



BCEAO

BANQUE CENTRALE DES ETATS
DE L'AFRIQUE DE L'OUEST

Directorate-General for Financial Stability and Inclusion
Directorate for Financial Stability

REVISED ANNEX TO THE CONVENTION GOVERNING THE WAMU BANKING COMMISSION

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Article 1: Legal Status

The Banking Commission is an organ of the West African Monetary Union (WAMU).

**TITLE ONE
ORGANIZATION AND FUNCTIONING**

Chapter One - Organization**Article 2: Responsibilities of the Banking Commission**

Pursuant to its mandate defined in Article 1 of the Convention, the Banking Commission shall be responsible for ensuring the soundness and security of the WAMU banking system, in particular through the supervision of the institutions under its jurisdiction and the resolution of banking crises. It shall ensure the protection of depositors and contribute to maintaining the stability of the regional financial system.

Article 3: Composition of the Banking Commission

The Banking Commission shall comprise two decision-making bodies:

- a Supervisory College, and
- a Resolution College.

The Banking Commission shall also have a Secretariat.

Article 4: Remit and Composition of the Supervisory College**4.1. Remit of the Supervisory College**

Except where otherwise stipulated, the powers vested in the Banking Commission shall be exercised by the Supervisory College.

The Supervisory College shall be responsible for:

- (a) granting its approval to applications submitted to it for accreditation and various authorizations and exemptions;
- (b) ensuring, on an ongoing basis, that the regulated institutions are in compliance with the legal and regulatory provisions applicable to their operations. Within this framework, it shall implement a process of prudential control and evaluation, the details of which shall be set out in circulars issued by the Banking Commission;
- (c) monitoring and evaluating events that may have negative consequences for the soundness of the Union's banking system. To this end, it shall conduct stress tests on the regulated institutions;
- (d) ensuring that the regulated institutions comply with their professional obligations arising from any other legislation applicable to them;
- (e) taking, in a timely manner, all administrative measures as well as all disciplinary or financial sanctions aiming to remedy any problems of security or soundness affecting a regulated institution; and

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- (f) managing relations with the competent supervisory authorities of the host and home countries of regulated institutions.

4.2. Composition of the Supervisory College

The Supervisory College shall be composed of:

1. the Governor of the Central Bank;
2. a representative designated or appointed by each WAMU Member State, namely the Director of the Public Treasury or the Head of the Directorate in charge of credit institutions;
3. a representative of the State guaranteeing the convertibility of the common currency; and
4. members appointed by the WAMU Council of Ministers, on nomination by the Governor of the Central Bank, for their competence in the banking, legal or financial fields or in any other field of expertise deemed to be consistent with the functions envisaged. Their number shall be equal to that of the members representing the States referred to in points 2 and 3.

The designation or appointment of the members referred to in points 2 and 3 above shall be notified to the Chairman of the Banking Commission by the competent national authority.

Article 5: Remit and Composition of the Resolution College

5.1. Remit of the Resolution College

The Resolution College Resolution shall ensure the development and implementation of measures for the prevention and resolution of banking crises.

The College shall be responsible, in particular, for:

- (a) contributing to the preservation of financial stability;
- (b) ensuring, in conjunction with the Supervisory College, the implementation of crisis prevention measures;
- (c) ensuring the implementation of crisis resolution measures;
- (d) ensuring the continuity of the activities, services and operations of institutions subject to a resolution procedure;
- (e) avoiding or limiting the need for public financial support; and
- (f) protecting the interests of depositors and creditors.

5.2. Composition of the Resolution College

The Resolution College shall be composed of the following four permanent members:

1. the Governor of the Central Bank;
2. the Representative, within the Supervisory College, of the State holding the Chairmanship of the Council of Ministers;
3. the Director of the WAMU Deposit Guarantee and Resolution Fund (FGDR); and
4. a member appointed by the WAMU Council of Ministers, on nomination by the Governor of the Central Bank, for their competence in the banking, legal or financial fields or in any other field of expertise deemed to be consistent with the functions envisaged.

When a regulated institution is subject to a resolution procedure, the Representative of the Supervisory College of the State where it is located shall be requested to participate in the proceedings as a non-permanent voting member.

Article 6: Chairmanship

The Governor of the Central Bank shall chair the Banking Commission. He shall be Chairman of both the Supervisory College and the Resolution College.

In the absence of the Governor, the Banking Commission shall be chaired by the Deputy Governor designated to serve in this capacity.

Article 7: Participation in Meetings of WAMU Bodies

The Chairman of the Banking Commission may attend meetings of the Conference of Heads of State and Government of the West African Monetary Union to express the opinion of the Commission on agenda items pertaining to the Commission.

He may also attend meetings of the Council of Ministers of WAMU in an advisory capacity.

Article 8: Terms of Office

The members of the Banking Commission designated by the WAMU Council of Ministers shall be appointed for a period of three years. Their term of office may be renewed twice.

Except in cases of resignation or death, the appointment of a member may only be terminated before the expiration of his or her term of office by decision of the WAMU Council of Ministers.

If a member is replaced before his or her term of office expires, his or her successor shall be appointed for the remainder of the term.

Article 9: Conflicts of Interest and Restrictions

During their term of office, the members of the Banking Commission may not hold any position or office, whether remunerated or not, in a regulated institution or in a professional association representing regulated institutions, nor provide services to such organizations.

Persons prohibited from running, administering or managing regulated institutions, or commercial, industrial, cooperative or craft enterprises in the territory of a WAMU Member State or in a third country may not be members of the Banking Commission.

Article 10: Confidentiality

The members of the Banking Commission and the individuals who contribute to its functioning shall be bound by professional secrecy. Professional secrecy may not be invoked against judicial authorities acting in the scope of criminal proceedings.

Article 11: Privileges and Immunities

The members of the Banking Commission shall enjoy the same privileges and immunities as the members of the Monetary Policy Committee of the Central Bank. In particular, they shall not be subject to any civil or criminal proceedings for any action carried out in the performance of their duties.

However, their immunity may be waived, in the case of State representatives, by the Government of said State; in the case of members appointed by the Council of Ministers of WAMU, by said Council; in the case of the Chairman, by the Conference of Heads of State and Government and, for other members, in accordance with the legal provisions governing them.

Article 12: Secretariat of the Banking Commission

The Central Bank shall provide secretarial services and cover the operating expenses of the Banking Commission.

The secretariat of the Banking Commission is headed by a Secretary General, assisted by two Deputy Secretaries General, all of whom shall be appointed by the Governor from among the staff of the Central Bank.

The Secretary General shall attend the meetings of the Banking Commission in an advisory capacity. He may be assisted at meetings by any colleagues whose assistance he deems necessary.

In the event that the Secretary General is unable to attend, he shall be replaced by the Deputy Secretary General appointed to serve in that capacity.

Chapter II - Functioning

Article 13: Rules for Convening Meetings - Meeting Procedures - Decision Making

The Banking Commission shall meet when convened by its Chairman, upon his initiative or at the request of one third of its members.

The Banking Commission may hold meetings by videoconference or by other means of telecommunications allowing the participants to be identified and guaranteeing their effective participation as well as the conditions for maintaining the confidentiality of the proceedings.

In the event of an emergency established by the Chairman, the Banking Commission may, except in matters of sanctions, make decisions by written consultation. The procedures for validating members' opinions are defined in the rules of procedure of the Banking Commission.

The Chairman shall set the agenda for the meetings, including, where applicable, the matters set forth in the request referred to in paragraph one.

The Chairman may, with the agreement of the Banking Commission, invite personalities from outside the Commission to attend its meetings in an advisory capacity.

With the exception of the Chairman, the members of the Banking Commission may not give proxies or be represented.

Decisions are taken by a majority of the votes cast. In the event of a tie, the Chairman shall have the casting vote.

Article 14: Frequency of Meetings

The Supervisory College shall meet as often as necessary, and at least twice a year.

The Resolution College shall meet as often as necessary, and at least once a year.

Article 15: Sitting Allowances

The members of the Banking Commission shall receive a sitting allowance, the amount of which shall be determined by its Chairman, upon consultation with the Chairman of the WAMU Council of Ministers.

The sitting allowance shall be paid on condition of actual meeting attendance.

TITLE II SUPERVISION OF REGULATED INSTITUTIONS

Article 16: Definitions

For the purposes of this Annex, the following definitions shall apply:

(1) Supervision shall refer to all rules governing:

1-1. the general framework of supervision or control of regulated institutions relating to the following actions and operations:

- accreditation, withdrawal of accreditation, setting-up authorizations and withdrawal of setting-up authorizations of credit institutions;
- various authorizations;
- control procedures;
- measures and sanctions imposed in the context of the supervision of regulated institutions;
- provisional administration and liquidation of regulated institutions;

1-2. the specific framework of supervision on a consolidated basis applicable to a specific category of regulated institutions, under the conditions stipulated by a decision of the WAMU Council of Ministers and by the legal and regulatory instruments in force.

2°) Regulated institutions:

- credit institutions, including parent credit institutions, and financial companies;
- microfinance institutions subject to the control of the Banking Commission, by virtue of the law governing them;
- electronic money institutions; and
- any other entity subject to the control of the Banking Commission.

3°) Preventive recovery plan: a plan developed by a regulated institution to identify all of the measures that may be taken on the initiative of the said regulated institution to address a significant deterioration in its financial situation or that of the group to which it belongs. The plan must take account of the essential services provided by the institution to the economy, and particularly its critical functions, in order to ensure their continuity.

Chapter 1 - General Framework for the Supervision of Regulated Institutions

Section 1: Accreditation and Establishment Authorizations for Credit Institutions

Article 17: Accreditation

Accreditation of a credit institution on the territory of a WAMU Member State shall be decided by an order of the Minister of Finance, after obtaining the approval of the Banking Commission.

Applications for accreditation shall be examined by the Central Bank.

Accreditations granted by national authorities before the entry into force of these provisions shall remain valid.

When an application for accreditation is submitted by a foreign entity subject to the supervision of a supervisory authority in its country of origin, the Banking Commission shall seek a no objection opinion from the said authority.

Article 18: Establishment Authorizations

A credit institution that has received accreditation in a WAMU Member State and wishes to set up branches and/or subsidiaries that may be eligible for such accreditation in one or more other Member States must, prior to setting up such branches and/or subsidiaries, notify its intention in the form of a declaration addressed to the Banking Commission, and submitted to the Central Bank.

The declaration of intent shall be reviewed by the Banking Commission.

The Banking Commission shall notify the applicant of its decision to authorize or refuse the establishment of a branch or subsidiary, after informing the Ministers of Finance of the home country and host country of the credit institution.

The decision to authorize or refuse establishment shall be notified within three months from the date of filing of the declaration of intent and the complete application file with the Central Bank.

Article 19: Licensing withdrawals

Withdrawal of the accreditation of a credit institution shall be pronounced:

1. by order of the Minister of Finance, following the approval of the Banking Commission, at the request of the credit institution or when it is found that the credit institution has not done business for at least one year; or
2. by the Banking Commission, in the framework of a disciplinary procedure, in accordance with the provisions of Article 31.

Article 20: Withdrawal of Establishment Authorizations

The Banking Commission may decide that the withdrawal of the accreditation of a parent credit institution entails the withdrawal of the authorization to set up its subsidiaries created in one or more WAMU Member States, taking into account their particular financial and legal connections and the consequences that may result from such withdrawal.

The Banking Commission shall, where appropriate, inform the Central Bank and the Minister of Finance of the State in which the subsidiary concerned is located of the decision to extend the withdrawal of the parent credit institution's accreditation to the subsidiary.

If a subsidiary wishes to continue operating, it must apply for accreditation in accordance with the conditions laid down by an instruction issued by the Central Bank.

The withdrawal of the accreditation of a credit institution shall automatically extend to its branches located in other WAMU Member States.

Section 2: Modalities of Supervision**Article 21: Supervision of Regulated Institutions**

The Banking Commission shall perform or arrange for the performance, in particular by the Central Bank, of off-site and on-site controls of regulated institutions, on a corporate or consolidated basis, in order to ensure their compliance with the provisions applicable to them.

It shall define the frequency and scope of controls and assessments of regulated institutions, taking into account in particular their size, corporate structure, risk profile, the nature and complexity of their operations and their systemic importance.

The Banking Commission shall continuously monitor and assess, within the framework of off-site and on-site supervision, the compliance of regulated institutions with the recommendations, supervisory measures or other supervisory decisions resulting from the findings of its controls.

The regulated institutions shall draw up and submit to the Banking Commission a preventive recovery plan which, in the event of a significant deterioration in their financial situation, shall include the measures envisaged to restore their financial equilibrium. The College of Supervision shall examine the preventive recovery plans submitted by the regulated institutions.

The Banking Commission may set different prudential standards for different regulated institutions.

Article 22: Closer supervision of systemically important banking institutions

The Banking Commission shall carry out tighter supervision on systemically important banking institutions. It shall set higher prudential requirements for these institutions.

Systemically important banking institutions are those whose failure, owing to their size, complexity, volume of business or systemic interconnection, could jeopardize the financial system and economy of the Union as a whole.

The Banking Commission shall periodically establish and publish a list of banking institutions of systemic importance at the national and regional levels, based on a methodology to be disseminated to the banking profession.

Article 23: Controls Initiated by the Central Bank

The Central Bank may also carry out the controls referred to in Articles 21 and 22 on its own initiative. It shall notify the Banking Commission of all on-site inspections.

The Central Bank shall report to the Banking Commission on the findings of such controls or inspections. It shall also inform the Banking Commission of any violations of banking regulations or other legislation applicable to the regulated institutions, of any breaches of the rules of good conduct of the banking profession, and of any other irregularities in the management of the regulated institutions of which it is aware.

Article 24: Interview Procedure

In order to fulfil its control mission, the Banking Commission may simply interview the managers of the regulated institution or any person whose assistance may prove useful.

Article 25: Compulsory Provision of Information

Regulated institutions must provide, upon any request from the Banking Commission, and in the specified time and format, all documents, information, clarifications and justifications necessary for the performance of its duties.

At the request of the Banking Commission, the statutory auditor of a regulated institution shall submit to it, within the deadlines and in the format specified, all reports, documents and other items, as well as any information required for the performance of its duties.

Article 26: Professional Secrecy

Professional secrecy may not be invoked against the Banking Commission.

Article 27: Reporting of the Findings of On-Site Controls

The findings of on-site controls shall be reported by the Banking Commission to the Minister of Finance of the State concerned, the Central Bank and the board of directors of the institution concerned or the body acting in its place.

The conclusions of on-site controls may be reported to other supervisors on the basis of the provisions of Articles 59, 60 and 61, as well as to the auditors of the regulated institutions.

Article 28: Compulsory Reporting of Information Relating to Criminal Offences

In the event that the Banking Commission discovers a criminal offense, it shall inform the competent judicial authorities, the Minister of Finance of the State concerned and the Central Bank.

Section 3: Measures and Sanctions Imposed in the Framework of the Supervision of Regulated Institutions**Article 29: Administrative Measures**

Where the Banking Commission finds that a reporting institution has failed to comply with the rules of good conduct of the profession, compromised its financial equilibrium or practiced irregular management or no longer meets the conditions required for accreditation or authorization to operate, as the case may be, the Banking Commission may, after informing the Minister of Finance of the State concerned, serve the regulated institution with:

- a warning, or
- an order to take or implement, within a specified deadline, the necessary corrective measures or any appropriate protective measures.

29.1. Corrective Measures

Among other corrective measures, the Banking Commission may:

- set capital requirements in excess of the regulatory targets defined in the prudential framework, based on the risk profile of the regulated institution;
- impose liquidity requirements tailored to the specific situation of an institution;
- order the reinforcement of governance, risk management and internal control systems;
- in case of non-compliance with prudential standards, require the submission of a plan to restore compliance, with a detailed timetable;
- order the immediate constitution of additional provisions on the assets of a regulated institution; and
- require shareholders to strengthen their capital base.

29.2. Protective Measures

Among other protective measures, the Banking Commission may:

- order the divestiture of any business operation that could compromise the financial soundness of a regulated institution;
- suspend all or part of the rights of shareholders;
- limit or prohibit discretionary distribution of funds, particularly dividends to shareholders, remuneration of members' shares to members and incentive payments;
- order the partial or total allocation of profits for the fiscal year to the capital of the company;

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- suspend, restrict or temporarily prohibit the free disposal of all or part of the assets; and
 - require the implementation of the preventive recovery plan provided for in Article 21.

29.3. Other Measures

The Banking Commission may also:

- oppose the appointment of a candidate to the decision-making and executive bodies of a regulated institution;
- ask an external auditor to carry out, at the expense of the regulated institution, any special audit that it considers necessary in the interest of the depositors, creditors and shareholders, and to produce a report;
- place any regulated entity under close supervision, with a view to closely monitoring the implementation of the terms of an injunction or its recommendations; and
- take any other administrative action it deems necessary when the safety or soundness of a reporting institution or the banking system is at stake.

Article 30: Binding Force of Administrative Measures

Administrative measures shall be binding.

A regulated institution that has not complied with an administrative measure of the Banking Commission shall be deemed to have violated the regulations in force.

Article 31: Disciplinary Sanctions and Financial Penalties

31.1. Disciplinary Sanctions

When the Banking Commission becomes aware of an infringement of banking regulations or any other legislation applicable to credit institutions, financial companies, microfinance institutions, electronic money institutions or any other entity subject to its supervision on the territory of a Member State, it shall inform the Minister of Finance of the said State and, without prejudice to any criminal or other penalties incurred, shall impose one or more of the following disciplinary penalties:

- 1) a warning;
- 2) a reprimand;
- 3) total or partial suspension or prohibition of operations;
- 4) any other limitation in the exercise of the profession;
- 5) suspension or compulsory resignation of the senior managers responsible;
- 6) prohibiting the persons responsible from directing, administering or managing any institution subject to its supervision or any of its agencies. Depending on the seriousness of the offence committed, such a prohibition may be permanent or limited in time. The prohibition may be pronounced even after the above-mentioned persons have been removed from office;

7) withdrawal of accreditation or establishment authorization.

31.2. Financial Penalties

In addition to the disciplinary sanctions referred to in the foregoing paragraph, the Banking Commission may impose financial penalties, the amount of which shall be determined by an instruction issued by the Central Bank. The corresponding sums shall be collected by the Central Bank.

Article 32: Inter Partes Procedures

No disciplinary sanction may be pronounced by the Banking Commission without the interested party, whether a natural person or a legal entity, having been heard or duly summoned or invited to present their written submissions to the Banking Commission. The interested party may be assisted by a representative of the Professional Association of Banks and Financial Institutions, the Professional Association of Microfinance Institutions or any other counsel of its choice. Such counsel shall be bound by professional secrecy.

Article 33: Public Disclosure of Disciplinary Sanctions

Disciplinary sanctions imposed by the WAMU Banking Commission may be made public in newspapers or media that it shall designate. All publication costs shall be borne by the regulated institution concerned. Publication terms and conditions shall be specified by a circular of the Banking Commission.

Section 4: Provisional Administration and Liquidation of Regulated Institutions

Article 34: Provisional Administration

The Banking Commission may decide to place a regulated institution under provisional administration in the following cases:

1. at the request of the executive management, when they consider that they are no longer in a position to carry out their duties properly;
2. when the Banking Commission determines that the institution can no longer be managed under normal conditions; or
3. when it has ordered the suspension or resignation of managers responsible for an infringement of banking regulations.

The Banking Commission shall notify its decision to the Minister of Finance of the State concerned, who shall appoint a provisional administrator with all the powers necessary for the administration, management and stewardship of the regulated institution concerned.

The provisional administrator shall be appointed within a maximum period of seven calendar days from the date on which the Minister of Finance receives the said decision, from a list drawn up for this purpose by the Banking Commission.

The same procedure shall be followed for the extension of the mandate of a provisional administrator or to lift the provisional measure.

Article 35: Liquidation

The Banking Commission may decide to order the liquidation of a regulated institution or a business that is illegally operating as a regulated institution. It shall notify its decision to the Minister of Finance of the State concerned, who shall appoint a liquidator for the institution or other business concerned.

The liquidation of a regulated institution shall be subject, where applicable, to the prior withdrawal of its accreditation.

A liquidator shall be appointed, within a maximum of seven calendar days from the date of receipt of the said decision by the Minister of Finance, from a list drawn up for the purpose by the Banking Commission.

The same procedure shall be followed for the extension of the mandate of the liquidator.

Chapter II: Specific Framework for Supervision on a Consolidated Basis**Article 36: Entities Subject to Supervision on a Consolidated Basis**

The following entities shall be subject to supervision on a consolidated basis:

- parent credit institutions; and
- financial holding companies and intermediary financial holding companies established in the Union.

Credit institutions, per the definition of the uniform act on banking regulation, which are not controlled by a credit institution or financial company and have at least one subsidiary that is another credit institution shall be considered to be parent credit institutions.

Companies whose principal activity is to acquire and manage financial holdings and which, either directly or through other companies having the same corporate purpose, control one or more companies carrying out transactions of a financial nature of which at least one is a credit institution shall be considered to be financial companies.

Article 37: Implementation of Supervision on a Consolidated Basis

The Banking Commission shall carry out supervision on a consolidated basis under the conditions stipulated by decision of the WAMU Council of Ministers and by the legislation and regulations in force.

Article 38: List of Financial Companies

The Banking Commission shall draw up and publish, annually, a list of financial companies which it supervises on a consolidated basis.

Chapter III - Other Powers**Article 39: Approval of Statutory Auditors**

No auditor may be appointed to the position of statutory auditor of a regulated institution, without prior approval from the Banking Commission. The approval procedure shall be decided by the Banking Commission.

The approval may be reported by the Banking Commission.

Article 40: Binding Notices

The Banking Commission must be consulted, and its consent obtained, in cases provided for by the banking regulation of the Member States of the Union.

Chapter IV - Acts and Measures of the Banking Commission

Article 41: Justification and notification of acts and measures

Justifications must be provided for all orders, decisions and opinions handed down by the Banking Commission.

The decisions of the Banking Commission shall be enforceable *ipso jure* on the territory of all WAMU Member States as from their notification. They shall be notified to the interested parties and communicated to the competent authorities by the Banking Commission.

However, the decision to withdraw an accreditation or establishment authorization, pursuant to Article 31 on disciplinary sanctions and financial penalties, shall be communicated to the Minister of Finance of the State concerned, who must, within seven calendar days of such communication, inform the interested party of the decision by ministerial order.

Approvals issued by the Banking Commission shall be notified to the Minister of Finance of the State concerned.

Article 42: Implementation of Binding Notices and Decisions of the Banking Commission

The Minister of Finance of the State concerned shall, within thirty calendar days, undertake and notify concerned regulated institutions of all regulatory acts required by the binding notices of the Banking Commission.

Decisions to withdraw accreditation or establishment authorizations must, however, be made known to the interested parties within seven calendar days as stipulated by Article 41.

The abovementioned periods shall run from the date on which the Minister of Finance receives the said decisions or approvals.

Failing appropriate action by the Minister of Finance of the State concerned at the end of the deadlines established in paragraphs one and two:

1. the decisions of the Banking Commission shall be legally enforceable and notified by it; and
2. the content of binding decisions shall be made known to the interested parties by the Banking Commission and shall become enforceable.

Article 43: Appeals against Decisions of the Banking Commission

The decisions of the Banking Commission may be appealed only before the Council of Ministers of the Union.

Appeals must be lodged by the interested party, who may be an individual or a legal entity, within two months from the date of notification of the decision.

However, in cases such as provided in paragraph three of Article 41, no appeals may be lodged against decisions to withdraw accreditation or establishment authorization, after notification by the Minister of Finance of the State where the decision is enforceable or by the Banking Commission.

No appeals may be lodged against decisions to place a business under provisional administration or under liquidation, following the appointment of a provisional administrator or liquidator by the Minister of Finance of the country where the decisions are enforceable.

Neither time limits for appeal nor actual appeals shall have suspensive effect.

All decisions of the Council of Ministers of the Union shall be enforceable *ipso jure* on the territory of all of the member States. They shall be made known to the interested parties and communicated to the competent authorities by the Chairman of the Council of Ministers of the Union.

Article 44: Arbitration

Where the assent of the Banking Commission is required, the national authorities shall, should they disagree with the opinion of the Banking Commission, submit the issue to the Council of Ministers of the Union for arbitration. The Chairman of the Banking Commission shall table the observations of the Commission before the Council of Ministers.

TITLE III RESOLUTION OF BANKING CRISES

Article 45: Definitions

For the purposes of this Annex, the following definitions shall apply:

1°) “Resolution” shall refer to the set of rules governing banking crisis prevention and management mechanisms;

2°) “Institutions subject to the resolution mechanism” shall refer to banking institutions of systemic importance to the Union, as defined by the provisions of this Annex, and their affected subsidiaries. The resolution mechanism shall be extended to any other credit institution, financial company, microfinance institution, market infrastructure or any entity subject to the control the Banking Commission in a Member State, whose failure could have a significant negative impact on financial stability or the economy of one or several Member States of the Union;

3°) “Resolution plan” shall refer to a plan developed by the Resolution College, setting out the measures the latter may take to address the failure of the regulated institution concerned, based on the information provided by the said institution.

The conditions and procedures for the implementation of the provisions stipulated in this Title shall be defined in a circular of the Banking Commission.

Chapter 1 - General Framework for Resolution for Regulated Institutions

Article 46: Rules of Resolution

The powers mentioned in this section shall be exercised by the Resolution College.

Article 47: Conflict Rule

The regulations in force in each Member State of the Union shall apply to regulated institutions in recovery or resolution, subject to the provisions of this Title.

Article 48: Dispensation from Authorization

Within the framework of a resolution procedure, the Resolution College shall be dispensed from seeking the authorization or approval of any public authority required for the planned operation.

Chapter II - Banking Crisis Prevention Mechanism

Article 49: Preventive Recovery Plan

The preventive recovery plans of institutions subject to the resolution mechanism, duly validated by the Supervisory College, shall be submitted by the latter to the Resolution College.

Article 50: Resolution Plan

The resolution plans drawn up by the Resolution College for the institutions referred to in Article 45 must include rules for the implementation of the measures referred to in Article 53.

The resolution plans shall be updated on a regular basis to take account of changes in the situation of each institution.

Article 51: Additional Requirements of the Banking Commission

The Supervisory College may require institutions referred to in Article 45 to take the necessary steps to implement the preventive recovery plans and resolution plans respectively provided for under Articles 49 and 50.

Chapter III - Banking Crisis Prevention Mechanism

Article 52: Entering Resolution

Upon request by the Supervisory College, the Resolution College may decide that any regulated institution deemed not to be viable and not to have prospects of returning to viability must enter resolution.

Article 53: Resolution Measures

The Resolution College may take all measures necessary for the performance of its duties, including:

1. requiring any regulated institution, its management, its corporate officers, its statutory auditors or its employees to provide any information that may be useful in the implementation of the resolution procedure;

2. appointing a special administrator in charge of implementing resolution measures and executing the decisions of the Resolution Authority. Any stipulation in the contractual relations of the institution whereby such an appointment is considered to be a default event, shall be deemed unwritten;
3. revoking or replacing any member of the management whose responsibility with respect to the situation of the institution is proven;
4. deciding the automatic transfer of all or part of one or more of the areas of business of the institution;
5. determining whether a relay institution shall temporarily receive all or part of the assets, rights and obligations of the institution under resolution, with a view to disposal under the conditions established by the Banking Commission;
6. transferring the shares or partnership shares issued by the institution to a relay institution or any other body;
7. requesting the intervention of the deposit guarantee and resolution fund (FGDR), in keeping with the provisions in force;
8. ordering a reduction of the capital, the cancellation of capital securities or liabilities, or the conversion of liabilities;
9. ordering the institution to issue new shares or partnership shares or other equity instruments, including preferred shares or contingent convertible securities;
10. notwithstanding any provision or stipulation to the contrary, issuing a temporary prohibition on the payment of all or any portion of debts originating prior to the date of entering resolution;
11. temporarily limiting or prohibiting the institution from performing specific transactions;
12. limiting or prohibiting the distribution of dividends to shareholders or remuneration of company shares to shareholders in the institution;
13. deciding to terminate agreements containing financial obligations for the institution or offsetting of debts and claims pertaining to the said agreements; or
14. suspending the right to close-out netting and the rights of termination and offsetting provided under item 13 above, for all or part of a contract signed with the institution.

Article 54: Compensation of Creditors

When a resolution procedure culminates in the liquidation of an institution, the Resolution College may decide to grant compensation to the creditors of the institution in resolution, where the former do not receive, at minimum, the amount they would otherwise have received if the institution had been liquidated according to the liquidation procedure in force.

Article 55: Information of national authorities

The Chair of the Banking Commission shall inform the Minister or Ministers of Finance concerned of the implementation of resolution measures.

Article 56: Emergency Situation

In the event of an emergency, the Resolution College may temporarily implement the resolution measures referred to in Article 53 without an *inter partes* procedure.

An *inter partes* procedure may be conducted for regularization purposes on the lifting, revision or confirmation of the said measures.

Article 57: Annulment of a Decision of the Resolution College

The annulment of a decision of the Resolution College, following an appeal under Article 43, shall not affect the validity of the acts taken for its enforcement when their overturning could compromise the interests of third parties, except in cases where fraud has been committed by the latter.

Chapter IV - Interventions by Deposit Guarantee and Resolution Funds**Article 58: Intervention Procedures**

With regard to the funding of resolution actions, the deposit guarantee and resolution fund (FGDR) shall intervene at the request of the Resolution College,

Requests may only be made to the deposit guarantee and resolution fund (FGDR) after all private financing options have been exhausted.

TITLE IV**COOPERATION BETWEEN SUPERVISORY AND RESOLUTION AUTHORITIES****Article 59: Cooperation Agreements**

The Banking Commission may sign cooperation agreements on supervision and resolution with any competent authority.

Article 60: Information Sharing

The Banking Commission may provide information on the situation of a regulated institution to another supervisory or resolution authority, subject to reciprocity and confidentiality.

Article 61: College of Supervisors

The Banking Commission shall be empowered to form a college of supervisors with other supervisory authorities for each holding financial company and parent credit institution doing significant international business.

The Banking Commission may also participate, as a host supervisory authority, in a college of supervisors of foreign groups, by invitation of their home supervisory authority.

Article 62: Crisis Management Committee

The Banking Commission shall be empowered to set up, when required, a crisis management committee for institutions subject to the resolution mechanism.

The Banking Commission may also participate, as a host supervisory authority, in crisis management committees for foreign groups, by invitation of their home resolution authority.

TITLE V
MISCELLANEOUS AND FINAL PROVISIONS

Article 63: Territorial Jurisdiction

The Banking Commission shall exercise the powers provided under this Annex on the territory of all Member States of the Monetary Union.

Article 64: Delegation of Authority

The Banking Commission may delegate to its Chairman the powers provided under articles 18, 21 in its final paragraph, 29, 34, 35, 39, 40 and 42.

The Chairman of the Banking Commission may, with the consent of the Banking Commission, sub-delegate such powers to their colleagues.

Article 65: Delegation of Supervisory Responsibilities

The Banking Commission may delegate such supervisory responsibilities as it deems appropriate to other competent supervisory authorities.

Article 66: Role of National Authorities

The administrative and judicial authorities of the Member States of the Union shall provide their assistance in respect of the execution of the mandate and decisions of the Banking Commission.

Article 67: Right of Evocation

The Chairman of the Banking Commission may bring before the WAMU Council of Ministers, for consideration, any decision or refusal to take action by the national authorities, pertaining to banking practices, that is not in line with conventional, legislative or regulatory provisions, or which the Chairman views as contrary to the interests of the Union.

Article 68: Rules of Procedure

The Banking Commission shall adopt its rules of procedure, which shall notably establish the quorum required for its deliberations to be valid.

Article 69: Annual Report

The Banking Commission shall prepare, at least once a year, a report on the performance of its duties, to be submitted to the Central Bank and the organs of the Union.

Article 70: Archives

The archives of the Banking Commission shall be inviolable.

Article 71: Implementing Instruments

Central Bank instructions and Banking Commission circulars shall stipulate, where necessary, the implementing procedures for the provisions of this Annex.
