

**EAST AFRICAN COMMUNITY
EAST AFRICAN LEGISLATIVE ASSEMBLY**



**REPORT OF THE COMMITTEE ON GENERAL PURPOSE ON THE RECONSIDERATION
OF THE EAC FINANCIAL SERVICES COMMISSION BILL, 2022**

**CLERK'S CHAMBERS
EAC HEADQUARTERS
EALA WING, 3RD FLOOR
ARUSHA – TANZANIA**

November 2024

1.0 INTRODUCTION

Mr. Speaker Sir,

On 1st March 2022, the Chairperson of the East African Community (EAC) Council of Ministers tabled in the House, The East African Financial Services Commission Bill, 2022, for the First Reading. Accordingly, the Rt. Hon. Speaker referred the Bill to the Committee on General Purpose for consideration. In accordance with the Treaty, and the Rules of Procedure of the Assembly, the Committee processed the Bill by among others, conducting public hearings in Partner States and holding consultative meetings with the Council of Ministers.

The Assembly passed the Bill on 15th December, 2022, and on 31st January 2023, the Clerk of the Assembly transmitted to the Partner States advance copies of the Bill in preparation for assent by the EAC Heads of State.

In his letter dated 31st October 2023, Hon. Abdi Dubat, Principal Secretary of the Ministry of East African Community and Regional Development in the Republic of Kenya, notified the Clerk of the Assembly that the Bill did not adequately address the concerns raised by the Republic of Kenya (**Annex 1**). In the letter, the Principal Secretary highlighted the concerns, and requested the Assembly to reconsider the same.

Relatedly, in his letter dated 5th March 2024 addressed to the Clerk of the Assembly, H.E. Ambassador Gervais Abayeho, Minister of East African Community Affairs, Youth, Sports, and Culture in the Republic of Burundi, highlighted the “comments from the Republic of Burundi that were not included in the Bill” (**see Annex 2**).

At the sitting of the Assembly held on 12th March 2024 in Nairobi, Kenya, the Speaker referred the Bill back to the Committee on General Purpose for reconsideration. The Committee convened a meeting in Nairobi, Kenya, from 16th - 21st September 2024, to reconsider the Bill.

2.0 BACKGROUND INFORMATION

Article 82(1) of the EAC Treaty requires Partner States to cooperate in monetary and financial matters and maintain the convertibility of their currencies, which is essential for establishing the East African Monetary Union (EAMU) as an integral part of the community.

To operationalize these provisions, the EAC Partner States negotiated a Protocol for the establishment of the EAMU. The overall objective of the Monetary Union is to promote and maintain monetary and financial stability aimed at facilitating economic integration, thereby sustaining growth and development within the Community (as outlined in Article 3 of the EAMU Protocol).

For the effective functioning of the EAMU, the Protocol stipulates the establishment of four institutions to support the Monetary Union, which include:

- a) The East African Monetary Institute (EAMI);
- b) The East African Statistics Bureau;
- c) The East African Surveillance, Compliance and Enforcement Commission; and
- d) The East African Financial Services Commission.

According to the roadmap annexed to the Protocol on Monetary Union, the East African Financial Services Commission was expected to be established by 2018. The Commission's overarching objective is to supervise and regulate non-bank financial services, which include the insurance, pensions, capital markets, and microfinance subsectors. It is important to note that banking regulation and supervision will be the responsibility of the East African Central Bank once established. Specifically, the objectives of the Commission are to:

- a) Promote the integration of the financial systems within the Community;
- b) Encourage the harmonization of supervisory and regulatory practices for the non-bank financial sector;
- c) Enhance confidence and protection for consumers, investors, and other users of non-bank financial services;
- d) Promote the stability of the financial system.

The functions of the Commission shall include:

- a) Coordinating and harmonizing supervisory and regulatory practices for the non-bank financial sector;
- b) Harmonizing and integrating payment and settlement systems, financial markets infrastructure, and other related systems;

- c) Coordinating an effective risk management framework for the non-bank financial sector;
- d) Collaborating with National Competent Authorities and relevant institutions to develop and implement a crisis management and resolution framework for the financial sector;
- e) Developing and coordinating a framework for the protection of consumers, investors, and other users of non-bank financial services, in collaboration with National Competent Authorities;
- f) Monitoring and coordinating the implementation of recommendations from the Council and other relevant Organs of the Community concerning the non-bank financial sector;
- g) Promoting the development of the non-bank financial sector;
- h) Facilitating information sharing between National Competent Authorities;
- i) Enhancing cooperation among National Competent Authorities to establish conditions conducive to a stable and efficient financial system;
- j) Advising and making recommendations to the Council on matters related to the Commission's;
- k) Performing any other functions necessary for the implementation of this Act.

3.0 METHODOLOGY

During the reconsideration of the Bill, the Committee:

- a) Interfaced with the Chairperson of the Council of Ministers and the delegates from the Republic of Burundi, Republic of Kenya, and the United Republic of Tanzania;
- b) Scrutinized and considered the letters of objection from the two Partner States.
- c) Made references to the Treaty, the Protocol on the Establishment of the East African Community Monetary Union, the EALA Rules of Procedure, and other relevant legal instruments of the Community.

4:0 SPECIFIC FINDINGS AND OBSERVATIONS

4.1 Comments from the Republic of Burundi

The letter from Hon. Ambassador Gervais Abayeho, Member of the Council of Ministers from Burundi raised concerns regarding the non-inclusion of comments from the Republic of Burundi in the Bill. In the letter, the following comments were raised:

- i. *Addition of the words “of this Act” to the definition of the words “Board” and “Commission” in clause 2 of the Bill immediately after the reference to the sections of the Bill; and*
- ii. *Addition of the word “Community” in the short title of the Bill.*

The Committee observed that the two comments relate to the drafting style of the Community and did not require reconsideration by the Assembly. Section 2 of the Laws of the East African Community (Interpretation) Act, 2004 specifies that *“section” means a section of the Act in which the word occurs*. As such, there is no need to add any reference to “of this Act” since this is clarified for all Acts of the Community.

The Committee noted that the title to the Bill was negotiated and agreed by all the sectors during the development of the Bill and adopted by the Council with the concurrence of the Republic of Burundi. This is not the first Bill/Act where the word “Community” does not appear in the title. Other Community Laws which do not have this term include, among others: the East African Monetary Institute Act, 2019; The Administration of the East African Legislative Assembly Act, 2012; The East African Legislative Assembly (Powers and Privileges) Act, 2003.

During our meeting, the delegate from the Republic of Burundi noted that their comments were informed by francophone drafting style, but was satisfied with the above explanation. In view of this, the Committee noted there is need for the Secretariat to train focal officers in the Ministries responsible for EAC Affairs on the drafting style of the Community.

4.2 Comments from the Republic of Kenya

The letter from the Principal Secretary, Ministry of East African Community, Regional Development and ASALs stated that the Republic of Kenya was not ready to assent to the Bill until the concerns of the stakeholders are addressed by EALA

The comments relate to the following provisions of the Bill:

- i. Clause 2: definition of non-banking financial services

According to the Republic of Kenya, *the definition of non-banking financial is seen as contradictory, as it refers to other financial services which is a broad and evolving*

term. It should explicitly exclude institutions licensed and regulated by the respective Central Banks.

Furthermore, the definition fails to specify the regulator, which is essential for the governance of non-banking services. For instance, with the Central Bank of Kenya recently regulating Digital Credit Providers in Kenya, exclusion in the Bill of the Banking Sub-sector alone is not sufficient to cover the institutions regulated by the Central Bank of Kenya.

The Committee noted that the definition of the “non-bank financial sector” is directly linked to Article 14(4)(b) up to (f) of the Protocol for the Establishment of the East African Monetary Union. The reference to “other financial services” does not appear in the Bill but rather is derived directly from Article 14(4)(f) of the Protocol. The definition in the Bill does not specify any regulator/supervisor in respect of any of the services listed in Article 14(4) of the Protocol. The Bill does not specify the regulator or supervisor for any of the non-bank financial sub-sectors listed in Article 14(4) (b) to (f) of the Protocol.

- ii. *Another comment from the Republic of Kenya is that: Under Clause 6(1)(a), the functions of the Commission include the coordination and harmonization of supervisory and regulatory practices for the non-bank financial sector. There is no provision for the Commission to develop and coordinate the implementation of a framework to guide this process. According to the Republic of Kenya: there is need to insert a provision under the functions of the Commission to develop and coordinate implementation of a framework for the coordination and harmonisation of supervisory and regulatory practices for the non-bank financial sector.*

The Committee noted that the Bill already provides for the Commission to coordinate and harmonise the supervisory and regulatory practices for the non-bank financial sector. The law cannot presume at this stage, how the Commission shall coordinate and harmonise these practices. The specific instruments to be used to coordinate and harmonise the regulatory and supervisory practices will depend on the nature of the regulatory and supervisory practices to be coordinated or harmonised and shall as established by the Commission. These should therefore not be prescribed by the law at this stage.

- iii. The third comment from the Republic of Kenya is that: *Under Clause 6(1)(b), there is need to include a provision under the functions of the Commission to develop and coordinate implementation of a framework for the harmonization of financial markets infrastructure and other systems.*

The Committee noted that the Bill already provides for the Commission to coordinate and harmonise the financial markets infrastructure and other systems. The law cannot presume at this stage, how the Commission shall coordinate and harmonise the financial market infrastructure. The framework or specific instruments to be used to coordinate and harmonise the systems shall be developed and established by the Commission. These should therefore not be prescribed by the law at this stage.

- iv. The fourth comment from the Republic of Kenya is that: *Clause 6(b), which tasks the Commission with harmonizing and integrating payment and settlement systems, duplicates the role assigned to the East African Monetary Institute, as outlined in Section 4(a) of the East African Monetary Institute Act, 2019.*

The Committee noted that whereas section 4(a)(iii) of the East African Community Monetary Institute Act, 2019 provides that the Institute is responsible for coordinating the harmonisation of the payment and settlement system, the work of the Monetary Institute (EAMI) is temporary since according to section 3 of that Act, EAMI is responsible for undertaking the preparatory work for the realisation of the Monetary Union. In addition, the harmonisation and integration of the payment system is for all institutions in the financial system which include the Central Banks working together with all the regional and national institutions responsible for regulating and supervising the non-bank financial sectors as key participants in the payment system as defined by the Protocol. What appears as a duplication is a deliberate provision to ensure that EAMI coordinates the harmonisation of the payment system during the preparatory work for the Monetary Union and the Commission also harmonises the payment system relating to the non-bank financial sector together with EAMI and after the preparatory work done by EAMI.

- v. The fifth comment from the Republic of Kenya is that: Under clause 11: *there was grammatical error regarding the spelling of the term "Chief" needs correction.*

The Committee noted that correction of typographical and misprint errors does not require reconsideration by the Assembly. Section 6(2) of the Acts of the East African Community Act, 2004 and section 18(2)(a) of the Laws of the Community (Interpretation) Act, already empower the Clerk to cause to be made in the assent copies such corrections as relate to misprints, typographical errors and wrong references, if any, as are necessary during the preparation of Assent copies.

- vi. The last comment from the Republic of Kenya: *Clause 24, the provision does not include protection of staff from personal liability. This should be included in the Bill.*

The Committee noted that issues relating to protection of staff is already provided for by the Treaty and the EAC Staff Rules and Regulations. Article 73 of the Treaty provides that persons in the service of the Community shall be immune from civil process with respect to omissions or acts performed by them in their official capacity. This is reinforced by the Protocol on Immunities and Privileges and regulation 15 of the Staff Rules and Regulations. There is therefore no need to include provisions on protection of staff in the Bill.

Further to the meeting that was held in Nairobi on 16th – 21st September 2024, the Committee also held a consultative meeting with Mr. James Lokwale representing the Minister responsible for EAC Affairs in the Republic of Kenya on 4th November 2024. The officer informed the Committee that upon consultation with the relevant offices, the Republic of Kenya was in agreement with the explanation given by the Committee on all the issues raised by their government in the letter dated 31st October 2023(**Annex 1**). To this effect, the Republic of Kenya dropped her comments and request for the reconsideration of the East African Financial Services Commission Bill, 2022.

5:0 GENERAL OBSERVATIONS

1. According to Article 63 of the Treaty, and Commonwealth parliamentary practice, the Executive can return a Bill to Parliament for reconsideration. However, the provisions for reconsideration are only restricted to areas where Parliament made amendments to the original Bill during its enactment. Parliament cannot reconsider a provision(phrase) of the Bill that was never amended during the Second Reading. It was noted that the comments and proposals from the Republic of Burundi and the

Republic of Kenya relate to the original provisions of the Bill which were never amended by the Assembly during the Second Reading in December 2022.

2. The East African Financial Services Commission Bill, 2022 is a Council Bill that was developed through a comprehensive consultative process involving all the sector state institutions in the Partner States. The Bill was adopted by the Council of Ministers with the concurrence of both the the Republic of Burundi and the Republic of Kenya. The proposals for reconsideration by the Assembly as submitted by the Republic of Burundi and and the Republic of Kenya Kenya present a fundamental policy shift which may compromise the negotiated position and agreement of the Partner States. It would therefore require the concurrence of all the Parner States for such proposals to be accommodated, which procedurally, would require that the Coucil of Ministers reintroduces the Bill to the Assembly for the First Reading.
3. The Committee recognises the sovereign right of the Partner States to assent or withhold assent to Bills passed by the Assembly as per the provisions of Article 63 of the Treaty. However, the same Article 63(2) of the Treaty enjoins a Partner State that may have resevations on a Bill to send their comments for reconsideration within three months after the Assembly has passed the same Bill. Unfortunately, Partner States have continuously violated this Treaty requirement to the extent that they return Bills for reconsideration by the Asembly after a long long time, somes after so many years. This anormally disrupts the legislative process of the Community and the progress of integration.

6.0 CONCLUSION AND RECOMMENDATIONS

The comments and proposals from the Republic of Burindi relate to the drafting style of the Community and therefore do not require reconsideration by the Assembly since Section 2 of the Laws of the East African Community(Interpretation) Act, 2004 gives adequate clarity on this. On the other hand, the comments and proposals from the Republic are substantially new proposals with significant policy implications on the overall objectives of the Community. Therefore, the Assembly is constrained to pass the above proposals which are under the purview of the Council of Ministers.

In view of the above findings and observations, the Committee recommends to the Assembly to:

1. Urge the Council of Ministers to implore the Partner States to familiarize themselves with the style of drafting employed in the Laws of the Community to ensure consistency and clarity in legislation.
2. Urge the Council of Ministers to ensure that the Partner States engage in comprehensive and timely consultations with their counterparts to address any outstanding issues related to the Council Bills before returning them to the Assembly for reconsideration, thereby avoiding delays in the legislative process.
3. Urge the Council of Ministers to direct the Partner States to always comply with the timelines for assent or withholding of assent to Bills as per the provisions of Article 63 of the Treaty.
4. Urge the Council of Ministers to ensure that any Partner State that may want to propose amendments to Bills with significant policy implications, such proposals should undergo review by the Council of Ministers to ensure alignment with the overall objectives of the East African Community.
5. Adopt the report and not to proceed with the recommittal of the East Africa Financial Services Commission Bill, 2022 since the concerns of the Republic of Burundi and the Republic of Kenya have been comprehensively addressed in this report.
6. Urge the Council of Ministers to forward the East African Financial Services Commission Bill, 2022 (as passed by the Assembly in December 2022) to the EAC Summit of the Heads of State for assent at the earliest opportunity.