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HARMONIZATION OF BANKING REGULATION AND SUPERVISION FRAMEWORKS IN THE ECOWAS REGION/SUB-REGION: EXAMINING THE EUROPEAN UNION HARMONIZATION MODEL FOR APPLICABLE LESSONS

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ABSTRACT

Cross-border banking has been increasing in West Africa since the 1990s. Given the low level of regional financial integration, this trend should lead to a convergence in the banking regulatory and supervisory frameworks in the region. 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.

The European Union (EU) offers a unique experience of financial regulatory and supervisory integration, completing various other European integration efforts following the second World War. This research finds that the harmonization of financial services regulation and supervision frameworks in the EU was largely achieved through the famous "Lamfalussy Framework," which led to the development of the single rule book using maximum harmonization principle and the establishment of the banking union after the introduction of the single currency. Additionally, prior to the introduction of the single currency, the EU adopted minimum harmonization, mutual recognition, and home country control principles in the development of the single market in financial services.

The paper examines the EU harmonization experiences of financial services regulation and supervision frameworks with a view of drawing key lessons for the ECOWAS financial services regulation and supervision harmonization efforts in order to ensure regional financial stability in the face of the rise of cross-border banks in ECOWAS as the region moves towards the achievement of the single currency. Additionally, it presents an outlook of the current harmonization status of banking regulation and supervision frameworks in WAMZ and WAMU countries as well as Cape Verde.

Moreover, the outlook of the current banking regulation and supervision frameworks in ECOWAS region reveals centralization in the WAMU countries and decentralization in the WAMZ countries and Cape Verde in terms of banking regulatory and supervisory frameworks. Therefore, the need to harmonize banking regulation and supervision frameworks in both WAMU and WAMZ countries at the ECOWAS level learning from the EU harmonization experiences cannot be overemphasized.

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1. INTRODUCTION

The European Union (EU) offers a unique experience of financial integration among sovereign countries, including regulatory and institutional integration of financial services. Financial integration of European economies started with growing trade integration, various financial regulatory initiatives from the late 1970s, and the scrapping of capital controls by participating European nations from the late 1980s. While financial integration made progress, financial supervisory and regulatory institutions remained national, with limited efforts to cooperate and share information. Even monetary unification in 1999 was not accompanied by the establishment of supranational institutions for financial supervision and resolution, even though there was a clear logic for it (Folkerts-Landau and Garber, 1992; Schoenmaker, 1997).

Although there is a common banking law for the Francophone states of West Africa, which provides the regulatory framework for banks, and a proposed Model Banking Act for the Anglophone states, there is currently no ECOWAS-wide regional law regulating the operation of cross-border banks. As such, there is a need to institute such a regional framework. This is why the harmonization of the banking regulation and supervision framework in the ECOWAS region is an important activity under the ECOWAS Roadmap for the Launch of the ECO (2022-2027). All of this underscores the need for regional banking rules that are enforceable against national supervisory authorities and failure to implement would attract the necessary sanctions from the regional supervisory body. The design of the ECOWAS-wide banking regulatory and supervisory regime should largely draw from the European Union (EU) experience - both before and after the introduction of the Eco. That way, it would benefit from the successes and avoid the pitfalls of the EU's experience in building a robust banking regulatory and supervisory framework.

The objectives of this paper are to examine the evolution of EU banking regulatory and supervisory harmonization, assess its strengths and weaknesses, draw key lessons for the ECOWAS banking regulatory and supervisory harmonization, and to highlight ways in which ECOWAS banking regulatory and supervisory harmonization could be strengthened and/or improved upon. While the focus of this paper is on the EU's banking supervisory and regulatory harmonization experience, it must be put into the broader context of various regulatory harmonization initiatives that were intended to make European financial institutions (specifically banks) and markets more stable, resilient, and supportive of economic growth and development.

This paper is divided into six (6) sections. Section 2 reviews the harmonization status of banking regulatory and supervisory frameworks in ECOWAS region (WAMU and WAMZ blocs). Section 3 examines the evolution of EU harmonization experience in banking regulation and supervision frameworks. Section 4 highlights the lessons that could be drawn from the EU harmonization experience for the ECOWAS-wide harmonization efforts of banking regulation and supervision frameworks. Section 5 presents the conclusion and recommendations of the paper for possible consideration.

2. HARMONIZATION STATUS OF BANKING REGULATION AND SUPERVISION FRAMEWORKS IN WAMU AND WAMZ REGIONS

2.1 WAMU Framework for Banking Regulation and Supervision

The WAMU banking regulatory framework is provided for by the WAMU Treaty, the BCEAO Statute and the WAMU Banking Commission Convention. Article 17 of the West African Monetary Union (WAMU) Treaty provided that WAMU 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 Article 30 of the BCEAO Statute and Article 1 of the WAMU Banking Commission Convention. Their joint supervisory functions are articulated in Articles 13, 14, 16, 18, 23, 25 and 26 of the Annex to the WAMU Banking Commission Convention. Hence, the BCEAO and the WAMU Banking Commission jointly share banking supervisory functions. However, under Article 31 of the Annex to 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.

Articles 17 and 18 of the WAMU Treaty also provided for the Central Bank for West African States (BCEAO), which had the responsibility under Article 30 of the BCEAO Statute and Article 22 of the WAMU Treaty to ensure the application of the common banking law in member states. Hence, the framework for banking regulation and supervision in WAMU takes on a regional and centralized approach. Banking regulation is harmonized in the WAMU Banking Law and the BCEAO and the Banking Commission conduct supervision. The Council of Ministers of the Union decided, in its ordinary session of September 17th 2007, to raise the minimum share capital applicable to banks and financial institutions of the West African Monetary Union (WAMU) to 10 billion and 3 billion respectively. The minimum share capital is raised, in a first phase, to 5 billion for banks and 1 billion for financial institutions, as of January 1, 2008. Banks and financial institutions in activity must comply with these new thresholds at most late December 31, 2010.

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 to 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 WAMU banking regulatory framework that needs strengthening are the rules on risk concentration and provisioning of non-performing loans.

The device, adopted by the Council of Ministers of WAMU during its session of June 24, 2016, aims to set the new prudential rules applicable to banks, financial institutions of a banking nature and to financial companies operating in the Union. This system is based on the rules of Basel II and Basel III. It aims to promote the preservation of a banking system, solid and resilient, meeting the needs of economies States of the WAMU, and which presents a controlled risk profile. This convergence of prudential system towards international standards is part of the pursuit of implementation of the guidelines defined by the highest authorities of the Union within the framework of institutional reform of WAMU and BCEAO. Finally, it should be noted that bank holding companies in WAMU are subject to appropriate banking regulations and consolidated supervision.

2.2 WAMU Bank Resolution Framework

Bank resolution framework in WAMU is decentralized 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. Despite

the fact that the WAMU banking supervisory framework takes on a centralized approach and is closer in design to the newly centralized approach adopted under the European Banking Union (EBU), no single bank resolution regime exists within WAMU. The importance of a Bank Resolution Framework will streamline the process of managing a failing bank in order not to prolong the negative effects of the institution on the financial system. In addition, it also leads to prompt settlement of depositors and creditors and encourage private sector involvement in the resolution of failing institutions.

In its report number 21/49 of March 2021, the IMF suggests that to ensure that unsustainable banks can be subject to early intervention and resolution, it will be essential to make the mechanism bank resolution fully operational in 2021, as planned by the authorities. The directors urge authorities to closely monitor the microfinance sector and strengthen the control of the fight against money laundering and the financing of terrorism.

2.3 WAMU Deposit Insurance Framework

WAMU has a deposit insurance fund and a financial stability fund in place. 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 WAMU, 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).

2.4 WAMZ Framework for Banking Regulation and Supervision

The WAMZ framework for banking supervision is provided from the West African Central Bank Statute. In the first provision referring to the topic in Article 8(1) (vii) of the West African Central Bank (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 National Central Banks (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‟.

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 (Vol. 17 No.2 Journal of Monetary and Economic Integration) the inception of the WACB until the full operation of the proposed centralized regulatory and supervisory body - the West African Financial and Supervisory Authority (WAFSA).

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 decentralized and under the control of the domestic supervisory authorities in Member States - much like the EU pre-crisis framework. 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.

2.5 WAMZ 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.

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).

2.6 WAMZ 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 scheme (Ghana is in the process of establishing this too) other states within WAMZ operate an implicit deposit insurance scheme. However, it is a requirement to harmonize the deposit insurance frameworks under the ECOWAS Roadmap for the Launch of the ECO. As such, it would be a challenge harmonizing / devising a regional deposit insurance framework around WAMZ states.

2.7 Cape Verde Framework for Banking Regulation and Supervision

The Central Bank of Cape Verde regulates and supervises financial institutions including banks in Cape Verde. Its power is inherited from the Basic Law of the Financial System (LBSF) – Law 61/VIII/2014, Law on Activities and Financial Institutions (LAIF) – Law 62/VIII/2014, and Supervision Exercise – Notice 2/2014. It conducts macro and micro prudential supervision as well as other financial services of financial sector institutions. Macroprudential Supervision focuses on the financial system as a whole and its main function is to limit financial instability risks and the resulting losses. Micro prudential Supervision aims to ensure the solvency and financial soundness of each financial institution individually, integrated in the respective consolidation perimeter, as well as each financial market, thereby ensuring the stability and efficient functioning of the financial system. With this, it appears that the regulation and supervision of financial services institutions in Cape Verde conform to some set of international standards and practices as enshrined in the Basel Core Principles for effective banking supervision and Basel I, II, and III prudential requirements.

1.7 Cape Verde Deposit Guarantee Framework

The bill that created the Deposit Guarantee Fund, in Cape Verde, was unanimously passed in Parliament on October 26, 2016. Initiated by Banco de Cabo Verde (BCV) as part of the Financial System Basic Law, the bill was presented by the Government. The Deposit Guarantee Fund aims to protect depositors within the banking system up to the limits established by law, contribute to maintaining financial system stability, and mitigate the effects of a potential banking crisis. The purpose of the Fund is to reimburse guaranteed deposits made at participating institutions where: an intervention was decreed or a participating institution was extrajudicially liquidated and BCV has recognized that a participating institution is bankrupt. As for the guarantee limits, the Fund guarantees the reimbursement, by bank, of the overall cash balances of each deposit holder, up to the limit of Cape Verdean Escudo (CVE) 1,000,000. The Fund is autonomous in terms of assets and works within Banco de Cabo Verde, which provides the technical and administrative services essential to its operation.

3.0 EVOLUTION OF EU HARMONIZATION EXPERIENCE IN BANKING REGULATION AND SUPERVISION FRAMEWORKS

3.1 The Pre-Crisis Financial Landscape in Europe (Before Introduction of Single Currency)

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 harmonization, and home country control. The three principles were subsequently enshrined in harmonization legislation in a number of areas, including financial services. The internal market was to be based on minimum harmonization of national regulatory systems and mutual recognition through which member states would recognize 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. 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 was 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 of 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 banks' 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 2019-2023 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 (Vol. 17 No.2 Journal of Monetary and Economic Integration) 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 banks.

3.2 The Lamfalussy Financial Regulatory and Supervisory Architecture in the European Union (Description, Successes, and Challenges)

While financial regulation and supervision remained exclusively with national authorities and fragmented in the European Union, the above framework was adopted to improve coordination, collaboration, and decision-making among the regional and national regulatory and supervisory authorities aimed at achieving financial regulation and supervision harmonization. In 2001, a high-level group headed by former central banker Alexandre Lamfalussy delivered a report (European Commission 2001) that provided the basis for the "Lamfalussy process," which was implemented in 2001 for securities and markets regulation and in 2004 for banking and insurance regulation and supervision. The objectives of the Lamfalussy process were to adapt financial regulation and supervision to allow a higher level of financial integration and to adapt it to market developments. Hence, the Council of the European Union agreed on the Lamfalussy framework to provide convergent regulation and supervision standards. The Lamfalussy process was put in place at the EU level to improve cooperation, convergence, harmonization or standardization of financial regulation and supervision. This framework involved four level of committees summarized as follows:

Level 1 committee comprises the European Parliament and Council (co-decision maker). It adopts financial framework legislation (directives/regulations) setting out the core principles defining implementing powers, without technical details as required by the EU regulation disciplines, after a

full and inclusive consultation process with the regulatory committees and the committees of supervisors.

Level 2 (Regulatory committees) comprises European Banking Committee (EBC), European Insurance and Operational Pensions Committee (EIOPC), and European Securities Committee (ESC), which were banking, insurance and pension funds, and securities market regulators at the EU level. It sets implementing measures with technical details following the adoption of financial directives/regulations and deal with political problems of directive design and implementation aimed at ensuring a high degree of harmonization and flexibility in the regulatory and supervisory framework. The Commission was advised on the technical preparation of the implementing measures by the relevant 'Level 3' committees.

The technical implementing measure was adopted by the Commission after a vote of the competent 'Level 2' regulatory committee (the European Securities Committee, the European Banking Committee or the European Insurance and Occupational Pensions Committee). Technical implementation measures were taken through EU regulations, which were directly applicable in members states and addressed to everyone.

Level 3 (Committee of National Supervisors) enhances regulatory and supervisory coordination, focused on a greater level of cooperation between national supervisors. It comprised Committee of European Banking Supervisors (CEBS), Committee of European Insurance and Occupational Pension Supervisors (CEIOPS), and Committee of European Securities Regulators (CESR). It provided technical advice for implementation at the national level and deals with 'transposition' of directives and Level 2 measures. The aim was to ensure common and uniform implementation by using, amongst others, common interpretative guidelines, which were non-binding. The Committee also aim to secure more effective cooperation between national supervisors and the convergence of supervisory practices. For example, the Committee of European Banking Supervisors not only promotes convergence of supervision, through peer review and exchange of information or expertise, but also undertakes mediation between cross-border banks and host supervisors. It also prepares notes and report to the Financial Services Committee and the Economic and Financial Committee of the Council.

Level 4 (Compliance and Enforcement Control) relates to the timely and correct transposition of EU legislation into national law and supervisory practices at the national level of the EU member states. The transposition and application of legislation has to be monitored and enforced by the Commission. Infringements can be brought before the European Court of Justice by the Commission.

These tangled arrangements highlight the hybrid role of the European Commission, which combines executive, legislative, political, and administrative features. Its role in the regulation of financial markets included preparation of EU legislative proposals for the European Parliament and Council, and participation in discussions about legislative proposals between EU member states, European institutions, and other relevant stakeholders.

3.2.1 Successes and Challenges of the Lamfalussy Framework

According to the European Commission's assessment report in 2004, the Lamfalussy process accelerated the passage of financial services legislation as four directives dealing with securities and

banking laws were enacted on average in 20 months as compared to earlier securities and banking directives whose time to enactment varied from 30 months to 9 years. Transparency and quality of legislations were also improved through consultation with industry participants prior to issuing a legislative proposal and using working documents to solicit comments from both the European Parliament and industry participants prior to submitting Level 2 legislation to the European Securities and Banking Committees.

Despite these successes of the Lamfalussy Framework, several impediments and issues were noted to be monitored over the next several years.

Capital Requirement Directives: In June 2004 the Basel Committee on Banking Supervision issued its final standard on capital requirements after several years of consultation and debate. The Revised Basel Accord sets forth several methods by which international banks can calculate required minimum capital levels. The standard takes a three-pillar approach, focusing on: (1) minimum capital levels using one of several acceptable calculation methods, (2) prudential supervision of the method chosen and (3) market discipline. The recent standard is a lengthy document of over 250 pages and describes in technical detail the different methods banks may use to calculate minimum capital levels. In order to reach an agreement among the members of the Basel Committee, the document includes over 100 national discretions – provisions allowing national regulators to vary from the text of the standard. The Committee of European Banking Supervision (CEBS) has identified 143 national discretions in the Revised Basel Accord. The Chair of the CEBS has stated that this number is too great for consistent implementation within the EU and that allowing this number of discretions would contradict the goal of creating a "level playing field." The CEBS has recommended deleting 23 of these national discretions from the proposed directive on capital requirements. Two major tasks of the CEBS will be advising the Commission on the text of the Level 2 directives in order to implement the Capital Requirements Directive consistently among the Member States, and reaching a consensus on decreasing the number of national discretions that will be applied to banks within the EU. One benchmark of the success of the Lamfalussy process in banking regulation will be the CEBS' ability to decrease the number of national discretions in the new capital requirements directive and in its related Level 2 legislation. This process was completed in 2006.

European Central Bank as Supervisor: Unlike other countries where the central banks not only set monetary policy but also have some degree of regulatory power over the banking industry, the European Central Bank by then had no prudential supervisory power over financial institutions in the EU. Some commentators question the wisdom of this lack of power and argue that this separation of monetary policymaking from financial regulatory policymaking creates an inherent systemic risk. The ECB has indicated that it welcomes greater cooperation between bank regulators and central banks, implying that the ECB is more suitable for macro-prudential supervision of the banking sector. In its official opinion on the directive creating the European Banking Committee and the Committee of European Banking Supervisors, the ECB stated, "close and effective cooperation between central banks and supervisory authorities is crucial for the promotion of financial stability." The expansionary tendency of the ECB thus adds a complicating variable to the financial services lawmaking process and the issue of inter-institutional balance.

Transposition of Directives by Member States Becoming a Bottleneck: Regardless of the ratification process or the likelihood of inter-institutional agreements, Member States must enact

national laws in compliance with a particular directive. Some Member States, however, have delayed enacting the relevant laws. The European Commission has the right to initiate infringement proceedings against Member States if they fail to act, but the Commission was hesitant to do so in the past because of a concern about harming its working relationship with a Member State.

Translation Delays: A more unusual issue became apparent, particularly after the enlargement and admission of ten new Member States to the EU in May 2004. Prior to expansion, the EU recognized ten official languages and translated all of its legislation and many of its official documents into those ten languages. Delays in translation were common but somewhat manageable. With the ten new Member States, though, the EU now recognizes twenty official languages. Translation bottlenecks were thus becoming a problem. The new capital requirements directive (Basel II), already agreed upon by the Council, was endorsed by the European Parliament because it has not yet been translated into all of the EU's official languages. Further, a directive on a new financial services committee structure was agreed upon in May 2004, but was not published in the Official Journal until March 2005. The delay was partly due to the translation of the directive into the twenty official languages. Some commentators have recommended that the working documents for financial services law be drafted only in English since English is by far the predominant language of financial markets. National governments, rather than the EU, would then be responsible for translating working documents into their respective official languages. Final legislation for Level 2 would continue to be translated into all official EU languages in order to comply with official legislation.

3.3 Development of EU Single Rulebook (Description, Successes, and Challenges)

The single rulebook is the backbone of the banking union and financial sector regulation in the EU. It consists of legal acts that all financial institutions (including banks) in the EU must comply with. The pillars of the single rulebook include: capital requirements regulations and directives for banks, deposit guarantee schemes, and bank recovery and resolution. The key objectives of the single rulebook are: to eliminate legislative and regulatory differences among member states, to ensure the same level of protection for consumers, and to ensure a level playing field for banks across the EU.

The term "Single Rule Book" was put forward in 2009 by the European Council in the context of the establishment of the European System of Financial Supervision (ESFS) that led to the creation of the European supervisory authorities (European Banking Authority ('EBA') in banking. A single rule book aims at bringing about a unified regulatory framework for the EU financial sector that would complete the single market in financial services. To bring about a "single rule book" in banking, the Commission and the co-legislators developed a three-pronged approach:

- Turning Directives into Regulations. Unlike Directives, a Regulation does not give rise to transposition into national law which may be a source of discrepancies across Member States. A regulation is directly applicable. In that respect, the European Parliament called in its 2017 and 2018 Banking Union reports on the Commission to use and prioritize Regulations in lieu of Directives;
- Further specifying EU banking legislation by regulatory and implementing standards developed by the European Banking Authority;
- Doing away with national options and discretions included in sectoral legislation.

Single Rule Book in banking is still not complete. There are still areas of banking legislation that are not unified (and certain areas cannot, for legal reasons, be fully covered by regulations). Banking legislation was broken down into the following three categories: (I) rules directly applicable; (ii) rules harmonized through directives transposed in national law and (iii) areas left to national competence. The scope of the Single Rule Book entails significant consequences on the way the Single Supervisory Mechanism performs supervision. While rules fully harmonized in the form of a Regulation, such as the CRR, are directly applicable by the SSM, the SSM shall apply national law - that may vary from one Member State to another - when implementing a Directive, such as the CRD. In addition, it must be noted that the single rulebook only partially harmonizes banking legislation that is left to national law in many areas.

3.3.1 Dealing with National Options and Discretions (NODs) – Challenges to Developing the EU Single Rulebook

Option refers to a situation in which competent authorities or Member States were given a choice on how to comply with a given provision selecting from a range of alternatives set forth in Community legislation. Discretion refers to a situation in which competent authorities or Member States were given a choice whether to apply or not to apply a given provision in EU Law.

In its October 2017 report on the Single Supervisory Mechanism (SSM), the Commission painted a nuanced picture of the way ECB dealt with national options and discretions: "In its start-up phase, the ECB has dedicated remarkable efforts to harmonizing the exercise of options and discretions. These efforts were successful and need to be praised, as the resulting harmonized rules on the exercise of options and discretions by competent authorities contributed to improving the level playing field in the euro area, for both Systemically Important Institutions (SIIs) and Least Systemically Important Institutions (LSIs). It was welcomed that the ECB does not take a broad-brush approach towards harmonization, but considers each option and discretion individually in the context of different starting points in the participating Member States and different needs characterizing the national banking sectors. It also appreciated that the ECB aims to achieve a level playing field by extending the harmonization exercise to the supervision of LSIs, whilst taking due account of proportionality. However, it is regrettable that for some options and discretions the goal of issuing a fully harmonized standard has not been reached, with the ECB accepting that different regimes coexisted.

3.3.2 Specific Issues

One purpose of the Capital Requirements Regulation (EU) 575/2013 (CRR) and the Capital Requirements Directive 2013/36/EU ('CRD IV package') was to address the issue of national options and discretions in prudential regulation inherited from the previous frameworks so as to achieve a "Single Rule Book" for all banks in the EU. However, the CRD IV package still contains a number of national options and discretions, over 150 according to the ECB assessment (See Explanatory Memorandum accompanying the public consultation on the draft Regulation and Guide of the European Central Bank on the exercise of options and discretions in Union law). Since the establishment of the Banking Union and the setting-up of the Single Supervisory Mechanism (SSM) such NODs appear even less justified in the euro area. As the ECB comprehensive assessment of November 2014 showed, there were very significant differences in the way the NODs were exercised across the euro area, in particular as regards the use of the transitional provisions of CRR/CRD IV

for the computation of common equity tier 1 (CET1) capital, with a material impact on the level playing field. According to the SSM explanatory memorandum, NODs may have material effects on the overall level of prudence of the framework and on the comparability of capital ratios that make it difficult for markets and the public to gauge the capital strength of banks. They also added a layer of complexity and costs which is particularly burdensome for firms operating across borders and leaves room for regulatory arbitrage. NODs can negatively affect the SSM's ability to supervise banks efficiently and from a truly single perspective.

3.3.3 Categorization of NODS: Five Dimensions

1. LEGAL BASIS: Directive or Regulation NODs can be enshrined in the Directive (CRD IV) or the regulation (CRR); NODs in the Directive can be transposed diversely by Member States which complicates the task of the SSM.

2. LEVEL OF DECISION: Member State or Competent Authority NODs can be available either to the Member State or to the supervisor (i.e., the 'competent authority'). The SSM has no competence over Member States NODs but can act on supervisory NODs in its capacity of competent authority in the Banking Union.

3. TIME HORIZON: Temporary or permanent while some NODs are permanent, other NODs are gradually phased-out. They reflect the intention to gradually implement the new capital requirements. The phasing-out pace may vary across Member States.

4. PERSPECTIVE: Macro- or micro-prudential Macro-prudential NODs concerns the level of the capital requirements (that may vary for financial stability purposes depending on the level of systemic risk in the country) while micro-prudential NODs rather relate to the definitions of the components of the capital ratio and thus the quality of capital.

5. SCOPE: Horizontal or case-by case NODs may apply to all banks ('horizontal') or be granted, upon request, to individual banks ('case-by case'). Typical instances of case-by-case NODs are the various waivers and derogations from the general rule.

Single Supervisory Mechanism (SSM) Action: If NODs are arguably a problem for the single supervisor, the SSM has also the means to foster a common approach in the Banking Union. The SSM can act when NODs are in the hands of the supervisor and its action is facilitated when these NODs are enshrined in the Regulation, which is directly applicable in the Member States. The majority of NODs in the CRR are granted only to competent authorities. These comprise the main provisions relating to capital adequacy and liquidity requirements, including waivers of application of prudential requirements on a solo basis. Thus, the majority of provisions considered material by the ECB (in order to carry out prudential supervision consistently across the Banking Union) are NODs on which it can directly act upon. At the end of 2015, the SSM launched a thorough work on NODs in order to harmonize the ones in its remit wherever possible, which led to the publication of an ECB Regulation and guide on 24 March 2016. The ECB Regulation entered into force on 1/10/2016. The ECB guide was a non-binding text, immediately applicable.

3.4 Harmonization Principles and/or Strategies

Discarding the initial idea that financial integration had to be attained through the harmonizing of all national regulations restraining trade in financial services and the compliance to common laws and policies, member states selected a more pragmatic approach embedded in the White Paper (1985) which set out a comprehensive program for the achievement of the single market by 1992. In this respect, the White Paper was regarded as a full framework for dealing the sequence of harmonization in banking services.

The new approach towards financial service integration rested on the well-known pillars of: a) minimum harmonization. The Commission adopted the principle of the "lowest common denominator", i.e., the minimum level of coordination and harmonization among national standards, necessary for a truly integrated internal market; b) mutual recognition. The principle states that, once minimum agreement has been reached on essential rules, each member state would have to recognize the validity of the rules applied in other countries; c) home country control. The principle charges each member state's supervisory authority with the responsibility of supervising national financial institutions, even when doing business in the territories of other member states.

These principles were used during the European single markets' operations and before the introduction of the single currency, single rule book, and banking union in EU. However, the single rulebook, which was developed after the introduction of the single currency in EU, was meant to achieve maximum harmonization of financial services standards. Maximum harmonization was a concept associated with moving rule-making fully to EU level by effectively taking away all implementing powers from Member States. It requires that Member States adopt the rule at face value, without the option to impose stricter rules. Such harmonization was used where the interest in maintaining strict uniformity outweighs Member States' interests in having regulatory choices and the ability to fine-tune EU-wide rules. In other words, where a regulatory approach is unanimously agreed-upon at the EU and Member State levels, maximum harmonization should be implemented. Of course, rules enacted with maximum harmonization must be tailored with the utmost detail to prevent any deviation and gold-plating.

3.5 The Establishment of EU Banking Union

The creation of the European Banking Union was intended to be an important instrument in enabling banks in distress to be resolved or restructured, without endangering financial market stability or burdening the tax-payer. Also, it intended to reduce the interdependence of banks and states that arose as a result of the bank rescue operations following the financial crisis of 2007-2009. The financial market crisis that originated in the US mortgage market had led to major losses among European banks which were themselves among the largest creditors of the US banks (Acharya and Schnabl, 2010; Borio and Disyatat, 2011; Lindner, 2013; Shin, 2012).

The European Banking Union, whose establishment was decided by the European heads of state and government in June 2012 (European Commission, 2014a), is an attempt to break the vicious circle between banks and states and resolve the conflict between financial market stability and taxpayer liability. In concrete terms, the banking union consists of the following three components: - a Single Resolution Mechanism (SRM) - a Single Supervisory Mechanism (SSM) - a Deposit Guarantee Scheme (DGS). The establishment of the Single Resolution Mechanism allows a bank to be completely or partly restructured and, if necessary, wound up, while maintaining central functions such as the

payments system and the security of the deposits. In addition, the existence of clear rules regarding the resolution mechanism agreed before a possible crisis minimizes the uncertainties surrounding the consequences of a bank getting into difficulties and thus protects the financial markets from uncertainty. In the event of losses that erode the bank's capital base, the cost of resolution will be supported by "bailing -in", so that the taxpayers do not have to bear the costs alone by bail-out mechanism. The bail-in is one of the concepts that envisages loss absorption and/or reconstruction of a failing entity's capital base by its shareholders and creditors. Consequently, the essence of the bail-in initiative is to be able to recapitalize the non-viable banks so that it can continue to provide banking services without bail-out with public funds. Since the GFC, there has been series of new international banking rules put in place to help reduce the risk of another financial crisis occurring and to make banks stronger so that it is less likely that a bank would fail and one of the measures that countries around the world are implementing is a bail-in regime. Bail-in, apart from avoiding taxpayers' exposure to loss assist in maintaining financial system stability particularly, with respect to Systemically Important Banks (SIBs).

By harmonizing supervision, it is hoped that ailing banks can be identified in good time and their difficulties can, if possible, thus be reduced by means of suitable preventative measures. A harmonized deposit guarantee scheme is intended to ensure that deposits up to a certain amount are protected from losses. Additionally, harmonization of the various mechanisms at European level is meant to contribute to preventing any uncertainty concerning the resolution of a troubled bank operating in different countries that could otherwise arise as a result of different national legal frameworks. Moreover, any interim aid needed is to be provided from common European funds which are to be established by the banks themselves. In this way, the public purse is no longer to be expected to bear the financial burden of possible bank rescues, thus making it possible to avoid the vicious circle of state solvency and bank solvency. Finally, the banking union builds on the higher capital requirements of Basel III. Those higher capital requirements are intended to reduce the likelihood of bank insolvencies.

3.5.1 The Single Supervisory Mechanism (SSM)

Under the SSM Regulation of October 2013, the ECB is vested with the necessary investigatory and supervisory powers to perform the following functions:

- Licensing/authorization of EMU based financial institutions (in cooperation with the National Competent Authorities (NCAs) (Articles 4 & 14 of the SSM Regulation);
- Monitoring compliance with capital, leverage and liquidity requirements (Articles 4 & 16 of the SSM Regulation);
- Conducting supervision of financial conglomerates (Articles. 4(1)(h) and Rec. 26);
- Early intervention measures (Prompt Corrective Action) when a bank breaches or risks breaching regulatory capital requirements by requiring banks to take remedial action (Art. 4(1)(I) and Rec. 27).

Under the Single Supervisory Mechanism (SSM), the European Central Bank (ECB) works together with the national supervisory authorities to constitute a single supervisory system responsible for supervision of all banks in the Euro-zone (Constancio, 2013). As the European Council (2012) decision states that the SSM will be composed of the ECB and national competent authorities, the

ECB is responsible for the overall functioning of the SSM. Under the proposals, the ECB have direct oversight of euro-zone banks, although in a differentiated way and in close cooperation with national supervisory authorities.

The ECB takes direct responsibility for the supervision of all banks headquartered in a Euro-zone Member State that have a certain size (assets in excess of €30 billion or above 20% of the Member State's GDP). Banks below this threshold remain the supervisory responsibility of the Member State in which the bank is headquartered. Based on this division of labor, the ECB directly supervises all (approximately 140) systemically important Euro-zone banks, accounting for approximately 80% of the aggregate assets of the Euro-zone banking system. NSAs supervise the remaining banks. But all supervision is done in accordance with policies and procedures set by the ECB and the ECB can decide to transfer to direct supervision any bank or group of banks that may be considered relevant or the origin of systemic risk" (Constancio, 2013).

In taking up these new responsibilities, the ECB, together with national supervisors and the Member States themselves, have to resolve a number of practical issues. These include (i) organizational issues, (ii) any entry conditions on banks that the ECB will impose, and, most importantly (iii) the approach that the ECB takes to supervision: whether it is rigorous or lax.

3.5.2 The Single Resolution Mechanism (SRM)

By providing common mechanisms to resolve banks, the Eurozone established by means of Regulation (EU) No 806/2014 (SRM Regulation), a single resolution mechanism (SRM), which governs the resolution of banks in the Eurozone and coordinates the application of resolution tools to banks. The resolution mechanism is aimed at safeguarding the continuity of essential banking operations, to protect depositors, client assets, and public funds, and to minimize risks to financial stability. This mechanism is more efficient than a network of national resolution authorities particularly in the case of cross-border failures, given the need for speed and credibility in addressing the issues in the midst of a crisis. The core body within the SRRM is the Single Resolution Board (SRB), which is the resolution authority within the Banking Union. Together, with the National Resolution Authorities (NRAs), it forms the SRRM. The Single Resolution Board (SRB) has been operational as an independent European Union (EU) Agency since January 2015. The mission of the SRB is to ensure an orderly resolution of failing banks with minimum impact on the real economy and the public finances of the participating Member States of the Banking Union.

The decisions have to be taken in line with the principles of resolution as set out in the single resolution rulebook comprising the EU Bank Recovery and Resolution Directive (BRRD) and associated legislation. The main resolution tools, as detailed in the BRRD (Article 37) are the following:

(1) the sale of business tool whereby the authorities would sell all or part of the failing bank to another bank, without the consent of shareholders (Articles 38-38 BRRD);

(2) the bridge bank tool, which consists of identifying the good assets or essential functions of the bank and separates them into a new bank (bridge bank) (Articles 40-41 BRRD). The bridge bank will later be sold to another entity, in order to preserve these essential banking functions or facilitate the continuous access to deposits. The old bank with the bad or non-essential functions would then be liquidated under normal insolvency proceedings;

(3) the asset separation tool, whereby the bad assets of the bank are put into an asset management vehicle (Articles 37(3), 42 BRRD). This tool relieves the balance sheet of a bank from bad or 'toxic' assets. In order to prevent this tool from being used solely as a state aid measure, the framework prescribes that it may be used only in conjunction with another tool (bridge bank, sale of business or write-down). This ensures that while the bank receives support, it also undergoes restructuring; and,

(4) the bail-in tool, whereby the bank would be recapitalized with shareholders wiped out or diluted, and creditors would have their claims reduced or converted to shares (Section 5 BRRD).

Therefore, an institution for which a private buyer cannot be found, or which cannot split up without destroying franchise value and other intra firm synergies, could thus continue to provide essential services without the need for a bail-out by public funds, and authorities would have time to reorganize it or wind down parts of its business in an orderly manner. To this end, banks would be required to have a minimum percentage of their total liabilities eligible for bail-in (Article 48 BRRD). If triggered, they would be written down in a pre-defined order in terms of seniority of claims in order for the institution to regain viability (Article 46 BRRD). The choice of tools will depend on the specific circumstances of each case and build on options laid out in the resolution plan prepared for the bank.

A bank would become subject to resolution when: (a) the institution is failing or is likely to fail having breached objective capital and liquidity indicators, (b) having regard to timing and other relevant circumstances, there is no reasonable prospect that any alternative private sector measures, or supervisory action, including early intervention measures or the write down or conversion of relevant capital instruments would prevent the failure of the institution within a reasonable timeframe, (c) a resolution action is necessary in the public interest and to achieve the resolution objectives of financial stability, protection of public money and depositors' money and continuous provision of critical services. As explained above, it is deemed that entry into resolution will always occur at a point close to insolvency.

3.5.3 Deposit Guarantee Schemes (DGS)

The European Union started the process of harmonization of DGSs in 1994 with the EU Directive on Deposit Guarantee Schemes. Thus, deposit protection continues to be provided by national DGSs, which extend coverage nationally to both financial institutions and their EU-based foreign branches.

In the case of the EU, the SDGS 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 harmonizes rules governing national deposit guarantee schemes across the whole EU 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 (Article 12 DDGS), the possibility of merging DGS or establishing cross-border DGS on a voluntary basis, (Article 4.1, Article 4.7, and recital 4 DDGS), the possibility of using the financial means of a DGS for the resolution of credit institutions (Article 11 DDGS), enhanced cooperation between home and host authorities (Art 14 DDGS) and greater depositor information (Article 16 DDGS).

4.0 LESSONS FROM EU FINANCIAL SERVICES INTEGRATION FOR THE ECOWAS BANKING REGULATORY AND SUPERVISORY HARMONIZATION

Although the conditions under which the EU financial services integration transpired are different from the ECOWAS environment, there are quite interesting lessons to learn from the EU experience of financial services regulation and supervision harmonization. For example, trade liberalization was obtained in the first place in the EU, while financial reforms and capital account liberalization followed through the operation of the single market. Lessons to learn should allow the customization and replication of some of the relevant ideas from the EU harmonization experience of banking regulation and supervision frameworks to the ECOWAS setting. Henceforth, some of the interesting lessons that could be considered are highlighted below:

4.1 Adoption of the Lamfalussy Framework – could be utilized to strengthen the decision-making structure over the harmonization of financial services regulation and supervision in ECOWAS to reflect a combination of executive, legislative, and political, as well as administrative features aimed to expedite cooperation, convergence, and harmonization or standardization of financial services regulation and supervision in ECOWAS member countries. Considering this framework as adequately described above in the EU context, the existing decision-making structure in place for the economic and monetary integration at ECOWAS level could be modified in the following ways to accommodate shift, effective, and efficient harmonization of banking regulation and supervision frameworks in the sub-region:

Level 1 Committee consists of ECOWAS Parliament/Commission and Authority/Heads of States and Governments, which shall be responsible to make legislative, political considerations, and adoption.

Level 2 Committee consists of the Ministerial Committees and Committee of Governors, which shall be responsible to review and adopt the technical reports and/or frameworks from the various the technical committees.

Level 3 Committee consists of the technical committees including the Directors of Regulation/Supervision and Legal Departments from member central banks, which shall be responsible to amend, adopt, and advise on reports and/frameworks coming from Level 4 committee.

Level 4 Committee consists of the regional organizations involved with financial services regulation and supervision harmonization at the ECOWAS level, including WAMA, WAMI College of Supervisors, and WAEMU College of Supervisors, which shall be responsible to develop draft legal, regulatory, and supervisory frameworks for financial services harmonization in the ECOWAS region. This committee shall work in close collaboration with a sub-committee comprising of national supervisors and legal experts from member central banks.

Level 5 Committee consists of Level 1 and 2 committees, which shall be responsible to ensure compliance and enforcement with laws, regulatory, and supervisory standards adopted at the ECOWAS level in all member countries, as well as imposing penalty for infringements of member countries.

4.2 Development of ECOWAS Level Single Rulebook: In developing the single rulebook for the establishment of the banking union, the EU adopted a three-pronged approach as outlined above – turning directives into regulations, specifying EU banking legislation by regulating and implementing standards developed by the European Banking Authority, and doing away with national options and

discretions. This approach was meant to achieve maximum harmonization in financial services regulation and supervision standards. However, it did not achieve maximum harmonization in actuality as there were still a huge chuck of national options and discretions in EU banking laws and regulations.

Prior to the introduction of the single currency and the establishment of the banking union, the EU issued several directives on capital requirements, deposit insurance schemes, and recovery and resolution framework for financial services institutions in an attempt to build the financial services single market by using the principles of minimum harmonization, mutual recognition, and home country control as described above. These directives formed the pillars for the development of the single rulebook, which was the building block for the establishment of the banking union.

Adopting this experience in the context of the ECOWAS financial services regulation and supervision harmonization efforts, it would be valuable to commence with the principles of minimum harmonization standards, mutual recognition, and home country control and gradually shift towards only maximum harmonization after the establishment of the banking union and the single supervisory authority in ECOWAS. This harmonization approach can be applied by developing a model act for banking regulation and supervision in line with internationally accepted standards and practices for adoption by member countries.

4.2.1 Harmonization of Recovery and Resolution Framework in ECOWAS

WAMZ, WAEMU, and Cape Verde can learn from the EBU (European Banking Union) 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, WAMZ, WAEMU, and Cape Verde would find the FSB Key Attributes instructive for the creation of national resolution regimes and, for the strengthening of banking resolution framework at the ECOWAS level.

The aim of the Key Attributes is to enable resolution authorities take an organized 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, WAEMU, and Cape Verde 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 harmonized regime can be planned along the lines of the EBU SRM. Also, once the WAEMU resolution framework has been strengthened and centralized - again by adopting the EBU SRM style – then the possible harmonization of the WAMZ, WAEMU, and Cape Verde resolution regimes can be instituted.

4.2.2 Harmonization of Deposit Guarantee Schemes (DGS) in ECOWAS

Harmonization of Member States DGS would require that DGS in Member States function effectively and are able to participate in a regional harmonization framework. So, like the case for the need to have a harmonized regulatory and supervisory regime before a single regional financial supervisor in a WAFSA can be instituted, there would necessarily be a need, first, to harmonize deposit insurance schemes across WAMZ and WAEMU member states, as well as Cape Verde 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. So, the starting point for

ECOWAS region should 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 harmonization regime.

WAMZ Member states can focus on instituting the International Association for Deposit Insurers (IADI) published set of Core Principles for Effective Deposit Insurance Systems 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 harmonization 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 national and regional deposit insurance regimes.

Due to the limited coverage of WAMU deposit insurance schemes, WAMU authorities need to ensure 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 mobilize 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 especially to avoid the vicious-link between sovereign debt and financial crisis as played out in the Global Financial Crisis (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 WAMU. 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.

4.3 Establishment of ECOWAS Banking Union: The banking union structure in the EU is quite unique as it enhances confidence and financial stability in the European banking system. This structure, as described above, could be pursued in the ECOWAS region as the EU banking union structure is built on internationally accepted standards. The replication of this structure in ECOWAS context must lead to the creation of a single regulatory and supervisory mechanism, single recovery and resolution frameworks, and effective and efficient deposit guarantees scheme at the ECOWAS level in line with international best standards and practices.

4.3.1 Regional and Domestic Preconditions

Adopting the EU model of banking union within ECOWAS region, the following other preconditions for a robust cross-border banking regulatory and supervisory framework under an ECOWAS Banking Union are suggested for consideration:

Regional Pre-conditions

a.) **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 has not been without challenges which are largely due to failure of Member States to implement regional provisions at the national levels. Given the challenges of achieving regional economic and monetary integration goals as basic as free trade areas within these Regional Economic Communities (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.

b.) **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 supranationalism 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 characterized by the strong adherence to the doctrine of supranationalism 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 supranationalism within the EU, which enables deep forms of integration, such as the European Monetary Union (EMU) and 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 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 and monetary provisions of the ECOWAS Treaty.

Domestic Pre-conditions

c.) **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 (Vol. 17 No.2 Journal of Monetary and Economic Integration) 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 well as strengthening the enforcement regimes for banking/financial regulation. 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.

d.) **Strengthen or build deposit insurance schemes in countries:** Deposit insurance schemes, as referred to above characterize a robust banking system. 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 exist 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.

e.) **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.

f.) **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.

5.0 CONCLUSION AND RECOMMENDATIONS

Adopting the European Banking harmonization model of financial regulatory and supervisory frameworks within the ECOWAS context as an effective tool for regulating and supervising cross-border banks, such as ECO bank and United Bank for Africa (UBA), would constitute a robust regulatory and supervisory 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 would be better managed in phases.

This paper has highlighted transitional steps that can be taken to arrive at an EBU-style framework for regulating and supervising 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 crisis resolution regimes in the WAMZ states that do not have them; establishing and strengthening deposit insurance regimes across WAMZ and WAEMU Member states, as well as Cape Verde. All of these would involve achieving minimum harmonization of banking regulation, resolution and deposit insurance regimes in WAMZ and establishing and strengthening them within WAEMU, and then commencing a merger of WAEMU, WAMZ, and Cape Verde banking regulatory framework, first through a minimum harmonization plan and possibly, in future, through a maximum harmonized plan as is currently being implemented in the EBU. It should be noted that this should a long-term plan, given the rise in cross-border banks and the financial stability implications of their operation in the sub-region.

However, the following specific actions are recommended to facilitate the harmonization of banking regulation and supervision frameworks towards the establishment of the banking union and single currency in ECOWAS:

- Strengthen the decision-making system over financial services regulation and supervision integration to encourage greater cooperation and harmonization or standardization of financial services regulation and supervision within ECOWAS by modifying the exiting decision-making structure or adopting the various committee levels, as discussed above under lessons to learn, to reflect combination of executive, legislative, political and administrative features as it was done in the EU.[1]
- Achieve homogeneity in financial services regulation and supervision by adopting the principles of minimum harmonization, mutual recognition, and home country control and

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- [1] This would give a holistic participation of all relevant stakeholders in the harmonization process at the ECOWAS level as it would involve law makers, national and proxy regional supervisors, and legal experts from member central banks and/or countries. This is because the current decision-making structure does not seem to involve significant participation of the law-making body, Directors of Regulation/Supervision and Legal Departments of member central banks, and the college of supervisors in WAMZ, WAEMU, and Cape Verde;

gradually move towards only maximum harmonization after the establishment of the ECOWAS Banking Union as envisaged under the European Banking Union.[2]

- Adopt the EU banking union model by developing a harmonized rulebook or framework and establishing a single supervisory mechanism, common deposit insurance schemes, and single recovery and resolution framework within ECOWAS region. The establishment of common deposit insurance scheme and single recovery and resolution frameworks should firstly be achieved at both WAEMU, WAMZ, and Cape Verde to facilitate a smooth harmonization at the regional level.
- Promote the achievement of the other regional and domestic preconditions for a robust cross-border banking regulatory and supervisory frameworks cardinal to the establishment of the ECOWAS Banking Union as outlined above.
- Conduct an assessment of banking regulation and supervision frameworks, and financial sector developments in WAMZ and WAEMU countries and Cape Verde to identify differences, similarities, and limitations as well as the size, complexities of operations, and risk profile of the various markets to facilitate the development of a harmonized standards in ECOWAS from an evidenced-based perspectives.[3]

- [2] This shall be done by developing a model framework for banking regulation and supervision in line with internationally accepted standards, which would outline the minimum standards, for adoption by ECOWAS member countries. This is very important as a one-size-fit all approach would appear unworkable due to the heterogeneous nature of the financial sector developments in ECOWAS Member countries;

- [3] This assessment could be done by undertaking surveillance missions to member countries. This is because the preliminary assessment of the existing regulatory and supervisory frameworks in ECOWAS member countries was done in 2012, which is over seven years ago and may not reflect the current developments in banking regulation and supervision, and market systems in member countries.

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