A BANKING UNION FRAMEWORK IN ECOWAS: A EUROPEAN COMPARISON

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ABSTRACT

Cross-border banking has been on the rise in West Africa since the 1990s. Going by the characteristics of financial integration, this trend should indicate a convergence in the banking regulatory frameworks in the sub-region. However, this appears not to be the case. In fact, the growth of these banks raises questions about the adequacy of the current regulatory environment for their operation and the potential regional financial stability implications resulting from regulatory gaps. Using the European Union (EU) as a model, this article considers how the gaps in the European financial regulatory framework exacerbated the impact of the global financial crisis in Europe, which transitioned from a financial crisis to a eurozone debt crisis. It also considers the effects of the gaps in the European regulatory framework on the European Monetary Union (EMU) - which is particularly instructive for the monetary union agenda in West Africa both through the West African Monetary Union (WAEMU) and the West African Monetary Zone (WAMZ). This article considers the extent to which the pillars of the newly established European Banking Union (EBU) can be adopted in the West African context to help facilitate financial stability as cross-border bank operations increase within the region.

Key words: Cross-Border Banking, Banking Regulation, Financial Stability, Banking Union, ECOWAS

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INTRODUCTION

The financial sector is essential to the economic development process of any economy and as studies indicate that regional economic integration is beneficial to countries within a region, it is expected that financial integration, as a type of regional integration, should also have economic growth prospects for the countries within a region. There is however, no conclusive evidence of a direct causal relationship between financial integration and economic growth. Despite this, growth benefits from financial integration are more pronounced in countries with robust institutions. It is therefore more pronounced in western economies, including the European Monetary Union (EMU) region/countries and less in African economies. Thus, studies so far on the link between financial integration and growth in Africa have been inconclusive. Despite the prominence of this link in western economies, studies conducted on the EMU indicate that financial integration (characterised by cross-border banking services), if not effectively managed through robust regulation (institutions) can have financial stability implications, which can, in the long run, affect growth. As cross-border banking services (and therefore financial integration) by African banks are on the increase in West Africa, this article assesses the extent to which the new European Banking Union framework can be adopted to facilitate financial stability in the face of the rise of cross-border banks in West Africa.
Although there is a common banking law for the Francophone states of West Africa,\(^1\) which provides the regulatory framework for banks, and a proposed Model Banking Act for the Non-francophone states\(^2\), there is currently no ECOWAS-wide regional law regulating the operation of cross-border banks in West Africa. As such, there is a need to institute such a framework. In light of the financial instability and economic crisis that ensued from the operation of cross-border banks within the European monetary union, a West African financial regulatory framework should: take account of the existing francophone WAEMU monetary union; consider the proposed WAMZ monetary union plans; have a well-structured plan for merging the two monetary areas and, prior to this merger, adopt a roadmap for financial regulatory harmonisation of the two groups which should reinforce and place on legal footing some existing arrangements such as the Central Bank of Nigeria’s cooperation with host countries to conduct joint supervision of its cross border banks in both the WAMZ and WAEMU countries. This roadmap for financial regulatory harmonisation should also place on a legal footing, the status of the College of Supervisors of the West African Monetary Zone (CSWAMZ) which meets quarterly to analyse developments in the banking system in the WAMZ and conduct joint supervision exercises of cross border banks.\(^3\)

All of this would necessarily entail that binding regional banking rules exist and that they are enforceable against national supervisory authorities failing to adequately implement them or adhere to the decisions of the regional supervisory body. The design of this ECOWAS-wide banking regulatory regime should, as such, draw from the European Union (EU) experience - both before and after the global financial crisis - in developing a regional banking regulatory framework. That way, it would benefit from the successes and avoid the pitfalls of the EU’s experience in building a robust banking regulatory framework.

This paper is divided into 7 sections. Section 2 reviews the literature on the effect of financial integration (which, \textit{inter alia}, is characterised by cross-border banking) on domestic financial stability and economic growth, and the role of law and institutions as a facilitator of growth in the process of financial integration. Sections 3 examines the case for the regulation of regional cross-border banks within ECOWAS (WAMZ and WAEMU) highlighting the rise in West African cross-border banks, which should typify the existence of financial integration. It then considers the risks posed by cross-border banks operating within a single/common market area or a planned common market area, using the EU as a case study and particularly focusing on the cases of the

\(^1\) The Francophone states of West Africa, belong to the West African Economic and Monetary Union (WAEMU/UEMOA) and have a WAEMU Banking Law.

\(^2\) The Non-francophone States of West Africa is comprised largely of Anglophone states and belong to the West Africa Monetary Zone which is the monetary union agenda.

\(^3\) Currently the CSWAMZ is composed of all WAMZ banking supervisory authorities and does not embrace the strict definition of Supervisory Colleges outlined by international banking standard setters such as the Basel Committee, which define supervisory colleges as permanent, although flexible, coordination structures that bring together regulatory authorities involved in the supervision of a banking group. In the case of the EU, it is the European Supervisor Authorities (comprising all EU financial supervisory Authorities) and what appears to be the EU version of the CSWAMZ, that have the responsibility to ensure that these EU supervisory colleges function efficiently and that consistent approaches and practices are followed. As such, the regional ECOWAS harmonised regulation should clearly define the role and remit of the CSWAMZ and the mechanisms for coordinating its activities with the WAEMU Banking Commission.
failure of the Icelandic banks in 2008 and Fortis Bank in 2009 and the impact of their failure and others both on the single market and the Eurozone/EMU. Section 4 considers the regulatory reactions to the EU dimensions of the financial crisis by assessing the new framework for financial regulation in the EU. It examines the current state of affairs for regulating cross-border banks in West Africa, focusing on the regulatory frameworks both in the WAEMU and WAMZ, and considers the extent to which the European experience can inform reform of the West African status quo. It focuses, here, on lessons that can be learned from the European experience by avoiding the pitfalls and drawing from the positives of the European framework. Section 5 then proffers pre-conditions for a robust cross-border banking regulatory framework within ECOWAS (WAMZ and WAEMU) along the lines of the recent European Banking Union framework. Section 6 considers, briefly, international dimensions to regulating cross-border banking services in West Africa and section 7 concludes with recommendations.

LITERATURE REVIEW

Financial sector integration refers to the elimination of restrictions to cross-border capital flows that may involve transactions concerning loans, debt and equity securities, and of barriers to cross-border market access by financial intermediaries, as well as to rights of foreign firm establishment. The market for a given set of financial instruments and/or services is fully integrated if all potential market participants with the same relevant characteristics deal with a single set of rules, when they decide to transact in financial instruments and/or provide financial services, and firms and consumers have non-discriminatory access to such financial instruments and/or services. From this definition, the evidence of cross-border banking is an indication of financial integration.

Cross-country studies conducted by Claessens and Laeven show that the operation of foreign banks in general promotes competition in host countries. Studies conducted by Claessens, Demirgüç-Kunt and Huizinga also show that the operation of foreign banks promotes efficiency and competition when assessed in the light of interest margins, profitability and cost efficiency. More specifically, in the African context, a few studies carried out on the effect of cross border banking services on efficiency and competition in Africa show varied findings. Studies conducted on the countries of the East African Community (EAC) indicate that the effect varies across countries and across time. So studies have shown that in early 2000s, foreign banks in Tanzania and Uganda lent more and charged lower spreads than domestic banks, while foreign banks in Kenya lent less than their domestic counterparts (Beck, Fuchs, Singer and Witte, 2014). Studies have also showed that banks head-quartered in the East African Community with subsidiaries in other parts of the region have lower spreads and are more efficient than other private domestic banks (Beck, Fuchs, Singer and Witte, 2014). Through these studies the ability of cross-border banking services to support growth through efficiency and competition in banking services, is not conclusive.

Although evidence of the existence of a direct causal relationship between financial integration and economic growth remains inconclusive, Liu, Lejot, and Arner (2013) find that any economic growth benefits deriving from financial integration depend upon a number of preconditions necessary to facilitate the integration process. These include domestic institutional reforms, the maintenance of adequate and enforceable property rights, and adequate controls on money supply (Dorn and Xi 1990). Osada and Saito (2010) also find this to be the case and also that, in general, countries with good institutions and developed financial markets benefit more from financial
integration, and countries in Western Europe and North America as well as those in East Asia are more likely to meet these conditions.

Nonetheless, in 2005 Schoenmaker and Oosterloow conducted a statistical study spanning a four-year period (2000-03) on the effect of financial integration in the eurozone area through the potential emergence of pan-European banking groups and the financial stability implications on this development in the light of the establishment of a single currency area (the Eurozone). The development of the pan-European presence of a number of large banks with large cross-border operations lent urgency to questions about long-term protection of EU-wide financial stability in the absence of appropriate institutional arrangements. To this effect, Schoenmaker and Oosterloow gathered a new data set on cross-border penetration (as a proxy for cross-border externalities) of 30 large EU banking groups. They found a home country bias but the data indicated that the number of groups having potential to pose significant cross-border externalities within the EU context was not only substantial but also increasing thus calling for strengthened regional regulatory frameworks.

It is interesting that their study was conducted just before the financial crisis in 2007 as the fallout from the crisis, which had significant implications for the eurozone area - particularly through the failure of big pan European banks operating within the monetary union - has led to a radical change in the financial regulatory framework of the European Union. The manner in which the European financial crisis unfolded gives credence to the realities of the risks inherent in an inadequate financial regulatory framework within any regional economic community - and in particular those with a monetary union agenda.

The new EU banking regulatory framework is informative on the approaches to adopt and pitfalls to avoid in regulating the operation of cross-border banks in a regional economic area, monetary union area or a potential monetary union area. As such, by comparing the development of financial integration through the increase in cross-border banking services within the EMU and those in ECOWAS, this article suggests ideas for institutional reform to enable financial integration in ECOWAS achieve both financial stability and economic growth both within WAEMU and the WAMZ proposed monetary union.

**METHODOLOGY**

This article adopts international and comparative legal research in assessing the extent to which the European Banking Union framework can be adopted to the West African context.

**STRUCTURE / PRESENTATION AND DISCUSSION OF RESULTS**

*The Rise of West African Cross-border banks and risks*

The operation of cross border banking services in Africa, for many decades was dominated by foreign / non-African banks until almost a decade ago when the operation of cross-border financial services by African banks began to emerge. Cross-border African banks have increased ten times in the past 20 years since 1990, with strong growth seen especially over the last six years. West African banks have particularly contributed to this trend with these banks constituting the bulk of banks operating cross-border during this period. The West African banks that have contributed to this growth trend include: the Bank of Africa (Mali) which grew from two countries...
to ten in the same period; Ecobank (Togo) which grew from five countries to 32 and the United Bank of Africa (Nigeria) which grew from two countries to 20.

The risks posed by cross border services by African banks are accentuated by the fact that most African banks are members of conglomerates with operations in other sectors including banking, capital markets, insurance, microfinance, pensions, money transfer, leasing and non-financial sectors. This makes for complex corporate structures with multiple holding companies, diverse shareholding structures, opaque ownership, non-disclosure tendencies, and other practices which complicate regulation. In order to cater for potential group risks and the potential systemic effect of the failure of such conglomerates, there is a need for strong regulatory oversight and surveillance of these financial groups/conglomerates. This is best enshrined in an ECOWAS-wide banking law. This regional law should provide for a harmonised regulatory framework for such bank groups operating within ECOWAS. The law should also provide for close monitoring of these groups by a regional body composed of banking supervisors of both WAEMU and WAMZ states and which is granted enforcement powers. Such a law should also provide for the framework for cooperation between such a regional supervisory body and supervisory authorities outside ECOWAS for ECOWAS banks operating beyond ECOWAS. This could be done through the institution of supervisory colleges exclusively for those cross-border banks, which would bring together all host regulators of its branches within and outside ECOWAS. In the case of the EU, the European Supervisor Authorities are by EU Law responsible for ensuring that EU supervisory colleges formed between EU regulators and host states regulators for the supervision of cross-border banks function efficiently. Although the CSWAMZ meets quarterly to analyse developments in the banking system in the WAMZ and conducts joint supervision exercises of cross border banks, its powers are not enshrined in regional law.

**The risks posed by cross-border banking services: The Ecobank Crisis 2014**

Ecobank Transnational Inc. is a bank holding company. The company, through its subsidiaries and branches, provides a full range of wholesale, retail, investment and transaction banking services and products to governments, financial institutions, multinationals, international organizations, medium, small and micro businesses and individuals. The investigation in 2014 of Ecobank by Nigeria’s Securities and Exchange Commission has shown how the crisis at the holding company, which falls outside the regulatory purview of the Commission, could by association undermine confidence in a broader banking sector recovery through poor governance press which could lead to the withdrawal of large depositors and thus causing liquidity shortages. Fortunately, Ecobank only experienced a 3 percent loss of deposits in 2013 from this crisis due to poor governance press. Nonetheless, if the situation had worsened, it could have had the potential of leading to the withdrawal of large depositors. The corporate governance crisis severely shook confidence in the Bank and highlighted the potential systemic implications of the operation of the bank as great concerns were particularly raised as to the risks that a run on the Nigerian subsidiary might have and pose elsewhere, as it represents 40 per cent of the business spread across 32 African countries (Financial Times, 2014) - again emphasising the urgent need for a robust regional framework for the regulation and supervision of cross-border banks.
The risk posed by cross-border banking services: The EU evidence

The drastic economic effect of the absence of a robust regional cross-border financial regulatory regime is most obviously seen in the case of the EU, where gaps in the regulatory framework eventually resulted in a financial crisis turning into a regional debt crisis with threats to the monetary union project.

The plan to have a single market in Europe inevitably included a plan to have a single market in financial services across EU member states and those belonging to the European Economic Area. This meant that a legal framework to enable financial institutions - including banks - operate cross-border had to be instituted. As maximum harmonization proved impossible for many areas of activity in the single market, the European Commission adopted instead the principles of mutual recognition, minimum harmonisation, and home country control. The three principles were subsequently enshrined in harmonisation legislation in a number of areas, including financial services. The internal market was to be based on minimum harmonisation of national regulatory systems and mutual recognition through which member states would recognise each other’s laws, regulations, and authorities.

The EU framework for financial services provided minimum standards for the establishment and operation of banks and other financial intermediaries. It also provided access to the single market unfettered by national borders or restrictions on activity, the so-called single passport facility. Essentially, the purpose of the passport facility was to allow intermediaries to deliver products or services into any part of the internal market and promote cross-border competition. As a result, the ‘passport directives’ in financial services defined the kind of financial intermediary to which they applied, its activities and the market segment, the conditions for initial and continuing authorizations, the division of regulatory responsibility between the home (domicile) state and the host state, and aspects of the regulatory treatment of non-EU member states. Authorized financial intermediaries that came within the ambit of one of the ‘passport directives’ could, on the basis of the home country license, offer banking and investment services on a cross-border basis, without maintaining a permanent presence in the target market, or through a foreign branch. The home state would generally be responsible for the licensing and supervision of financial intermediaries, for their foreign branches, and for the fitness and propriety of managers and major shareholders. The host state would be responsible for conduct within their jurisdiction or conduct in the course of offering services cross-border to clients residing within their jurisdiction.

While, at the later stages of single market development the EU has moved very close to maximum harmonization in financial market regulation, the overall European regulatory structure prior to this move lacked strong uniformity/consistency both in terms of rule construction and rule enforcement at the national levels. In addition, there was a marked absence of institutions that could provide binding guidance, in the event of difference of opinion between national regulators, as regards the application and enforcement of financial regulation, or could resolve eventual conflicts of national regulatory actions.

The two recent cases highlighting the gaps in the pre-crisis regulatory framework are the cases of the Icelandic banks and the Fortis Bank discussed below.
The Icelandic banks (home country rule flaws)

The collapse of the Icelandic banks - Glitnir, Kaupthing and Landsbanki – which operated branches in EU member states on the basis of the single passport presents a classic case of home country control failure and of the dire consequences of lack of centralized supervision and resolution mechanisms in the EU. The single passport, also afforded to European Economic Area countries (such as Iceland, which is not an EU member), gave Icelandic banks the ability to expand their assets and deposit base through branches and through internet-based operations offering cross-border banking services. As European depositors were lured by the high interest rates offered by Icelandic banks, gradually Icelandic banks built a large depositor base in certain European countries.

However, by 2008 both the country’s economy and even more its banks were in serious trouble. While trouble was brewing over several months Icelandic bank operations within the EU were supervised by the home country authorities, which were unwilling to take any radical restructuring or rescue measures, thus, nothing was done to prevent the ensuing panic. So when Icelandic banks faced difficulties in refinancing their short-term debt, a run on the Icelandic bank’s deposits in the Netherlands and the United Kingdom became inevitable, as domestic depositors were not covered by the deposit protection scheme of their home countries. While both the Netherlands and the UK, were, in the beginning unwilling to extend protection to Icelandic bank depositors, at the same time, Iceland could provide no comfort to foreign depositors, because it was already in the middle of a deep financial crisis, and its government did not want to pay for the mistakes made by private banks with the assistance of politicians and of ‘home’ supervisory authorities. Harsh responses followed both from the UK and Netherlands authorities, which, though entirely necessary, annulled the single passport principle. In order to prevent the crisis spreading to the British banking system the UK Prime Minister, Gordon Brown extended protection to British depositors, which essentially meant that the British deposit protection scheme would cover the loss. Thus, the UK Treasury proceeded with the unprecedented step of issuing a compulsory freezing order of Icelandic bank assets and deposits under the Anti-terrorism, Crime and Security Act 2001, which, of course, antagonized relationships with Iceland. In addition, the UK government announced that it would launch legal action against Iceland over any losses connected to the compensation of an estimated 300,000 UK savers. Icelandic authorities later reached an agreement separately with both the UK and the government of the Netherlands. Thus, Iceland will be paying the UK and Netherlands a percentage of GDP from 2019-23 to compensate for the deposit protection made available by these two countries to their own consumers holding deposits in Icelandic banks.

The case of Fortis (no bank resolution framework)

Fortis, which was a big European bank with strong cross-border presence in France, the Netherlands, Belgium and Luxembourg, came very close to collapse when the collapse of Lehman Brothers hit global markets. In Belgium, Fortis was the country's biggest private sector employer and more than 1.5 million households -- about half the country -- banked with the group. In 2007, Fortis had acquired parts of ABN AMRO through a consortium with Royal Bank of Scotland and Santander. In 2008, Fortis had difficulties achieving its plans to strengthen its financial position. Over the summer of 2008, its share price deteriorated and liquidity became a serious concern. Insolvency fears led Fortis’ shares to fall to their lowest level in more than a decade and its shares gradually lost more than three-quarters of their value.
Fortis was deemed to be systemically relevant in the three countries. Thus, the European Central Bank (ECB) and ministers from the Netherlands, Belgium and Luxembourg agreed to put 11.2bn euros ($16.1bn; £8.9bn) into Fortis to save the bank. As part of the weekend deal to rescue Fortis, the bank would have to sell its stake in the Dutch bank ABN AMRO, which it had partially taken over the previous year. The Fortis deal would have seen Belgium contribute 4.7bn euros, the Netherlands 4bn euros and Luxembourg 2.5bn euros. However, European bank shares fell sharply on worries that other banks could have problems, and on concerns over the 700bn dollars bailout plan in the United States the Troubled Asset Relief Program (TARP). One of the biggest casualties was Fortis’ rival Dexia, which French and Belgian governments also promised to step in to support. Eventually the joint rescue of Fortis broke down along national lines and each of the three countries (Belgium, the Netherlands, Luxembourg) concentrated only on the part of the group that was most important for their market, in defiance of single market principles/ideals.

The pre-crisis framework clearly lacked a framework for the resolution of cross-border banks which resulted in countries having no option but to protect the exposure of their markets to the failure of this big bank.

**Significance of a Robust Regulatory Framework within an Economic and Monetary Union**

A robust regulatory regime for cross-border services was even more critical for the EU due to the monetary union. This was so as the financial crisis in the EU transitioned into a debt crisis which threatened the eurozone (monetary union) members due to the absence of a fiscal union and weaknesses in the enforcement of the Growth and Stability Pact, which had allowed member states to accrue huge deficit positions prior to the crisis. This meant that these countries were not in a good financial position to support banks when they went burst. So when these countries began to attempt to bail out banks (Greece, Portugal, Ireland, Spain and Italy) they fell into a deeper crisis, which resulted in them defaulting on their loans from the international markets. This, of course, had consequences for the monetary union as these countries were eurozone countries. Due, also, to the lack of a lender of last resort role in the ECB, as the ECB was not in charge of supervising banks but member states, the ECB was not responsible for bailing out banks but member state governments themselves - which they did and got to a crisis situation. This thus gave the financial crisis in the EU a fiscal dimension which resulted in the ECB violating Treaty rules of buying the debt/bonds of countries and thus questioning the rationale of a monetary authority tasked, primarily, with the role of conducting monetary policy but being in a conflicting position of ensuring financial stability in Member States. The absence of a mechanism to support eurozone countries in an economic crisis situation, which could have quickly spread across the region resulted in the quick creation of the European Financial Stability Fund (EFSF) and later the European Stability Mechanism (ESM) which was strongly supported by financially able EU member states such as Germany. The absence of this facility would have resulted in devastating consequences to the Eurozone and possibly led to its demise. As such, Beck (2012) has argued that the need for a banking union is stronger within a monetary union as it is here that the close link between monetary and financial stability is manifested the most and where the link between government and bank fragility is worsened as national governments lack policy tools that countries with an independent monetary policy have available.
These regulatory gaps in the EU framework thus led to calls for the creation of a banking union involving EMU states due to the impact of the crisis on the eurozone. The EBU was to provide a stronger regulatory regime within a monetary union which would include a more centralised supervisory regimes with reduced state control and therefore less home country bias; a strong crisis management regime including the existence of a robust regional/centralised bank resolution framework and/or, in the interim, a stability fund/mekanism to aid banks needing bail out or countries seeking to bail them out; and a regionally coordinated deposit insurance regime. The EBU comprise three pillars including: a Single Supervisory Mechanism, a Single Resolution Mechanism and a Single Deposit Guarantee Scheme.

THE AFRICAN BANKING REGULATORY FRAMEWORK

No Pan African Framework for Banking Regulation

There is currently no pan-African banking law regulating cross-border banking services in Africa. At the pan-African level, there is only the African Union (AU) and the African Economic Community (AEC) agenda to achieve a monetary union for the whole of Africa by 2028 in six stages. This is provided for in the African Economic Community Treaty. An integral part of this plan includes the achievement of financial integration and harmonisation, first among regional economic communities (RECs) and then across the entire continent. In the West African sub-region, however, the WAEMU has a common banking law and in the Non-francophone WAMZ group, there is a proposed Model Banking law underway, as stated above. There are also, in the West African sub-region, groupings / committees of banking supervisors which meet periodically to discuss cross-border banking supervision within the sub-region, such as the CSWAMZ, mentioned above, and the Committee of Banking Supervisors of West and Central Africa. These two committees also meet yearly to discuss cross-border banking issues. However, as their status, operation and powers are not enshrined in regional law/Protocol, nor are they accorded enforcement powers synonymous to those granted the European Supervisory Authorities considered above.

The plan to achieve a pan-African economic community under the auspices of the AU and the African Economic Community is envisaged by strengthening the REC and then gradually harmonising their economic policies until a common market and ultimately a common currency is established among all states.

It is vital to note at this point that the framework for economic integration adopted in Africa, both by the AEC (whose aim is to achieve African-wide integration) and the RECs (whose primary responsibilities are to achieve integration at sub-regional levels) is modelled after the EU framework. Nonetheless, most RECs including ECOWAS and WAEMU which all bear hallmarks of the EU framework, have had challenges in achieving their economic integration goals within the set timeframe (Salami 2011). This is not as a result of problems inherent in the EU framework but more to do with regional and domestic issues and the interplay of relationships between institutions at these two levels, as well as the legal, institutional, socio-economic and political environments in the African states seeking to achieve integration which is significantly different from the European setting. What is more compelling in the African case is that these countries are at diverse stages of legal, institutional, economic and political development and the degree of
commonality within Member States in these areas is significant in determining the success of the integration arrangement.

Nonetheless, as the EU approach to integration is the most advanced, to date, on regional economic integration arrangements and is generally adopted in African integration, its framework is instructive to any plan to institute a regional banking regulatory regime across Africa.

**The state of Banking Regulation and Supervision in West Africa: The WAMZ Case**

The Economic Community of West African States (ECOWAS) is the REC that has the highest number of African cross-border banks. It is composed of Francophone states (who together make up the West African Economic and Monetary Union (WAEMU)) and the non-Francophone states. In 2001, the non-Francophone states of ECOWAS and Guinea entered into a fast track arrangement to achieve a monetary union. This was to be established through the creation of a West African Monetary Zone (WAMZ). The states that make up this group now include: The Gambia, Ghana, Guinea, Liberia, Nigeria and Sierra Leone. The principal institution coordinating this monetary union agenda is the West African Monetary Institute (WAMI). It would eventually be transformed into the West African Central Bank (WACB) upon the establishment of the monetary union.

The WAMZ fast track approach was arrived at after earlier attempts at monetary integration failed. The fast track was originally set to achieve a monetary union in 2003; however due to the challenge of achieving economic convergence - as was the case with the EMU which took 50 years to achieve - the achievement of the WAMZ monetary union has been postponed a few times.

**WAMZ framework for banking regulation**

The WAMZ framework for banking regulation is not clearly outlined in the Statute of the West African Central Bank ("the WACB Statute"), which is to be the statute governing the operation of the WACB once it is established. Suffice to mention that the original Statute of the West African Central Bank (WACB) 2000, was amended by the Revised Statute of the West African Central Bank (WACB) 2003. With respect to banking regulation, the first provision on the topic in Article 16(vi) of the WACB Revised 2003 Statute that, ‘The Branches of the WACB (which are National Central Banks (NCB)) shall perform the following functions in their territories...licensing, regulating and supervising financial and credit institutions...’ This could be interpreted as stating that the regulation of credit institutions was to be performed by NCB and as such remain at the domestic level. Also, Article 27(2) states that, ‘The WACB may offer advice to, and be consulted by...the competent authorities of the Member States on the scope and implementation of legislations and other rules and regulations relating to prudential supervision of credit institutions...’. If the regulation relating to prudential supervision are regional provisions binding on all WAMZ states to which the WACB is providing advise, then it can be argued that the regulation is conducted de facto by WACB although implemented by its branches through the NCBs. However it is not clear and the use of soft phrases such as ‘The WACB may offer advice to...’ makes one deduce that the competent authorities in member states would have the ultimate responsibility for the regulation of credit institutions once the WACB is established. Also, although the provision does not give the WACB any direct regulatory responsibilities with respect to the regulation of credit institutions, the WACB could be called upon to play a role in this respect. If, however, the competent authorities in member states for the regulation of credit
institutions are the NCB, then, as branches of WACB (as provided for under Article 6(1) WACB Revised Statute), it could be argued that the regulation of these banks is in effect conducted by the WACB. From these provisions it would seem that the intention of the drafters was to place this function at the national level.

This system differs significantly from the EU financial regulatory framework, prior to the crisis, where credit institutions were regulated by the banking harmonisation directives. All Member States were bound to implement EU directives by the set timeframe but the precise methods for achieving implementation of directives were left to each Member States. Under this framework, banking regulation was based on minimum harmonisation, as such, a degree of harmonisation was achieved before the proposed single rule book approach was introduced in 2013, after the crisis.

**The WAMZ framework for banking supervision**

The WAMZ framework for banking supervision is also not very clear. In the first provision referring to the topic in Article 8(1) (vii) of the WACB Revised Statute, it states that one of the main functions of the WACB would be the exercise of prudential supervision over credit and financial institutions. However, in Article 16(1) (vi) of the same statute, the functions of NCB are listed as including: licensing, regulation and supervision of financial and credit institutions within their territories. It is thus not clear whether this framework intends to devolve the supervision of credit institutions within WAMZ to the NCB and absolve the WACB of any direct supervisory functions, or whether it intends to share supervisory functions with NCB. Suffice to say though, that in another unclear provision, the banking supervisory function of the WACB is watered down by the use of evasive words. Thus, the main provision on supervision that is titled ‘Prudential Supervision’ states in Article 27(1) WACB of the same statute that, ‘The WACB may in accordance with the decision of the Board of Directors perform tasks relating to the prudential supervision of credit institutions and other financial institutions’.

This provision seems to exonerate the WACB from any direct supervisory function. First, it uses noncommittal words such as ‘The WACB may...perform tasks relating to the prudential supervision...’ which is a shift from Article 8(1) (vii) which, unequivocally, lists one of the main functions of the WACB as the exercise of prudential supervision over credit and financial institutions.

Secondly, this provision incorporates a proviso that WACB may perform these tasks relating to prudential supervision only ‘...in accordance with the decision of the Board of Directors...’

Suffice to say that this same provision in the original 2000 WACB Statute was categorical about the supervisory functions of WACB. Although it left unchanged the provisions granting NCBs the function of prudential supervision over financial institutions within their territories in Article 16(1) (v) of the original statute 2000), the provision on prudential supervision clearly stated this function as a WACB function in Article 27(1) of the original statute. This provision stated that, ‘The WACB shall determine the rules and undertake prudential supervision of financial institutions’.

The use of soft and non-binding terms in the 2003 Revised Statute leads one to assume that it may be the intention of the WAMZ framework that supervision is left at the national level from
the inception of the WACB until the full operation of the proposed centralised regulatory and supervisory body - the West African Financial and Supervisory Authority (WA FSA). However, it could be argued that, although supervision is conducted de facto by NCBs, supervision is conducted de jure by WACB, as NCBs are national branches of WACB.

As things stand within WAMZ (and going by the WACB statute, which would appear to be the stance to be taken even after the creation of WACB) banking supervision is decentralised and under the control of the domestic supervisory authorities in Member States - much like the EU pre-crisis framework. As seen in the case of the EU, decentralisation can have adverse implications as (due to home country bias) it may not effectively contribute in building a fully integrated banking market or - as often referred to in the EMU - a single market in financial services. A decentralised supervisory framework also makes it more difficult to deal with cross-border bank failures, as seen in the case of Fortis and the Icelandic banks. It is instructive to note that it is for this reason that the EU framework has transitioned from the pre-crisis approach of minimum harmonisation to a post-crisis agenda of maximum harmonisation through the European Banking Union (EBU), comprising: the single supervisory mechanism, the single resolution mechanism and the proposed common deposit protection scheme. The EU supervisory framework has, therefore, moved from a decentralised position of home country rule to a more centralised approach where the ECB is responsible for all banks in the European Banking Union but directly supervises systematically important ones.

Suffice to mention that prior to the EBU, the drive to build a single market in financial services through mutual recognition and minimum harmonisation principles was eventually tied into the Lamfalussy framework - which involved cooperation/coordination among national supervisory authorities through their membership of numerous EU committees. This framework, among other things, was to facilitate the sharing of information among supervisory authorities. After the crisis, this framework was replaced by the De Larosiere framework which attempts to simplify the Lamfalussy framework through the operation of fewer committees by establishing forums for coordination, cooperation and information exchange among national supervisory authorities including banking, capital markets insurance and pension’s regulators. This, like the idea around the Lamfalussy framework, would facilitate cooperation among supervisory authorities across the key financial services sector.

The WAMZ states can think of adopting a similar framework as a precursor to a centralised approach at the start of the proposed WAMZ monetary union. This approach could be based on the principles of minimum harmonisation, mutual recognition and home country rule and, in the case of the EU, helped achieve a degree of harmonisation and served as a precursor for a federalised approach to achieving a single market in financial services under the De Larosiere framework, known as the European System of Financial Supervision (ESFS). This framework operates as a hub and spoke network of EU and national bodies working together. Comprising of three levels of authority with the European Systemic Risk Board (ESRB) sitting at the highest level; the European Supervisory Authorities (ESAs) sitting at the middle level; and the National Supervisory Authorities sitting at the lowest level. WAMZ, currently without a monetary union agenda can adopt this approach and then progress towards achieving a more centralised approach upon the creation of a monetary union as is currently instituted under the EBU Single Supervisory Mechanism. Suffice to mention here, that it was the identifiable gaps in the ESFS that led to the institution of the EBU. The SSM and the SRM of the EBU have been designed to be able to
respond to a banking crisis in a quicker and more coordinated fashion compared to the ESFS decentralised system.

Under the ESFS, federalised approach, the role of the ESRB as articulated in Article 2 of the ESRB Regulation is to supervise the financial system as a whole. It was established to prevent widespread financial distress. According to Article 3 of the ESRB Regulation, the three main tasks of the ESRB include: monitoring and assessing systemic risk; providing early warnings when significant risks emerge; and issuing policy recommendations for remedial actions and monitoring their implementation. A similar approach would involve WAMZ adoption of a regional body like the ESRB which would be tasked with supervising the WAMZ financial system as a whole - let's call it the West African Systemic Risk Board.

The European Supervisory Authorities (ESAs) include the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA). Under Article 1(3) of the ESRB Regulation, these authorities comprise national banking supervisors, national insurance supervisors and national securities supervisors. The ESAs set common technical standards for EU financial firms and have the power to intervene in crises. These ESAs work in tandem with the supervisory authorities of Member States. The adoption of the ESA type regime within WAMZ will mean that financial supervisory authorities in each WAMZ Member State would make up this ESA like bodies - let's call them West African Supervisory Authorities (WSA).

At the lower echelon of the EU financial regulatory framework are the national banking supervisors, national insurance supervisors and national securities supervisors. These national supervisory authorities are responsible for the daily supervision of individual firms (except in the case of systemically important banks which, under the EBU, the ECB now has direct supervisory responsibility). In a similar fashion, and as currently exists, national supervisory authorities in WAMZ Member States would be responsible for the daily supervision of individual firms.

However, it should be noted that this hub and spoke network of EU and national bodies working together is possible as a result of the EU and its Member States' embrace of the concept of supranationality. As an integral part of their EU membership, EU Member States delegate decision-making powers to EU institutions, which are in turn responsible for providing oversight and/or direction to Member States – a phenomenon that has not yet been achieved in ECOWAS and WAMZ.

Within the EU framework, the ESAs have EU legislative powers under Article 8(2) of the EBA Regulation, Article 8(2) of the EIOPA Regulation and Article 8(2) of the ESMA Regulation. They have power to create legally binding technical standards. The idea is for the ESAs to create a single, harmonised, European rulebook applicable to all national authorities and financial institutions in the single market. This in effect means that the financial supervisory authorities have a direct role in rule-making at the European level. While the WAEMU has a harmonised framework for regulating financial institutions, although not through this approach (as discussed in the next section), it would be interesting to see the extent to which 'WSAs' would be accorded the powers to create a single harmonised rule book for financial supervision if this approach is adopted by WAMZ, although it would make perfect sense for their involvement to be a significant part of this process.
Under Article 18 of the EBA Regulation, Article 18 of the EIOPA Regulation and Article 18 of the ESMA Regulation, the EU ESAs also have exceptional powers to take action in emergencies, including the banning of certain products or restriction of certain financial activities. However, under Article 3(e) of the ESRB Regulation, it is the EU Council that will have the power to declare emergencies, in consultation with the European Commission and the ESRB and, where appropriate, the ESAs. Under Article 17, EBA Regulation the ESAs also have the power to mediate, arbitrate and enforce their decisions. They also, under Articles 19 and 56 of the EBA Regulation, have the power to settle disputes between national authorities, in particular in areas that require co-operation, co-ordination or joint decision-making by supervisory authorities from more than one Member State. Under Article 58 of the EBA Regulation, decisions may be appealed to a joint board of appeal for all three ESAs.

Again for the 'WSA' to be accorded these powers, it would be essential that all supervisory authorities within WAMZ who constitute the WSA have records of effective supervision at the national level for them to be able to effectively perform in a coordinated regional group as 'WSAs' and to be able to perform these tasks effectively. Although, as stated above, the CSWAMZ coordinates the activities of WAMZ supervisors and performs joint supervision of banks, its status as a regional supervisory body is not defined in regional law/Protocol, nor does regional law accord it with enforcement powers, as is the case with the European Supervisory Authorities. Such a provision would strengthen the status of the CSWAMZ to be able to override national supervisory authorities’ decisions and to enforce its decisions. As banking supervisory authorities in some WAMZ states need to strengthen enforcement, having the equivalent of the ESAs with the power to mediate, arbitrate, enforce its decisions and to settle disputes between national authorities, would be a rather ambitious goal for now. Closely linked to this is that the varying degrees of financial systems development and expertise of financial regulatory authorities across WAMZ, makes the attempt at coordinating effort at supervision by 'WSAs' quite a challenge.

With respect to devising a single rule book by 'WSAs', the absence of any pre-coordination arrangement harmonising rules, such as is feasible through a minimum harmonisation framework (which should be the bedrock of an EFSF-type regime in WAMZ or indeed any future centralised supervisory regime), makes the achievement of a single rulebook by a WSA- type institution impractical within WAMZ. Even in the context of the EU, challenges existed as although EU financial regulation was achieved by Member States implementing financial harmonisation directives, Member States’ applications of harmonised directives were and have at times been inconsistent and as such destabilising for the single market - as evidenced in the crisis. The varying degrees of financial systems development and expertise of financial regulatory authorities across WAMZ would necessarily call for a coordination arrangement harmonising rules which in itself would require coordinating financial systems that are at similar stages of development (such as Ghana and Nigeria – the most advance within WAMZ - separately from, Gambia, Guinea, Sierra Leone and Liberia) and then ultimately coordinating them all. It is only after this that a WAMZ attempt a achieving a single financial rulebook would be feasible. With the current state of affairs, the attempt to establish a single financial rulebooks for WAMZ would be a great challenge.

Also quite critical is that the role of the ESAs in developing a harmonised single rulebook is made possible by their authority to make legally binding laws that is recognised by the EU legislative process. The rulebook would, as such, carry the same binding effect as EU regulations, which are binding in their entirety and directly applicable in all Member States. This is possible only as a result of the supremacy of EU law in EU Member States. The ECOWAS legal framework from
which WAMZ derives does not have such effect in Member States (Salami 2012), as such even if the 'WSAs' were accorded such rule-making powers, their implementation in Member States may be problematic.

All of this makes the performance of these functions by ESA-like bodies in WAMZ currently impracticable.

The main criticism however, of the De Larosiere framework (European System of Financial Supervision (ESFS)) with the introduction of the EBU is that, under the EBU banking supervision is centralised, while capital markets and insurance services supervision remain decentralised and conducted by supervisory authorities, although under the De Larosiere framework (ESFS). As such, the EBU is criticised for being in conflict with the agenda to achieve a single market in financial services more so as its members are primarily eurozone members which leaves out other non-eurozone Member States of the EU who do not wish to participate in it.

The WAMZ framework should take on board the possible tensions that could arise from centralising parts of the financial sector (such as banking) and leaving other parts decentralised particularly when financial institutions are gaining increasing sophistication and are able to provide all three key financial services - banking, capital markets and insurance - thus calling for a coordinated and consolidated approach to regional regulation – the very discussions raised in this article. Achieving minimum harmonisation in the banking sector is feasible as most banking systems can achieve minimum standards, although they are at different degrees of development. Reverse is the case with capital and insurance markets, where these are predominantly at very nascent stages of development across sub-Saharan Africa.

The proposal by WAMI to consolidate the supervision of the activities of all the institutions in the financial system in the WAFSA appears to be a useful strategy to combat the EU state of affairs, however, it is advanced and ambitious at the current stage of financial sector development in WAMZ states, as well as in the current stage of monetary union process in WAMZ.

As stated above the WAMZ has a Legal and Institutional Issues Committee (LIIC) that is drafting a Model Banking Act for the Zone, which all WAMZ states would be required to adopt. Due to the disparity in financial systems development in WAMZ Member States, this law should take on a minimum harmonisation approach, much like the approach adopted by the EU prior to the European Banking Union. The adoption of this Act by all WAMZ states will certainly pave the way for achieving maximum harmonisation that would be characterised by the operation of a single supervisor through WAFSA of WAMZ Banks. A speedy implementation of this provisions given the rise of cross-border banks in West Africa would enhance financial stability in the sub-region and would facilitate the integration of the banking markets which would operate within the WAMZ monetary union space.

An important issue that would need to be addressed, for the successful operation of this law is that Member States would need to ensure that the provisions of the Act are implemented in domestic law and are effectively complied with. This, of course, would require that supervisory authorities are robust in their supervision of banks. The Icelandic bank cases reveal the consequences of weak domestic supervision in a decentralised regime on other jurisdictions within the region. So for minimum harmonisation to work under this proposed Model Banking Law, the Member States are expected to have in place strong bank supervisory authorities which are able
to comply with the proposed Model Banking Law. Nonetheless, more pertinent a lesson to be learned from the Icelandic bank cases is that although a good degree of banking harmonisation was achieved in the EU through mutual recognition and minimum harmonisation through the Single European Act, the autonomy left to Member State home countries to supervise their banks eventually resulted in the breakdown of the home country rule and revealed that a stronger degree of harmonisation - 'maximum harmonisation' - through a well-centralised system was what was required to achieve a truly integrated banking market free from home country bias.

As such, the long-term agenda for WAMZ states should be the achievement of maximum harmonisation through a centralised / direct supervisory function by WAFSA of WAMZ banks.

*The West African Economic and Monetary Union (WAEMU): Framework for Banking Regulation and Supervision*

This regional group comprises the francophone states of the Economic Community of West African States (ECOWAS). The WAEMU is the monetary union arrangement in francophone West Africa. Unlike the case of WAMZ, it is a monetary union. Its history dates back to the colonial era when France administered the monetary system of its colonies - which are now WAEMU member states. Although these states attained political independence from France in the 1960s, they chose to retain the monetary regime administered by France. They did this through a series of treaties including the West African Monetary Union (WAMU) Treaty that set out the framework for the continuation of the monetary system after the colonial era. France thus administered their monetary system and did so through a common framework for all the states. Although the common monetary authority is no longer administered by France, but by the member states of WAMU, its design and operation still has French undertones. In 1994, an economic union agenda was incorporated into WAMU that led to a change of its name to the West African Economic and Monetary Union (WAEMU). This, however, left the monetary union agenda under the WAMU Treaty unchanged.

*WAEMU framework for banking regulation and supervision*

The WAEMU banking regulatory framework is provided for by the WAEMU Treaty, the BCEAO Statute and the Banking Commission Convention. Article 22 of the West African Monetary Union (WAMU) Treaty (the original WAEMU Treaty) provided that WAEMU states would have a common banking code. This banking code/regulation is the WAMU Banking Law. The separate supervisory roles of both the BCEAO and the WAMU Banking Commission is provided for in Articles 23 to 28 of the BCEAO Statute and Articles 1 and Article 12 to 23 of the WAMU Banking Commission Convention. Their joint supervisory functions are articulated in Articles 13, 14 and 21 of the WAMU Banking Commission Convention. Hence, the BCEAO and the WAMU Banking Commission jointly share banking supervisory functions. However, under Article 31 of the WAMU Banking Commission Convention and Article 12 of the WAMU Banking Law, residual functions in this field are left to ministers of finance of WAEMU Member States.

Owing to the history of WAEMU, its banking regulation framework is fundamentally different from the WAMZ approach. Article 22 of the WAMU Treaty provided that WAMU states would have a common banking code. Articles 15 and 16 of the WAMU Treaty also provided for the
Central Bank for West African States (BCEAO), which had the responsibility under Article 27 of the BCEAO Statute and Article 22 of the WAMU Treaty to ensure the application of the common banking law in member states. At the creation of the WAMU Banking Commission in 1990, the BCEAO and the WAMU Banking Commission jointly shared this supervisory function.

Prior to the establishment of the WAMU Banking Commission, however, banking supervision was conducted by the BCEAO under Article 24 and 25 of the BCEAO Statute through uniform rules adopted by the Council of Ministers of WAMU as provided for in Article 6(1)–(2) and Article 22 of the WAMU Treaty). As such, the coordination of supervision was achieved prior to the commencement of the Banking Commission's banking supervisory functions. After the establishment of the Banking Commission, this function was shared both by the BCEAO and the Banking Commission, with residual functions in this field left to Ministers of Finance of Member States of WAMU.

Hence, the framework for banking regulation and supervision in WAEMU differs from the WAMZ in that banking regulation and supervision in WAEMU takes on a regional and centralised approach. Banking regulation is harmonised in the WAMU Banking Law and the BCEAO and the Banking Commission conduct supervision.

In the case of WAMZ, as seen above, banking regulation and supervision under the WACB Statute, which will come into effect after the WAMZ monetary union is achieved, appear to be left to the Member States. The WAMZ framework, therefore, requires Member States to take action in ensuring coordination and implementation of regional banking provisions in their states.

Despite the centralised approach to regulation and supervision within WAEMU, the WAEMU banking regulatory framework is deemed by the IMF to be weak as prudential regulation needs to be strengthened. The IMF is of the opinion that this could be addressed by bringing prudential regulation closer in line with international standards. It believes that the move to Basel II/III standards will be an opportunity to bring prudential rules closer to international norms. The IMF suggests that banks’ capital adequacy levels should be increased and that fixing an early deadline for raising operating banks’ minimum share capital to CFAF 10 billion is significant. It also believes that there should be closer monitoring of banks’ exposure to foreign exchange risks and prudential limits to address them should be strengthened (IMF, 2015).

Despite that increased capital requirements would contribute to strengthening the African cross-border banking operations and promote financial stability in that respect, the issue is that most of the African cross-border banks are not banks that provide products that Basel III capital requirement have been designed to address. Thus requiring them to meet this capital requirement is likely place huge strains on their capital position. The implementation of Basel III by these banks is therefore likely to be confronted with delays. Other aspects of the WAEMU banking regulatory framework that needs strengthening are the rules on risk concentration and provisioning of non-performing loans.

With respect to supervision, unlike the case of the EU where a tight mechanism through the EBU and the work of the ECB in supervising banks has introduced a strict regime for the supervision of systemically important cross border banks/ groups, the supervisory framework for WAEMU cross-border bank groups is weak. This is problematic as such bank groups account for almost 70 percent of WAEMU’s banking sector assets (IMF, 2015). The main reason for this state of affairs...
is that bank holding companies in WAEMU are not subject to banking regulation or consolidated supervision. There is therefore an urgent need to subject bank holding companies to appropriate banking regulation and consolidated supervision. Although the IMF suggests the creation of supervisory colleges for pan-African banking groups that have their home in the region and these can be helpful in so far as exchange of information among supervisors is concerned during good/stable banking periods, however, as revealed by the GFC, this system was not effective during the crisis when it mattered the most. This was the case as regulators were not keen to be transparent about the true state of banks not wanting to worsen the financial crisis in their jurisdictions. As such, the WAEMU Banking Commission and the BCEAO should focus on conducting regular stress tests on the consolidated positions of such groups, and strengthening cross-border supervision and the resolution framework can be a way forward as has been done in the case of the EU/EBU. Moving to consolidated supervision and the application of International Financial Reporting Standards (IFRS) should, thus be a high priority.

** Harmonising the WAEMU and WAMZ Regulatory And Supervisory Regimes **

Once minimum harmonisation has been achieved in WAMZ by the successful enactment of the proposed WAMZ Model Act and this Act is effectively implemented in member states, this can then be followed by maximum harmonisation. Once maximum harmonisation which is to be instituted at the start of the WAMZ monetary union and characterised by the WAFSA’s supervision of WAMZ banks (and possibly capital and insurance markets) is achieved, then talks of instituting a minimum harmonisation regime between WAMZ and WAEMU can commence. Suffice to mention that four members of the WAMZ have signed MOUs with WAEMU Banking Commission for supervisory cooperation, while others are set to do so, so this would be a useful platform to establish the minimum harmonisation plan between WAEMU and WAMZ.

Given the plan to establish an ECOWAS monetary union by 2020, the ultimate agenda for WAMZ and WAEMU would be to institute an EBU-style plan having three pillars: a Single Supervisory Mechanism (SSM), a Single Resolution Mechanism (SRM) and a Single Deposit Guarantee Scheme (SDGS). It should, however, not be forgotten that the EBU compulsorily includes all European monetary union countries (Eurozone countries) due to dire fiscal effects of a financial crisis (as played out in the ‘vicious cycle’ between bank bail outs, sovereign debt and banks credit to sovereigns) on a monetary union which was the argument for the creation of the EBU in the first place. As such, the achievement of this ultimate maximum harmonisation of banking regimes within WAEMU and WAMZ should be planned for the point where WAEMU and WAMZ monetary union are merged.

** WAMZ and WAEMU Bank Resolution Framework **

The WAMZ framework does not provide for a resolution mechanism to cater for the orderly resolution of banks. This could be problematic for both the WAMZ single market in financial services and the proposed monetary union area - as evidenced in the case of the collapse of Fortis bank in the EU. In that case, the absence of a resolution framework meant that countries resorted to rescuing the parts of this cross-border bank that was critical to their markets. This, as seen in the EU, was also problematic for the monetary union as countries bailing out such banks ended up in more deficit and eventual debt crisis. So in an integrated / monetary union zone without a resolution regime, a collapse of a cross-border bank can have a destabilising effect on host states where these bank branches operate, as these host states’ supervisory authorities are likely to have
the ultimate responsibility for bailing them out - hence the statement by Mervyn King, the Bank of England Governor during the GFC that, “...banks are global in life and national in death”.

As only Nigeria and Ghana have national resolution regimes, the creation of national resolution regimes in the other states of WAMZ would be necessary first steps before a WAMZ regional resolution regime can be instituted. For this, these WAMZ states can be guided by the Financial Stability Board (FSB) Key Attributes of Effective Resolution Regimes for Financial Institutions 2011 (as revised in 2014) (FSB Key Attributes, 2014) which is considered below.

After all WAMZ states have successfully instituted national resolution frameworks, they can then begin to plan to institute a regional resolution regime. Here, the WAMZ arrangement can learn from the EBU single resolution mechanism which coordinates the resolution of banks under a Single Resolution Mechanism (SRM) characterised by the operation of a common legal framework and administered by a Single Resolution Board. Suffice to mention though that the West Africa Monetary Institute and College of Supervisors of the WAMZ are currently carrying out a Study that would help design a national and regional framework for banking crisis resolution and can draw both from the FSB Key Attributes of Effective guidelines and the EBU single resolution mechanism.

In the case of the quite centralised approach to regulation and supervision within WAEMU, it would have been expected that a typical banking union - as defined by Nicolas Vernon to be ‘the transfer of banking sector policy from the national to the [regional] level’ (Vernon, 2015) – would exist, however, this is not the case. The reason for this is that the WAEMU bank resolution framework is rather decentralised with finance ministries performing the residual role of deciding whether a bank is to be resolved or not. This is problematic as bank resolution is a protracted process due to this division of power between regional and national institutions. So that despite the fact that the WAEMU banking supervisory framework takes on a centralised approach and is closer in design to the newly centralised approach adopted under the EBU, no single bank resolution regime exists within WAEMU. As such, like the WAMZ, the WAEMU can learn from the EBU SRM approach or by reforming the current state of affairs by putting in place a single and independent administrative resolution authority to allow for a less complicated and faster resolution, in line with international standards and best practices as set out in the guidance issued by the Financial Stability Board Key attributes of effective resolution regimes for financial institutions. Thus both WAMZ states and WAEMU authorities would find the FSB Key Attributes instructive for the creation, in WAMZ states, of national resolution regimes and, for the strengthening of the WAEMU banking resolution framework.

The aim of the Key Attributes was to enable resolution authorities take an organised approach to the resolution of financial institution without reliance on public support but at the same time ensuring that the institutions can continue to function effectively. Also, as the Key attributes now constitute a new internationally agreed standard (soft law) on national resolution regimes for failing Systemically Important Financial Institutions (SIFIs) its adoption by WAMZ and WAEMU would further enhance their status with respect to compliance with international financial standards. As the IMF is also likely to include the adoption of resolution tools for banks and financial institutions as ‘conditions’ in its programs of financial assistance, all ECOWAS states would benefit from the incorporation of these standards into national law.
The Key Attributes set out twelve essential features of national resolution regimes: (1) scope; (2) resolution authority; (3) resolution powers; (4) set-off, netting, collateralization, segregation of client assets; (5) safeguards; (6) funding of firms in resolution; (7) legal framework conditions for cross-border cooperation, (8) crisis management groups; (9) institution-specific cross-border cooperation agreements; (10) resolvability assessments; (11) recovery and resolution planning; and (12) access to information and information sharing.

The application of the key attributes in the case of WAEMU would, amongst other things, necessitate the removal of residual powers from Member States ministries of finance, as the attributes highlight the need for the independence of the resolution authority.

With respect to holding companies which also operate financial institutions and which according to WAEMU law are not subject to regional banking regulation, there would be a need to bring these holding companies which also operate banks, under the purview of the regional banking regulation and banking resolution regime. This would necessitate a change in law.

The legal framework for the institutions of the banking resolution framework is quite vital in ensuring the implementation of these key attributes and the IMF and World Bank (2009) found that in countries that have experienced systemic crises, some of the most common shortcomings in the legal framework of the banking resolution regime have been the following:

Weak mandate of resolution authorities to restructure banks - the bank resolution entities may not have a clear mandate to restructure banks, or the organizational framework, financial resources, and professional leadership to accomplish their objectives. Secondly, the inability to restructure banks. Here the banking/resolution authorities may lack the legal authority (with or without judicial oversight) necessary to write down shareholders’ equity, sell bank shares, or engage in purchase-and-assumption transactions and transfer certain categories of liabilities (e.g., deposits) to other institutions along with bundles of assets. Thirdly, the lack of legal protection for Board members, staff, and other officials of agencies responsible for bank restructuring. In many countries, officials of the banking authorities are not given sufficient legal protection from personal liability for actions respecting an insolvent bank they have taken in good faith in the normal course of their duties. Their bank resolution efforts will often be impeded by civil actions brought against them personally by interested parties.

Thus the independence of the national resolution authorities and their immunity from judicial action for activities/decisions taken in the course of their duties should be clearly articulated/outlined in the legal framework for bank resolution in the countries. These issues need to be dealt with carefully in the law setting out the national banking resolution regime and the entire legal and judicial system, as well as the administrative regulatory regime, should stand ready to defend it.

It is not until national resolution regimes are instituted in WAMZ member states that a WAMZ harmonised regime can be planned along the lines of the EBU SRM. Also, once the WAEMU resolution framework has been strengthened and centralised - again by possibly adopting the EBU SRM style - then talks of a possible harmonisation of the WAMZ and WAEMU resolution regimes can be instituted.
WAMZ and WAEMU Deposit Insurance Framework

WAMZ Harmonised Deposit Insurance Framework

WAMI has proposed the creation of a Deposit Insurance Scheme. It further proposes that this scheme should operate along the lines of the Nigerian Deposit Insurance Corporation. It recommends that both the proposed WAFSA and the Deposit Insurance Scheme should be established at the commencement of the WACB (WAMI 2002). For this model to operate effectively at the regional level, it would be expected that it operates effectively at domestic levels. However, this is not the case throughout the WAMZ and with the exception of Nigeria which operates an explicit deposit insurance schemes (Ghana is in the process of establishing this too) other states within WAMZ operate an implicit deposit insurance scheme. As such, it would be a challenge harmonising / devising a regional deposit insurance framework around WAMZ states.

A comparison with the EU framework is instructive here too. This is so as the third pillar of the European Banking Union is the creation of a Single Deposit Guarantee Scheme (SDGS), however, there is no political agreement yet on how to advance to a SDGS. Common deposit protection is discussed in terms of principles and 'high-level politics' but no specific regulatory proposals have been advanced yet.

The rationale for a common deposit insurance scheme is clear and more relevant within the context of a monetary union or currency union. As with perfect capital mobility, in order to prevent a flight of deposits from troubled countries to countries perceived to be 'safe', one needs to convince ordinary citizens that the common currency (in the case of the EU, a euro) in a bank account in a Member State of the monetary union is worth the same and is as secure as the same currency in a bank account in another Member State of the monetary union.

In the case of the EU, although the SDGS shall not be established for the time being, the framework continues to rely upon the existing networks of national deposit guarantee schemes. A new Directive on Deposit Guarantee Schemes (DDGS), was adopted by the Council and the European Parliament in April 2014. This Directive further harmonises rules governing national deposit guarantee schemes across the whole EU (with EEA relevance, too), with a view to strengthening the single banking market, particularly as regards swift payout if a scheme's intervention is triggered. Some other key elements of the Directive are: the possibility of voluntary borrowing between DGS (Art 12 DDGS), the possibility of merging DGS or establishing cross-border DGS on a voluntary basis, (Art 4.1, Art 4.7, and recital 4 DDGS), the possibility of using the financial means of a DGS for the resolution of credit institutions (Art 11 DDGS), enhanced cooperation between home and host authorities (Art 14 DDGS) and greater depositor information (Art 16 DDGS).

Harmonisation of Member States DGS along these lines would require that DGS in Member States function effectively and are able to participate in a regional harmonisation framework. So, like the case for the need to have a harmonised regulatory and supervisory regime before a single regional financial supervisor in a WAFSA can be instituted, there would necessarily be a need, first, to harmonise deposit insurance schemes across WAMZ member states before talks of a regional deposit insurance scheme can be feasible. However, as some states do not have deposit insurance schemes, and those which have are at varying degrees of development, the starting point for
WAMZ would be to ensure that all Member States establish DGS. Secondly, these DGS should have a record of successful operation before they can participate in a regional harmonisation regime. As such, for now, although the institution of a common deposit guarantee scheme in WAMZ is a laudable plan, it does not appear to be a feasible one.

WAMZ Member states can focus on instituting the International Association for Deposit Insurers (IADI) published set of Core Principles for Effective Deposit Insurance Systems “Core Principles” in readiness for a regional regime. As these principles were for the benefit of countries considering the adoption or reform of a deposit insurance system, they can be adopted by WAMZ states in building or strengthening their national deposit insurance regime before talks of a regional harmonisation can be entered into. However, the IADI believe that the effectiveness of a deposit insurance system is influenced not only by its design features but also by the environment within which it operates. The operating environment includes macroeconomic conditions, the strength of the sovereign, the financial system structure, prudential regulation and supervision, the legal and judicial framework, and the accounting and disclosure system. The operating environment is largely outside the scope of authority of the deposit insurer. However, it influences the deposit insurer’s ability to fulfil its mandate and determines, in part, its effectiveness in protecting depositors and contributing to a jurisdiction's financial stability. These preconditions should be in-place to support an effective deposit insurance system, and are designed to be adaptable to a broad range of country circumstances, settings and structures. The adoption of these preconditions would be the necessary first steps to focus on achieving before embarking on creating or reforming their national deposit insurance regimes.

**WAEMU deposit insurance regime**

In the case of WAEMU, a deposit insurance fund and a financial stability fund have been established. The deposit insurance scheme has some key features found in most credible schemes, such as appropriate coverage, timely payouts, and adequate funding (as seen in the new EU Deposit Guarantee Directive). Nonetheless, as it is not yet funded and has not been tried and tested, its robustness is unknown. Also, the deposit insurance scheme has limitations as it is designed for now to cater for only smaller banks and not with systemic crisis. It has specifically been designed to cope with the failure of two-medium sized banks in the WAEMU, and as such would only be able to absorb limited losses among its insured pool. It is also, for now conceived as a simple "pay box" administered by the central bank. Part of the deposit will cover banks, while the other part will cover microfinance institutions. It is planned to be constituted over a 10-year period and expected to cover 80 percent of depositors (40 percent of deposits, given the concentration of wealth), with a maximum guarantee of FCFA 1.4m per account. (Basdevant, Imam, Kinda, Nguyen, and Zdzienicka, 2015).

Due to this limited coverage, WAEMU authorities need to ensure both that the deposit insurance scheme is well-supported. Hence the key objective of a deposit insurance scheme, which is to promote confidence would be defeated unless authorities mobilise their own resources. To prevent this, it is essential that all funding mechanisms for a deposit insurance system are made available including a means of obtaining supplementary backup funding during a crisis - as is laid out under the new EU Deposit Guarantee Directive 2014.

Also authorities should ensure that a robust crisis management regime is in place to cope with a systemic crisis such as an emergency liquidity assistance and the Financial Stability Fund and
especially to avoid the vicious-link between sovereign debt and financial crisis as played out in the GFC. With respect to the institution of an emergency liquidity assistance, which is a critical lender of last resort role played by central banks of providing liquidity support to distressed financial institutions during a crisis, does not exist in WAEMU. Although the BCEAO provided liquidity assistance during the only systemic crisis experienced in the region in 1994, it is not legally mandated to perform this role. A revision of the BCEAO Statute to incorporate this role will thus be necessary.

With respect to the WAEMU financial stability fund, this is modelled on the European Financial Stability Fund/ European Stability Mechanism – mentioned in section 3.1.3. Its aims are to provide temporary bridge funding to governments facing liquidity squeezes and to minimize potential spill overs from such temporary shocks on the wider financial system.

**Challenges in Coordinating WAMZ and WAEMU Regulatory Regimes**

The coordination of the WAMZ and WAEMU Banking Regulatory framework is a requisite conversation to be had especially as cross border banking services operate across West Africa. There is therefore, a need to have a standardised and robust regulatory framework for the entire sub-region.

One approach that can be adopted here in coordinating the banking regulatory framework between the two sub-regional groups (WAEMU and WAMZ), which from a regulations perspective would require, at the very least, the adoption of minimum harmonisation standards such as that adopted by the EU prior to the EBU and, as stated above, based on the principles of mutual recognition, minimum harmonisation and home country rule. Other approaches could involve MoUs between the two regional financial supervisory authorities and getting the two authorities to cooperate through exchange of information with banking operations within their jurisdiction (this would, of course be in the aftermath of the WAMZ monetary union).

Suffice to mention and as stated above, that four WAMZ States have signed MOUs with WAEMU Banking Commission. Also, the WAEMU Banking Commission has observer status at CSWAMZ meetings. Thus, where cross-border banking operation exist within WAEMU and these four states of WAMZ, both the WAEMU Banking Commission and relevant WAMZ Member States Banking authorities should be willing to exchange information and coordinate supervisory activities for the supervision of financial institutions that operate across the two jurisdictions. The other WAMZ states should be encourages to sign MOUs with the WAEMU Banking Commission. Another way to achieve the coordination of the banking regulatory framework of the two sub-regional groups is through the institution of Colleges of Supervision, as prescribed by the Basel Committee, involving the supervisory authorities of those ECOWAS banks that operate cross-border and the respective host state regulators of their branches.

A similar approach should also apply for the coordination of national resolution regimes through the adoption of a harmonisation regime across WAEMU states and WAMZ Member States. However, given the current challenges of the bank resolution regime in WAEMU and the fact that majority of WAMZ states do not have national resolution regimes, it is essential that the FSB Key attributes be instituted as a guide for both establishing and strengthening national resolution regimes in WAEMU and WAMZ, respectively. Once effective resolution regimes have been
achieved across the two regional groups, then talks of a harmonised resolution regime can commence.

After the achievement of the WAMZ monetary union and a centralised or single regional banking regulatory framework for WAMZ - as proposed in the WAFSA - a more robust plan for coordinating the WAEMU and WAMZ supervisory activities or merging them can be put together. This would necessarily involve both the WAEMU Banking commission and the WAMZ WAFSA to institute a framework of cooperation which derive its authority from the ECOWAS Treaty.

Whilst all this appears doable theoretically, the practical application of it might prove more challenging as one cannot ignore the challenges of implementing regional provisions particularly at the ECOWAS level. As such, while the banking harmonisation laws, which derive from the WAMU Treaty, constitute hard law, and are directly applicable in the Member States and thus binding upon them - and have been largely successful, in that respect is accorded to the role of the WAEMU Banking Commission and the BCEAO in their supervision of banks within WAEMU - the case for WAMZ banking harmonisation / regulatory regime is different. WAMZ derives its legal status from the Economic Community of West African States (ECOWAS) Treaty that is the parent institution from which WAMZ was established. Thus under Article 20(3) of the WAMZ Agreement, the WAMZ Agreement is said to form an integral part of the ECOWAS Treaty. However, ECOWAS, whose aim is to foster economic integration among its member states, through trade liberalisation, has been slow in achieving this goal. Its 1975 goal of establishing the simplest forms of economic integration including a free trade area and a customs union among its members has, to date, faced the challenges of non-tariff barriers. Although the ECOWAS Treaty is legally binding, trade liberalisation has not been without huge implementation challenges at domestic level (Salami, 2012). It is, therefore, hoped that in the institution of the harmonised WAMZ framework, which has been billed to kick-off at the start of the WAMZ monetary union (WAMI, 2002), Member States would be committed to implementing banking harmonisation provisions both for the effective regulation of cross-border banks as well as for the smooth operation and integrity of the WAMZ monetary union. These challenge, of course, makes the merger of WAEMU and WAMZ a project unlikely to be realised any time soon.

**PRECONDITIONS FOR A ROBUST CROSS-BORDER BANKING REGULATORY FRAMEWORK UNDER AN ECOWAS BANKING UNION**

Given the absence of clear ECOWAS-wide banking regulatory regime, as highlighted above, it is doubtful that an adoption of the EBU-style framework in the region would be achievable in the short-term. As such, pragmatic approaches are suggested below as possible ways forward in building a robust regulatory framework for the operation of cross-border banks in West Africa.

*Regional Pre-conditions*

*Strengthening existing regional economic integration arrangements*

Both WAEMU and WAMZ are primarily based on economic integration agendas for participating states. The goals of these arrangements include achieving a free trade area, a customs union, a common market and an economic union and, in the case of WAMZ, a monetary union. Nonetheless, the achievement of these goals have not been without challenges which are largely due to failure of Member States to implement regional provisions at the national levels. Given the
challenges in achieving regional economic integration goals as basic as free trade areas within these RECs, it is reasonable to speculate that the creation of a common regional financial framework for these states - and particularly in the case of WAMZ states - would be even more challenging. Member States should consider, first, trying to achieve the most basic of these integration goals, and then strive to achieve deeper goals such as financial integration.

Devising a strong supranational framework for economic integration

Closely linked to the above point is the challenge of WAEMU and WAMZ states to fully embrace the concept of supranationality and neither can boast of having a strong supranational framework. The governance framework for the operation of the EBU (SSM and SRM) enables the system to work, being characterised by the strong adherence to the doctrine of supranationality through the transfer of EU participating Member States of decision-making powers to regional bodies such as the ECB (for the SSM) and the SRB (for the SRM). It is this strong adherence to the doctrine of supranationality within the EU, which enables deep forms of integration, such as the European Monetary Union (EMU) and which will enable the EBU (consisting of both the SSM, SRM and, possibly, a common deposit guarantee scheme).

Also the EU supranational framework is strongly supported by the work that both the Court of Justice of the European Union and the European Commission does in enforcing the EU Treaty. Although quite great improvements are seen in the increased jurisprudence of the ECOWAS Court of Justice, particularly in the area of the enforcement of human rights, more needs to be done in its role in enforcing other aspects of the regional integration provisions such as the economic provisions of the ECOWAS Treaty.

Achieving Homogeneity through minimum harmonisation before embracing a maximum harmonisation plan as envisaged under the EBU

WAEMU and WAMZ financial systems are at varying stages of developments and this further complicates the process of financial integration. Even within their individual groups, the disparity between Member States can be so wide thus making any form of integration a futile act. A typical example is trying to institute a common banking regulatory regime for Nigeria and Liberia or Sierra Leone. Hence, a way forward to achieve financial integration among these groups and especially WAMZ, would be to adopt regional standards and mechanisms for the different groups at the same stages of development. Another alternative would be to integrate only those Member States within the REC that have attained a certain level of financial development and progressively increase the numbers as the financial systems of more Member States develop. Taking a broad-brush approach or a 'one-size-fits all' approach, as international standards currently do, would achieve only minimal, if any, success. As such a minimum harmonisation plan can be set for countries at similar stages of banking development, using the minimum harmonisation and mutual recognition plan of the EU but being cognisant of the short comings of it - part of which has resulted in the drive to establish a maximum harmonisation regime.

Domestic Pre-conditions

Strong domestic banking regulation and resolution framework

This is, perhaps, the most salient point. Banking regulation in ECOWAS states needs to be strengthened. The most important aspect of banking regulation requiring strengthening among African States is the creation, where needed, and strengthening, where required, of the national
bank resolution framework – this is particularly absent in most banking systems in Africa. Another area that requires strengthening in banking regulation in ECOWAS states is accounting and disclosure standards for financial institutions and companies. Also pertinent would be strengthening the corporate governance provisions (as revealed by the ECOBank scandal and crisis of 2014), as well as strengthening the enforcement regimes for banking/financial regulation. Closely linked to this, also, is instituting the consolidated supervision of banking groups in Africa. This would encourage a more cohesive approach to risk management and regulation, and reduce corporate governance risks. Strengthening the independence of the banking supervisors is also vital, as this is a fundamental problem, and would be particularly key in the reform of the WAEMU banking resolution framework. Here, the standards set by the FSB Key Attributes of Effective Resolution Regimes for Financial Institutions, referred to above, should be consulted.

Strengthen or build deposit insurance schemes in countries

Deposit insurance schemes, as referred to above characterise a robust banking systems. Therefore their existence both in WAEMU and WAMZ member states is critical in building a robust regional regulatory framework. However, as seen above, they must exists and operate successfully, nationally, before a regional framework can be achieved (especially in the case of WAMZ) and the preconditions outlined by the IADI to have a robust deposit insurance regime is vital to the success and effectiveness of any deposit insurance regime (IADI Core Principles, 2014). The IADI state that the effectiveness of a deposit insurance system is influenced not only by its design features but also by the environment within which it operates. The operating environment includes macroeconomic conditions, the strength of the sovereign, the financial system structure, prudential regulation and supervision, the legal and judicial framework, and the accounting and disclosure system. Although, the operating environment is largely outside the scope of authority of the deposit insurer, as it influences the deposit insurer’s ability to fulfil its mandate and determines, in part, its effectiveness in protecting depositors and contributing to a jurisdiction’s financial stability, it is vital. These preconditions are hardly existing in the ECOWAS region and should be instituted as WAEMU and WAMZ state plan on building and strengthening their deposit insurance regimes.

Strengthening the general legal environment for the operation of banking laws

Reforming WAEMU and WAMZ legal and judicial systems is essential in order to support banking sector development. The institution of robust legal environment would support: the general banking regulatory framework, the national bank resolution framework and the enhancement of corporate governance standards within banks. It is also bound to improve foreign portfolio investor interest in the banks. The slow and inefficient manner in which contract, property and insolvency laws are enforced in a good number of WAEMU and WAMZ states inhibit investments, as investors avoid countries that pose high risks to their investment, and part of their assessment of risk is the degree of instability in the legal systems.

Focus on economic growth

Recent studies have shown links between financial sector development and economic growth. In a study on the relationship between stock markets, banks and economic growth, Levine and Zervos found that the measures of banking and stock market development are robustly correlated with current and future rates of economic growth and that this is particularly the case for developing countries. As ECOWAS states are at different levels of economic development, an integral part of the WAEMU and WAMZ integration agenda should be to foster an environment
for economic growth in Member States. This would ensure that Member States’ economies achieve an acceptable standard of development in order to be effective players in the financial integration agenda.

INTERNATIONAL DIMENSIONS

International dimensions becomes necessary for cross-border West African banks who operate across Africa and other countries and who may be exposed to risky conditions in such host states - thus necessitating a regulatory framework that provides for cooperation with other regulators or regulatory arrangements beyond West Africa. Here, the traditional tools for regulating and supervising cross-border banks highlighted in the Basel Committee’s Core Principles for Effective Banking Supervision as: consolidated supervision, the signing of Memoranda of Understanding (MoUs) and establishment of Colleges of Supervisors (CoS) all have to be utilised. However, as these tools proved weak and ineffective in preventing and resolving the 2007 GFC - largely due to their non-binding nature - calls have been made to strengthen their operation within the African context (Salami, 2014). The EU, through its EBU, has also shown leadership in setting out the possible mechanisms that can be instituted by regional economic communities in regulating cross-border banking services operating beyond their region and these too are instructive to the ECOWAS region.

RECOMMENDATIONS AND CONCLUSION

Adopting an EBU-style financial regulatory framework in the ECOWAS context as an effective tool for regulating cross border banks in Africa, such as ECO bank and United Bank for Africa (UBA), would constitute a robust regulatory regime. However, as the relevant institutional and regulatory infrastructure both at the domestic and regional levels still need to be developed, adopting such a framework for now is not feasible.

This paper has highlighted transitional steps / arrangements that can be taken to arrive at an EBU-style framework for regulating West African cross-border banks. These include: strengthening the regulatory and resolution framework in WAEMU; strengthening the banking regulatory framework in WAMZ Member States and establishing national resolution regimes in the WAMZ states that do not have them; establishing and strengthening deposit insurance regimes across WAMZ and WAEMU Member states. All of these would involve achieving minimum harmonisation of banking regulation, resolution and deposit insurance regimes in WAMZ and establishing and strengthening them within WAEMU and then commencing a merger of WAEMU and WAMZ banking regulatory framework, first through a minimum harmonisation plan and possibly, in future, through a maximum harmonised plan as is currently being implemented in the EBU.

Suffice to say that although this is likely to take a while to achieve, it should be a long-term plan, given the rise in West Africa cross-border banks and the financial stability implications of their operation.
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