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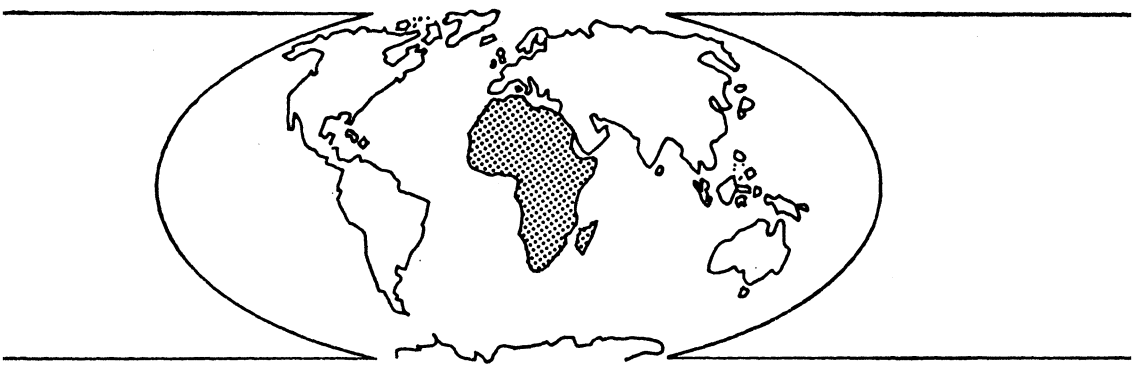


CASSA DI RISPARMIO DELLE PROVINCIE LOMBARDE

1 - 1975 - II

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Contents

LEGISLATIVE SUPPORT OF AGRICULTURAL CREDIT INSTITUTIONS IN AFRICA *by Dennis Mylonas* 3

THE COST OF AGRICULTURAL CREDIT SUPPLIED BY INSTITUTIONAL SOURCES *by Vincenzo Nesci* 21

MONEY AND CREDIT IN AFRICA 22

ITALIAN SURVEY 26

AFRICAN SURVEY 30

BOOK REVIEWS 33

Sommaire

LES BASES LEGISLATIVES DES ETABLISSEMENTS DE CREDIT AGRICOLE EN AFRIQUE *par Dennis Mylonas* 11

LE COUT DU CREDIT AGRICOLE OCTROYE PAR LES SOURCES INSTITUTIONNELLES *par Vincenzo Nesci* 12

MONNAIE ET CREDIT EN AFRIQUE 22

NOUVELLES ITALIENNES 26

NOUVELLES AFRICAINES 30

REVUE BIBLIOGRAPHIQUE 33

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LEGISLATIVE SUPPORT OF AGRICULTURAL CREDIT INSTITUTIONS IN AFRICA

1. The central part of any national agricultural credit legislation is normally constituted by the laws, statutes and other relevant texts governing the establishment and the functioning of an institutional system for a national agricultural credit network. This consists of one or more credit institutions usually organized in the form of a bank operating at the national level (Agricultural Banks, Development Banks, Co-operative Banks, etc.) and its various regional or local agencies. Exceptionally these institutions are organized in the form of public corporations (1). In the following pages the term agricultural bank includes all forms of agricultural credit institutions.
Legislation governing the establishment and operations of an agricultural bank can be distinguished into general and special legislation. The first includes all those enactments taken by the appropriate country authorities in order to set up the rules regulating the creation and the functioning of all banking institutions in the country regardless of their specific object. Can also be part of this general legislation laws and regulations relevant to commercial companies, credit instruments, securities, etc. and even certain sections of much more general enactments as for instance the Civil Code of the country, if such a Code exists.
The special legislation on the other hand includes only the organic laws of statutes of the institution together with any regulations, by-laws, etc. which govern its creation and operations.
This second kind of legislation is indispensable for the legal existence of the institution. Provisions contained in it are particularly important for its life and can even amend or repeal other provisions of the general legislation. In extreme cases general legislation can not exist; special legislation however, in one form or another, cannot but exist if the institution itself is created and functions.

2. The organic laws of agricultural banks usually take the form of an Act (2), Ordinance, Decree-Law, Legislative-Decree or simple Decree. In French-

(1) As for instance the Agricultural Finance Corporation and the Agricultural Development Corporation in Kenya.

(2) For instance Agricultural Finance Corporation Act of 1969 in Kenya.

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speaking countries it is common that the establishment of the institution is made by an enactment in one of the above mentioned forms, often very short, while its statutes are not incorporated to the enactment but annexed to it (3). The *Banque Nationale Agricole* in Tunisia established in June 1959 (now called *Banque Nationale de Tunisie*) is a case apart. It has been created by government decision without any special law and its statutes have the same legal power as those of any other private commercial company of the country.

The organic law of a bank usually contains only general provisions which govern its establishment object, administration, financial matters and operations in general. Details regarding specific matters are settled by subsequent enactments taken by the Executive under the powers conferred to it by the main Act (4). Both the main Act and any such subsequent enactments are published in the official Gazette of the country. The specific detailed rules applying to the administration and the operations of the agricultural credit institution are further set up by the governing bodies of the institution itself in accordance with the provisions of the organic laws and contained in documents often called internal regulations or by-laws of the institution. From a theoretical point of view they can be considered as subsidiary sources of legal provisions; their practical value is however often similar to or greater than that of the primary legislation. They are rarely published in the official Gazette.

3. Agricultural banks are all corporate bodies with legal personality and with the necessary powers to perform their functions. As such they can enter into contracts, acquire, hold and dispose of any property and can sue and be sued in their own name. These attributes are sometimes specifically mentioned in the organic law of the institution, as in the case of Kenya (5), or they can be inferred from the fact that these bodies are possessing legal personality (Ivory Coast, Tunisia) (6).

(3) As in Ivory Coast where the Statutes of the *Banque Nationale pour le Développement Agricole* are annexed to the Law No. 68-08 of 6 January 1968 establishing the *Banque*.

(4) Ivory Coast: Decrees Nos. 68-305 and 68-306 of 24 June 1968 and No. 69-305 of 4 July 1969.

(5) The 1969 Act, Sec. 3 (3).

(6) Ivory Coast, Statutes of the *Banque Nationale pour le Développement Agricole*, Art. 1; Tunisia, Statutes of the *Banque Nationale de Tunisie*, Art. 1.

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Agricultural credit institutions are generally, but not always, joint stock companies with limited liability. Thus from the three national institutions taken here as examples, the *Banque Nationale de Tunisie* and the *Banque Nationale pour le Développement Agricole* are organized as joint stock companies; the Agricultural Finance Corporation of Kenya, as its name suggests, is not.

The fact, further, that the government often holds the majority of the share capital and, as a result, heavily participates in their management, gives them a certain peculiarity which allows for their description as "state" or "semi-governmental" bodies of "public" or "national" interest (7). But here again there are exceptions as, for instance, in the case of the Tunisian *Banque* which is considered as a simple private commercial bank to the capital of which the government has a participation.

These various considerations do not affect, however, the legal status of the institutions as such, although they are of considerable importance for their operational, financial and administrative autonomy.

4. The question can therefore be asked, how governmental of semi-governmental credit institutions can co-operate to agricultural development programmes and yet be autonomous regarding loan decisions. The answer is not an easy one. From a legal point of view a provision in the statutes of the institution making its governing bodies exclusively responsible for decisions concerning the granting of loans, should be a sufficient safeguard for the institution's autonomy on the subject. Furthermore a provision recognizing them the possibility to refuse to act in accordance with any government directions if, in their opinion, they may involve the institution in financial loss (8), could assure a considerable degree of autonomy in the operations of the institution in general.

In reality however the efficacy of such provisions cannot be guaranteed unless the independence and autonomy of the governing bodies themselves can be assured. But in institutions created by the government with state-contributed capital, as an instrument of the government's agricultural policy it will be

(7) See for instance: Ivory Coast, *Idem.*

(8) See Kenya, the 1969 Act, Sec. 4 (5).

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rather unusual to find Boards of Directors or other administrative bodies independent from government authorities. This impossibility is even statutorily established by requesting that the majority of the Board members be appointed by governmental services.
Representation of interested parties inside the governing bodies tends therefore to become rather representation of the interested government services. Thus the relevant provisions of the organic laws or statutes of credit institutions set the number of board members to be nominated by the various appropriate ministers in order to represent them in the Board of Directors. It is often provided that representatives of non-governmental bodies such as co-operatives, farmers' associations, etc. are also sitting in the board. The way of their selection however usually leaves them very narrow margins of real independence. They are in fact nominated by the responsible minister on the proposal of the body they are representing. Under these conditions, although the composition of the governing instances of agricultural banks reflects a fair representation of the sectors interested in their operations, it is very difficult to assure that the non-governmental members of those instances, if any, have any real weight in the decision-making process.

5. Co-operative Societies are normally managed by committees elected by the general assemblies of their members. As a rule there is no direct government participation in either the constitution of the managing bodies or their operations. There exist, however, a certain indirect control, through special government offices found in all countries and dealing with the co-operatives. The heads of those offices, usually called Registrars of co-operative societies or Commissioners of co-operative development, are invariably given wide power of supervision and control regarding the registration of societies, their operations, the audit of their accounts, replacements of the members of their committees in case of incorrect management, etc. (9).
Government control is even more evident in the case of apex institutions such as co-operative banks on the national level.

6. The capital of agricultural banks is fixed in their organic laws, or statutes, in accordance to government decision, as also is the percentage of the

(9) Cf. The Co-operative Societies Act, 1966, No. 39 of 1966.

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capital to be subscribed by the government itself, other governmental agencies and, in certain cases, the private sector. The structure of the capital depends upon the concrete form of the institution. It can be constituted entirely by government contribution, divided into shares or not; it can consist partly of government funds (majority or minority participation) and partly of private funds, again divided into shares or not. These various possibilities are well illustrated by the three countries taken here as examples.

Thus in the case of the *Banque Nationale pour le Développement Agricole* of the Ivory Coast, non-government funds amount to less than 1/12 of the whole capital which is not divided into shares (10). In Kenya the funds of the Agricultural Finance Corporation are entirely governmental and again not divided into shares (11). In Tunisia the capital of the *Banque Nationale de Tunisie* consists of only 25 percent government subscription, the balance being subscribed by co-operatives and other private sector agencies and institutions, divided into shares (12). This last case is however an exceptional one because as already said the *Banque* in Tunisia is in fact a commercial bank engaging in agricultural credit operations only secondarily. It also is the only one that enioys a real financial autonomy. The *Banque* of the Ivory Coast and the AFC of Kenya heavily depend on the government for fund allocations enabling them to fulfil their functions.

This difference is also reflected in provisions regulating reserves and disposal of profits of the institutions. Thus practically the whole amount of the annual net profits of the two latter institutions is credited to their reserve funds. But while the statutes of the Ivory Coast *Banque* do not state the purpose of the fund and do not fix its total amount (13), the AFC Act precises that the fund can at the maximum exceed by 10 percent the capital of the Corporation after deduction of losses and that is to be applied in making good any losses in the transactions of the AFC. Further net profits can be credited to special reserve funds established by the Corporation's board. The board can then decide that any supplementary net profits or even sums

(10) Statutes, Art. 5 and Decree No. 68-305 of 24 June 1968, Art. 1.

(11) The 1969 Act, Sec. 15.

(12) Statutes, Art. 7 and 4th Resolution of 1969 Extraordinary Assembly.

(13) Statutes, Art. 19.

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taken from the special reserve funds are paid to the Treasury for the redemption of loans made by the government to the Corporation (14).

On the contrary the relevant provisions in the statutes of the *Banque Nationale de Tunisie* are typically those of a commercial bank. The reserve fund is thus constituted by an annual 5 percent of the net profits until it reaches the 10 percent of the share capital of the *Banque.* It is then deducted the appropriate sum in order to pay to shareholders a first dividend of 3 percent on the paid-up and not yet redeemed amount of each share. On the surplus the ordinary general assembly can decide either the report of certain sums to the next fiscal year or their allocation to general or special reserve funds. These funds can be either distributed to the shareholders or used for the repurchase and cancellation of shares or for the total or partial redemption of shares. 10 percent of the remaining is paid to the Board of Directors and the rest is distributed to the shareholders (15).

Out of the three institutions examined here the only one which provides for protection against losses incurred as a result of operations undertaken at the request of the government is the Kenyan Corporation. Sector 4 subsection 5 recognizes in fact to the Board of Directors the possibility to refuse to act in accordance with the government's directions if they can involve the Corporation in financial loss "unless the government has undertaken to reimburse the Corporation the amount of any losses incurred in so acting" (16).

7. The special nature of agricultural banks is reflected by the provisions often found in agricultural credit legislation, stating the privileges granted to them by the State, and consisting usually in fiscal exemptions. Such exemptions are not however a general rule. Thus in Ivory Coast all acts, contracts, loans and in general all documents prepared by the *Banque* in accordance with its statutes are exempted from stamp and registration duties (17). In Kenya there is no provision regarding this matter in the organic law of the AFC, although a provision exists in the law establishing the Agricultural

(14) The 1969 Act, 16 (1), (2), (4), (5) and (6).

(15) Statutes, Art. 49.

(16) See also *Supra* p. 4.

(17) Statutes, Art. 20.

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Development Corporation very similar to the one just mentioned. It exempts the ADC from any duty chargeable under the Stamp Duty Act in respect of any instrument executed by, on behalf or in favour of the Corporation. In Tunisia the statutes of the *Banque* do not mention this matter at all. This can be explained by the mainly commercial character of the *Banque.* Other special enactments provide however for fiscal exemption of given categories of agricultural credit users (for instance co-operatives) from certain charges (as duty on interest on loans, etc.) (18).

8. The organic laws of agricultural banks generally recognize them the capacity for borrowing either by contracting direct loans with other banking institutions, national or international, or by issuing bonds and debentures. Both these forms of borrowing are always provided for as making part of the bank's object or powers (19), although they are often subject to a number of restrictions considerably reducing their autonomy on this matter.
Their borrowing capacity is thus usually limited to a certain ceiling fixed either statutorily or by the responsible government authority as in Kenya (20). In cases where such limitations are not included in the agricultural credit legislation itself, they can derive from other more general enactments (21) or simply be the result of policy decisions.
The same considerations stand true regarding the power of agricultural credit institutions to issue bonds, debentures or other similar obligations. Thus although the principle of the institutions' power to issue such obligation is generally statutorily recognized, other specific or general provisions can limit this power considerably. Limitations can refer either to the procedure of issue, or to the terms and conditions under which they are issued.

9. Rediscounting of agricultural credit instruments depends on the existence of appropriate provisions either in the agricultural credit legislation itself, or, more often, in the organic laws of the Central Banks of the countries concerned. In the absence of such provisions rediscounting either becomes

(18) See for instance, Law No. 63-19 of 27 May 1963, Art. 70

(19) Ivory Coast, Statutes, Art. 3; Kenya, the 1969 Act, Sec. 14 (1) (b); Tunisia, Statutes, Art. 26.

(20) *Ibid,* Sec. 14 (2).

(21) Thus the *Banque* in the Ivory Coast is subject to the Law of 4 August 1965 and its Regulations. Cf. Decree No. 68-306, Art. 2.

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impossible, or it is possible oniy through a complicated and not always efficient procedure. The first is the case of Ivory Coast and Kenya, the second is the case of Tunisia.

Thus in Kenya the Central Bank is entitled to purchase from, sell to or rediscount for "specified banks" bills of exchange, promissory notes and other credit instruments bearing at least two good signatures, the last being the endorsement of the credit institution. These instruments must mature within 180 days from the date of rediscount by the Bank and be issued for the purpose of financing, among other activities, agricultural production. The Banks however in the interest of the national economy can from time to time accept for rediscount instruments maturing within 270 days if they are secured by a pledge, hypothecation or assignment of the related products or crops (22).

In Ivory Coast rediscount of agricultural credit instruments by the Central Bank (*Banque Centrale des Etats de l'Afrique de l'Ouest*) is possible up to a certain ceiling fixed by the Bank. Such instruments can either represent loans not exceeding nine months or medium-term loans for a period between two and seven years, bearing two or more good signatures.

Instruments representing medium-term loans can be rediscounted if they have been granted for the financing of equipment operations included in the Development Plan of the country, or of operations which have received the previous agreement of the Bank. Other conditions, concerning the repayment of the loan, are also imposed by the Statutes of the Bank for the rediscounting of medium-term loan representing instruments (23).

In Tunisia the statutes of the Central Bank authorize the rediscounting of instruments with a maturity period not exceeding three months renewable up to nine months, in the case of short-term loans, and up to five years in the case of medium-term loans (24). These conditions make the rediscounting of both short- and medium-term loans granted by the *Banque* rather difficult for two main reasons: firstly, short-term loans exceeding nine months and medium-term loans exceeding five years cannot be rediscounted, a thing which is a serious restriction for the agricultural credit operations of the

(22) The Central Bank of Kenya Act, No. 15 of 1966, Sec. 35.

(23) Statutes of the *Banque Centrale des Etats de l'Afrique de l'Ouest*, Arts. 13 and 17.

(24) Law No. 58-90 of 19 September 1958, Statutes of the Central Bank, Arts. 42 and 43.

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Banque. Second the *Banque* in order to be able to rediscount its short- and medium-term loans needs to draw each time a series of three-month maturity instruments covering the entire period for which the loan has been granted of which only the last one is to be used.
Furthermore, there is the obligation of the *Banque* to request in advance the rediscount facilities to the Central Bank and wait for the appropriate authorization, as well as the doubt on whether or not the Central Bank will grant the renewal of the instruments to be rediscounted.
Finally, there is an additional condition for the rediscounting of these instruments: they must bear at least two good signatures, in the case of short-term loans, three in the case of medium-term loans in order to be accepted for rediscount. This requirement, as the similar ones contained in the statutes of Central Banks in other countries, is very difficult to be fulfilled at least for loans given to the big majority of small farmers.

Dennis Mylonas

LES BASES LEGISLATIVES DES ETABLISSEMENTS DE CREDIT AGRICOLE EN AFRIQUE

RESUME

L'Auteur est de l'avis que le développement du secteur du crédit agricole dans les pays africains peut se réaliser seulement grâce à une législation efficace et avisée. Tout de même il estime que les dispositions législatives générales portant notamment sur l'activité bancaire et sur celle de crédit ne peuvent pas à elles-seules assurer une structure et un fonctionnement aptes et efficaces des établissements de crédit se consacrant à l'octroi de prêts en faveur de l'agriculture. En s'agissant d'un secteur tout-à-fait particulier, il estime également indispensable la promulgation de lois spéciales.
L'étude se termine par une analyse comparée des législations et notamment des mesures régissant le crédit agricole dans les pays africains où l'Auteur met en relief les caractères d'uniformité et les discordances les plus marquantes.

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