

African Union, African Regional Bodies

Decision relating to the implementation of the Yamoussoukro declaration concerning the liberalisation of access to air transport markets in Africa

Appendix A to the Regulations on Powers, Functions and Operations of the Executing Agency of the Yamoussoukro Decision: Procedure to be applied by the Executing Agency for the Issuing of Decisions, Regulations and Guidelines (“Rulemaking Procedure”)

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1 Basic principles and applicability

Article 1 – Scope

This Decision prescribes the procedures for the development and issuing of recommendations, opinions, decisions, guidelines and guidance material by the Agency.

Article 2 – Definitions

For the purposes of this Decision:

“**Rulemaking**” shall mean the development and issuance of rules for the implementation of the YD.

“**Rules**” comprises the following:

- decisions of the Agency;
- opinions concerning the scope, implementation, compliance with and content of the Yamoussoukro Decision and its implementing rules;
- recommendations of the Agency to the Monitoring Body, CAMT or any organ of the African Union intended to result in the application of a sanction against a State Party;
- guidelines;
- guidance material, which is non-binding material that helps to illustrate the logical procedures, processes and materials in implementing a rule and which does not provide presumption of compliance.

2 Rulemaking procedure

Article 3 – Programming

1. The Secretary General shall establish an annual rulemaking programme in consultation with the Monitoring Body and the regional economic communities.
2. The rulemaking programme shall take account of:
 - i. the object and basic principles set out in Article 3 of the Regulation on the Powers and Functions of the Executing Agency;
 - ii. the object of implementing a liberalised air transport market in Africa;
 - iii. significant protection of the interest of the African air transport consumer;
 - iv. the need to ensure a vibrant but safe, economically viable, efficient and healthy African airline sector; and
 - v. the objective of developing an efficient, transparent and responsive continental regulatory system.
3. Any person or organisation may propose the development of a new rule or an amendment thereto. The Secretary General shall consider such requests in the context of the revision of the rulemaking programme.
4. Proposals, including the identification of the proposer, the proposed text and the justification for the proposal, shall be sent to the Agency and shall be individually acknowledged.
5. The Secretary General shall provide the proposer with justification for his or her decision on whether to act on his or her proposal.
6. The rulemaking programme shall be supported by an analysis of the priority accorded to each task taking into account the resources at the disposal of the Agency and potential continental impact of the proposal.
7. The Secretary General shall adapt the rulemaking programme as appropriate in the light of unforeseen and urgent rulemaking demands. The Monitoring Body shall be informed of any such changes.
8. The adopted rulemaking programme shall be published in the Agency's official publication.
9. The Secretary General shall conduct regular reviews of the impact of the rules issued under this Regulation on Rulemaking Procedure.

Article 4 – Initiation

1. Rulemaking activities shall be initiated in accordance with the rulemaking priorities set out in the annual rulemaking programme.
2. The Secretary General shall draw up terms of reference for each rulemaking task after consulting the Monitoring Body. The terms of reference, which shall be published in the Agency's official publication, shall include the following:
 - i. a clear definition of the task;
 - ii. a timetable for completion of the task; and

- iii. the format of the deliverable.

Where a drafting group is set up, whether by recourse to the standing Committee on Air Transport or its ad hoc Committee on Legal Issues or other ad hoc group, the terms of reference shall also include details of the composition of the group, its working methods and reporting requirements.

3. The Secretary General shall choose between the use of a drafting group, consultants or Agency resources for the fulfillment of each rulemaking task, taking into account the complexity of the task at hand and the need to draw upon the expertise of persons involved in the implementation of the rule envisaged. This decision shall be taken after consulting the Monitoring Body.
4. When a drafting group is convened, the Secretary General shall determine its exact composition, which shall draw upon technical expertise available among national authorities and, where necessary, airlines and other interested parties, as well as within the Agency itself.
5. The Agency shall provide drafting groups with the administrative and logistical support necessary for the fulfillment of their tasks, including the provision of standard operating procedures, to be adapted as necessary by the groups themselves according to their specific circumstances.
6. The Agency shall adopt standardised working methods for drafting groups, in particular the following:
 - i. Chair/Secretary elections;
 - ii. obtaining of consensus and resolution of conflicts;
 - iii. the preparation of minutes; and
 - iv. access to the AFCAC website or online facilities to assist in drafting.

Article 5 – Drafting

1. New rules or amendments thereto shall be drafted in accordance with the terms of reference referred to in article 4 of this Regulation on Rulemaking Procedure.
2. The Secretary General may amend the terms of reference as appropriate in the light of progress with the rulemaking task.
3. The Secretary General shall inform the Monitoring Body of any such changes.
4. Drafting of rules shall take into account the following:
 - i. The Abuja Treaty and Constitutive Act of the African Union;
 - ii. The Yamoussoukro Decision, Regulation on Legal Powers and Functions of the Executing Agency including subsidiary rules and regulations;
 - iii. Competition Rules;
 - iv. Consumer Protection Rules;
 - v. ICAO Standards and Recommended Practices;
 - vi. Timely implementation of the proposed rules, taking into account translation delays;

- vi. Compatibility with existing rules and in particular rules adopted by the regional economic communities and the courts.
5. Upon completion of the drafting of the proposed rule, the Secretary General shall verify that the rule satisfies the terms of reference established for the rulemaking task and shall publish a Notice of Proposed Rulemaking (YDNPR) in the Agency’s official publication, including the following information:
 - the proposed rule;
 - an explanatory note describing the development process;
 - full details of significant or contentious or interface issues identified during the drafting process;
 - details of the situation with respect to the Yamoussoukro Decision;
 - the role of the regional economic communities, the Monitoring Body and other organs of the African Union.
6. As regards guidance material, it is sufficient that the Notice of Proposed Rulemaking contains a justification (including a paragraph showing that the material complies with the definition of guidance material) and the proposed new or amended guidance material.

Article 6 – Consultation

1. All State Parties all eligible airlines and any person or organisation with an interest in the rule under development shall be entitled to comment on the basis of the published Notice of Proposed Rulemaking.
2. All consultation shall be treated in accordance with the rules on access to documents under relevant provisions of the Executive Council Decision on Legal Functions and Powers of the Executing Agency.
3. Copies of all YDNPR shall be transmitted to States Parties, the regional economic communities, the Pan-African Parliament, NPCA and the African Development Bank.
4. The consultation period shall be 4 months from the date of publication of the YDNPR.
5. The Secretary General may, prior to the start of the consultation period, specify a shorter or longer consultation period to that specified in paragraph 4. This decision shall take account of the potential impact and complexity of the rules envisaged and the opinions of the Monitoring Body. Notification of the length of this revised period shall be published at the same time as the YDNPR in question.
6. During the consultation period, the Secretary General may, in exceptional and strictly justified circumstances, extend the consultation period specified in paragraphs 4 and 5 at the request of States Parties, airlines or interested parties. Such changes to the length of the consultation period shall be published in the official publication of the Agency.
7. Comments shall be forwarded to the Secretary General and shall contain the following elements:
 - i. identification of the commentator.
 - ii. YDNPR reference code; and
 - iii. position of the commentator, relative to the proposal (including justification for the position taken).

Article 7 – Review of comments

1. The Secretary General shall ensure that comments are reviewed by appropriately qualified experts not directly involved in the drafting of the proposed rule together with the Agency staff or drafting group tasked with the drafting of the rule in question.
2. Further consultation with consultees may be undertaken as necessary for the sole purpose of securing a better understanding of comments submitted.
3. The Secretary General shall review the comments received from consultees and publish detailed a Response to YDNPR in the Agency's official publication within 3 months of the expiry of the consultation period.
4. The Response to YDNPR shall include the following:
 - a. a summary of the original YDNPR;
 - b. publication and commentary dates;
 - c. summary of key rules;
 - d. a list of all parties commenting on the rule in question; and
 - e. a summary of comments received and the Agency's responses thereto.
5. If, based on the number of comments received, the Secretary General is unable to publish the Response to YDNPR referred to in paragraph 4 by the deadline specified, he or she shall publish an amended timetable for the rulemaking process.
6. If the result of the review of comments is that the revised text differs significantly from that circulated at the start of the consultation process, the Secretary General shall consider a further consultation round in accordance with this Decision.
7. If the comments received from State Parties/civil aviation authorities indicate major objections to the proposed rule, the Secretary General shall consult the Committee on Air Transport to discuss the rule further. In those cases where additional consultation results in continuing disagreement regarding the rule, the Secretary General shall include in the Response to YDNPR the results of this consultation and the impact and consequences of his/her decision regarding the issue at stake.

Article 8 – Adoption and publication

1. The Secretary General shall issue his/her decision in respect of the rule in question no earlier than 2 months following the date of publication of the Response to YDNPR in order to allow sufficient time for consultees to respond to its contents.
2. Rules issued by the Agency shall be published in the Agency's official publication, together with an explanatory memorandum.