benefits

It ought to be pointed out that no member States can give up her legal tender in vacuum. As at today the machinery for rolling out the *Eco* has not been fully or reasonably put in place. No member of such organization will readily proclaim that she is giving up her legal tender and in its place to adopt '*Eco*'. Member States may be willing to give up their respective legal tenders at a time when it is reasonable to do so; when institutions are put in place and fiscal and monetary policies to be implemented are certain but not necessarily error free. The subtle declaration and intervention by the WAEMU to introduce '*Eco*' as its own regional currency is a fatal blow to the *Eco*. That notwithstanding States with lesser population and economic prowess will draw ample life from States with higher capacity economically. The exchange rate will be stable irrespective of the States' productivity. There will be uniform exchange rate for member States.

Economic integration will also bring with it emigration to other States where an individual has highest tendency of getting the desired job. The entire sub-region will be one open market with little restrictions. Goods will be sourced from any point at the best prices and value. There will also be cross-cultural fertilization within the Union. There will be increased competition between members States. Labor and goods can flow more easily across borders to where they are needed, making the whole union work more efficiently³⁰. It was argued that the biggest benefit of the euro is that it is managed by the European Central Bank. The European Central Bank has to balance the needs of all the member nations and therefore is more insulated from political pressure to inflate or manipulate the currency to meet any one nation's needs³¹.

The setting up of ECOWAS Central Bank ought to follow suit. It should be managed by an independent body of seasoned bankers and financial experts if the aims of the Body will be achieved. This will in a way take it away from the realm of suspicion either by the smaller member States so called or from any other member State. The varying benefits that

²⁹ Delors Report was presented on April 12, 1989 as a proposal to European Council on concrete stages towards economic and monetary union; www.aei.pitt.edu, assessed 2/4/2020

³⁰ A Beattie, Pros and Cons of the Euro, updated June 25, 2019, www.investopedia.com, assessed 2/4/2020

³¹ A Beattie, *Ibid*.

will accrue from '*Eco*' far supersede the disadvantage that may be seen in the course of usage.

10 Conclusion

The United Nations General Assembly adopted Resolution 1514(xi) titled "declaration on the granting of Independence to colonial countries and peoples". The independence intended here is both political and economic independence.

It may be rightly said that French ECOWAS substantially have political³² independence but attainment of economic independence is in fact a mirage. If it were not the French overwhelming influence, the WAEMU could not and will not have the courage to announce that it will adopt '*Eco*' as its currency in retiring CFA franc.

These French States having not achieved independence will obviously find it difficult to really harmonize with other ECOWAS States for '*Eco*' use. However, the necessary steps in the likes of laws, rules, and regulations have not been amply made.

The supposed Central Bank has not been set up. The Revised Treaty of ECOWAS and several other bodies under the Union working towards harmonization of laws and actual implementation of the '*Eco*' cannot as a matter of urgency take any step towards it without the enabling Treaties first being endorsed.

It is recommended that urgent steps should be taken towards drawing up a Treaty specifically geared towards formation and setting up of the ECOWAS Central Bank. It is the Treaty or primary legislation that will bring the Central Bank into existence. The Central Bank will then make rules and regulations towards promotion and implementation of '*Eco*' as a unified currency.

The Treaty also has to be domesticated in the member States for it to be enforced in those States as in Nigeria save where it contains a provision that it will apply expressly without recourse to the National Assembly or Parliament of any member State. Compromise has to be reached between the remaining ECOWAS States and WAEMU on the harmonization of the '*Eco*' between the ECOWAS and this sub-body.³³ The impending introduction of '*Eco*' by WAEMU States notwithstanding steps should be taken to see to the actualization of the '*Eco*' by ECOWAS as a whole. The benefits to the region will be inestimable.

³² This political independence is even doubtful to the authors hereof. Of all the coups that saw changes of government in French Africa the hands of France appears to be in all. It is not just the leadership or governance of people by their own race that determine political independence presence of external forces in the enthronement of that very government presupposes that the State has not really been fully independent.

³³ This work is not meant to be conclusive in this area of research towards economic integration of the ECOWAS region via the use of '*Eco*' as a unified currency.