

Economic Community of West African States, African Regional Bodies

## Supplementary Act A/SP.2/08/11 on Sanctions Against Member States that Fail to Honour their Obligations to ECOWAS Act 8-2 of 2011

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Economic Community of West African States

**Supplementary Act A/SP.2/08/11 on  
Sanctions Against Member States that Fail  
to Honour their Obligations to ECOWAS  
Act 8-2 of 2011**

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**Commenced in full on 1 August 2011**

*[This is the version of this document at 19 August 2011.]*

**The High Contracting Parties,**

**MINDFUL** of Articles 7, 8 and 9 of the ECOWAS Treaty as amended, establishing the Authority of Heads of State and Government and defining its composition and functions;

**RECALLING** that ECOWAS has created supranational bodies whose decisions are binding and therefore applicable directly and in their entirety in Community Institutions as well as in Member States with the aim of enhancing their effectiveness;

**RECALLING** also that ECOWAS has granted its political and judicial Institutions the capacity to enforce compliance and apply the decisions of its supranational bodies;

**CONSIDERING that** Article 77 of the ECOWAS Treaty stipulates that the Authority can impose sanctions against Member States that fail to honour their obligations to the Community;

**CONSIDERING** that the Protocol A/SP1/12/01 on Democracy and Good Governance, supplementing the ECOWAS Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security in its Article 45, stipulates that the Community can impose different sanctions on Member States where democracy has been disrupted through whatever means;

**CONSIDERING** that Article 9 of the Supplementary Protocol A/SP1./01/05 amending the Protocol relating to the Court of Justice grants this Court the competence to consider cases of non-fulfilment by Member States of obligations incumbent upon them by virtue of the ECOWAS Treaty, Conventions and Protocols, Regulations, Decisions and Directives;

**NOTING** that the Community provisions in force do not define the obligations, for which non-application or non-fulfilment exposes Member States to sanctions;

**DESIRING** to establish appropriate sanctions and ensure suitable, just and equitable application;

**CONVINCED** that the Community can impose sanctions which are effective and actually applicable against Member States or their leaders, if it has a well-defined sanctions system;

**DESIROUS** to adopt a system comprising obligations which if unfulfilled, may lead to the imposition of sanctions, and a system that brings together in a single document the range of applicable sanctions, defining the modalities for the implementation of the said sanctions, by specifying in particular, the procedures for imposing and lifting sanctions;

**ON THE PROPOSAL** of the Meeting of Ministers of Justice of Member States held in Abuja on 16 to 17 May 2011;

**ON THE RECOMMENDATION** of the sixty-sixth ordinary session of the Council of Ministers held in Abuja from 17 to 19 August 2011;

**AGREE AS FOLLOWS:**

## **Chapter 1**

### **Obligations for which non-fulfilment is likely to engender sanctions against Member States**

#### **Article 1 – Definition of obligation of Member States**

1. Member States shall apply and respect Acts of the Authority and Council of Ministers which include the ECOWAS Treaty, Conventions, Protocols Supplementary Acts, Regulations, Decisions, Directives of the Community as well as the decisions of the Community Court of Justice.

#### **Article 2 – Categories of obligations of Member States**

1. The obligations contained in the Acts described in Article 1 paragraph 2 of this Supplementary Act are divided into two categories. They are those Acts that aim to create within Member States and at the regional level, an atmosphere of true and lasting peace, void of all threat and violation of the constitutional order and those which aim at strengthening and accelerating the process of regional integration.
2. The following shall among others constitute the obligations of Member States, to:
  - i) respect and protect Human Rights, the Rule of law, democracy and constitutional order;
  - ii) ratify ECOWAS Protocols and Conventions;
  - iii) dismantle tariff and non-tariff barriers which hinder the free movement of persons, goods, the right of residence and establishment;
  - iv) pay all financial obligations in general and in particular apply the texts in the Community Levy;
  - v) promptly apply texts adopting the integration policies, projects and programmes of the Community;
  - vi) apply the mandatory texts enumerated under Article 1 paragraph 1 of this Supplementary Act;
  - vii) prohibit the adoption of measures or positions contrary to democratic governance and respect for the Rule of Law, or likely to constitute either a serious threat to regional security or gross and severe human rights abuses, or trigger a humanitarian disaster;
  - viii) refrain from adopting and implementing all measures likely to subvert or compromise the strengthening of the process of regional integration.
4. The decisions of the ECOWAS Community Court of Justice are binding on Member States.

*[Please note: numbering as in original.]*

## **Chapter 2**

### **Sanctions applicable in the event of non-fulfilment of obligations**

#### **Article 3 – Principle of Sanctions**

1. Member States or their leaders that fail to honour their obligations to the Community shall be liable to judicial and political sanctions.
2. Leaders of Member States, members of their families and their associates shall also have sanctions imposed on them as stipulated in paragraph 1 of this Article.



## Article 4 – Purpose of sanctions

1. The aim of imposing sanctions must be to prevent the non-respect or non-application of mandatory Acts defined in Article 1 of this Supplementary Act from having harmful effects on the functioning of the Community and its Institutions. It is to prevent such behaviour by Member States compromising the implementation of Community programmes and lead to gradual blockage in the activities of the Community.
2. Sanctions must encourage Member States to respect and enforce all mandatory Acts of the Community. They must promote the elimination of all obstacles to regional integration and facilitate the achievement of Community goals.
3. To be effective, sanctions to be imposed against Member States must aim at creating conditions for the restoration of normal constitutional processes when they are imposed; for example in the case of a breakdown in democracy. They also allow for the righting of a wrong or the acknowledgement of a right denied a citizen, where this right has been conferred by a mandatory Act. The aim of sanctions must be to strengthen the Community and make her more effective.
4. As far as it is possible, sanctions shall not affect the delivery of humanitarian aid to people in the concerned Member State.

## Article 5 – Judicial sanctions

The Court of Justice may deliver judgements sanctioning Member States for failure to comply with their obligations under the Treaty, the Conventions and Protocols, Regulations, Decisions and Directives of ECOWAS.

## Article 6 – Political sanctions

Sanctions applicable against Member States that do not honour their obligations to the Community may include:

- (i) suspension of any new loans or new assistance granted by the Community;
- (ii) suspension of disbursements for all ongoing loans, projects and Community assistance programmes;
- (iii) non-acceptance of applications to statutory and professional positions within Community Institutions;
- (iv) suspension of the right to vote;
- (v) suspension from participation in Community activities;
- (vi) non-support of applications presented by Member States to elective positions in international organisations;
- (vii) refusal to organise meetings in the concerned Member State;
- (viii) suspension of the concerned Member State from all ECOWAS decision-making organs. During the suspension period, the concerned Member State shall continue to pay its contributions to the Community;
- (ix) travel ban on the leaders their families and their associate, notwithstanding community provisions on free movement of persons;
- (x) freeze their financial assets;
- (xi) recall by other Member States of their Ambassadors from the country where there is a breakdown of democracy;
- (xii) embargo on arms entering the concerned Member State;
- (xiii) ban on contesting for the Chairmanship of the Community;
- (xiv) condemnation and refusal to acknowledge unconstitutional Governments;

- (xv) Peace enforcement or restoration of constitutional order by use of legitimate force.

### **Article 7 – Definition of the content of some sanctions**

To facilitate consistent and equal application to all Member States, the envisaged sanctions shall be defined in the provisions of this Supplementary Act.

### **Article 8 – Suspension from participation in ECOWAS activities**

1. When a Member State is suspended from participating in the activities of the Community, these activities shall include all activities organised or co-organised by ECOWAS, as well as outside the sub-region.
2. When a Member State is suspended from participating in ECOWAS activities, ECOWAS Institutions shall not invite or admit the representatives of this country to its meetings, regardless of the place where these meetings are held. ECOWAS Institutions shall suspend the implementation or monitoring of on-going projects and programmes in this country. All consultations with leaders of the suspended Member States regarding Community activities shall cease.
3. The leaders of the suspended Member States shall not sit on any committee set up by ECOWAS to prepare or monitor the implementation of Community projects or to manage or settle issues regarding the Community. No leader of the suspended country shall be a member of any ECOWAS delegation representing the Community before international bodies or in the implementation of any Community activity.

*[Please note: numbering as in original.]*

4. The territory of the suspended Member State shall not be used to hold any meeting nor event organised or supported by ECOWAS.

### **Article 9 – Travel ban on leaders, their families and associates**

1. When leaders of a Member State, members of their families and associates are banned from travelling, the other Member States, without prejudice to the fullness of their powers and the relevant provisions of the ECOWAS Protocols on Free Movement of Persons, Goods, the Right of Residence and Establishment, shall:
  - a) impose on them restrictions on any travel they shall make to the other Member States;
  - b) impose restrictions on the use of their airspace or territorial waters;
  - c) expel them from their territory;
2. The afore-mentioned travel restrictions shall apply on all occasions except when the leaders under the travel ban are invited by ECOWAS, African Union, European Union and the United Nations or when the travel is for humanitarian reasons.

### **Article 10 – Recall by other Member States of their Ambassadors accredited to a country**

When the Authority of Heads of State and Government decides on other Member States recalling their Ambassadors accredited to a country, all diplomatic relations with that country shall also be suspended.

### **Article 11 – Embargo on arms entering a Member State**

1. When the Authority of Heads of State and Government decides to place an embargo on arms entering a Member State, other Member States shall put in place an embargo on the delivery of arms, ammunitions, and military equipment to this country. Other Member States shall prevent:
  - a) the sale and/or supply to a country under embargo, by their citizens or from their territory, or through their ships or aircrafts, of weaponry and related materials of all types, including arms and ammunitions, military vehicles and equipments, police equipment and related spare parts;
  - b) entry to the territorial waters of the country under embargo, of any means of transport carrying weaponry or related materials of all types, including arms and ammunitions, military and police vehicles and related spare parts.
2. When an arms embargo has been placed against a country, the President of the Commission shall not accede to any requests for exemption from the application of the provisions of the ECOWAS Convention on Small Arms and Light Weapons. The President of the Commission shall cease to notify the leaders of the country under embargo, of requests for exemption from the application of the Convention on Small Arms and Light Weapons that he may receive from other Member States, and the responses he will give to such requests.
3. Other Member States shall ensure the strict surveillance of their coastal areas, land borders and air spaces, in order to prevent any violation of the arms embargo by the country against which this sanction has been imposed.

### **Article 12 – Ban on standing for Presidential office in Member States**

The perpetrators of Coup d’Etat and their accomplices, governments seeking to remain in power and prevent any possibility of alternation by changing the constitution, as well as participants and beneficiaries of all other anti-constitutional changes shall not stand for presidential office in their respective Member State. ECOWAS and its Member States shall not recognise governments arising from power obtained through such means.

## **Chapter 3 Modalities for implementing sanctions**

### **Article 13 – Application of sanctions**

The sanctions defined in Articles 5 to 11 of this Supplementary Act shall be enforced in gradual or cumulative manner.

### **Article 14 – Power of initiative**

The procedure for the application of sanctions against Member States that fail to honour their obligations to the Community shall be implemented:

- a) upon decision of the Authority of Heads of State and Government;
- b) at the request of a Member State;
- c) on the recommendation of the President of the Commission.

### **Article 15 – Allegations of non-compliance or non fulfilment of obligations by Member States**

1. Cases of non-compliance or non-fulfilment by Member States of their obligations to the Community may be reported by any individual or corporate entity of a Member State, any Community Institution, Member State and may be ascertained by the Council of Ministers of the Authority of Heads of State and Government.
2. The allegations by individuals and corporate entities shall be addressed to National Authorities responsible for regional integration or the President of the Commission. When these allegations are addressed to national authorities, the latter shall forward same to the President of the Commission without delay. Allegations by Institutions shall be addressed to the President of the Commission. All allegations shall be presented to the Council of Ministers through the President of the Commission.
3. The President of the Commission shall notify the Member State concerned of the allegation against it and informs it that it has a period of thirty (30) days with effect from the date of notification, to honour the obligations which it is accused of failing to honour, or present a case in its defence.
4. At the expiration of the afore-mentioned thirty (30) days deadline, the President of the Commission shall have a thirty (30) days period to verify whether the concerned Member State has honoured its obligations to the Community. If this is the case, the President of the Community shall inform the initiator of the allegation and present a report to the Council of Ministers at its next Session.

### **Article 16 – Indictment against a Member State that fails to honour its obligations to the Community**

1. If, following investigations by the President of the Commission, it is revealed that the Member State has failed to respect or fulfil its obligations, and that after the start of the investigations, the concerned Member State has made no effort to remedy this, the President of the Commission shall make a report contained in a Memorandum addressed to the Council of Ministers.
2. The Council of Ministers shall consider the Memorandum presented by the President of the Commission and set a deadline for the concerned Member State within which it must honour the obligations it is being accused of having failed to respect or fulfil.
3. If at the end of the deadline set by the Council of Ministers, the concerned Member State has still not fulfilled its obligations, the Council of Ministers shall make recommendations to the Authority of Heads of State and Government on the sanctions to be imposed on the concerned Member State, their leaders, members of their families and associates. The Authority shall impose appropriate sanctions.
4. Sanctions imposed against any Member State shall not be subject to appeal before the Community Court of Justice or any other court.

### **Article 17 – Notification of sanctions**

1. Member States shall be immediately notified of sanctions imposed on them. Other Member States as well as all Community Institutions shall also receive notifications by the President of the ECOWAS Commission.
2. The notification referred to in paragraph 1 of this article shall be published in the Official Journal of the Community by the ECOWAS Commission.

## **Article 18 – Application of sanctions and monitoring of their implementation**

1. All Member States and Community Institutions shall take the necessary measures to ensure that the Decisions by which sanctions are imposed are fully applied.
3. The President of the ECOWAS Commission shall put in place a Committee for monitoring the implementation of sanctions. The Commission shall, within its means, render the assistance required by the concerned Member State to carry out the obligations it has failed to honour.

*[Please note: numbering as in original.]*

3. The composition of the Committee shall be defined by an enabling rule of the President of ECOWAS Commission.

## **Article 19 – Suspension of application of sanctions against a Member State**

1. Any Member State, that temporarily finds itself unable to honour the obligations described in Articles 1 of this Supplementary Act for reasons such as disasters or exceptional circumstances that seriously affect its economy, peace, security and political stability, shall inform the President of the Commission of the circumstances without delay.
2. When, in application of paragraph 1 of this Article, the President of the Commission is informed, the latter shall make a report to the Council of Ministers requesting that no sanctions be taken against the concerned Member State or that the provisions on sanctions be benevolently enforced on the Member State, until such a time as the disasters or exceptional circumstances affecting the country no longer exist.

## **Article 20 – Suspension of sanctions**

1. If no session of the Council of Ministers and the Authority of Heads of State is held in the two (2) months following the observation by the President of the Commission that the Member State concerned has fulfilled its obligations, the President of the Commission shall propose to the current Chairman of the Council of Ministers, who is acting on behalf of the Authority, to suspend the sanctions taken against the concerned Member State.
2. The President of the Commission shall inform the Council of Ministers of the recommendations of its Chairman and the suspension decision taken by the Chairman of the Authority at the next session of the Council
3. A Member State which fails to honour its obligations shall after sanction proceedings have been commenced against it, present a request to the Council of Ministers through the President of the Commission, for a special time frame allowing it to ensure the respect and fulfilment of its obligations. In this case, the Chairman of the Council of Ministers, on behalf of the Council of Ministers, shall make recommendations to the Chairman of the Authority of Heads of State and Government on the suspension of the sanctions proceedings. The Chairman later acting on behalf of Authority, after private consultation with his peers, may accede to the request.
4. If at the end of the special time frame, the defaulting Member State honours its obligations, no sanction procedure will be taken against it. If the Member State does not honour its obligations, the Authority shall impose appropriate sanctions against it.

## **Article 21 – Lifting of sanctions**

1. Once it has honoured its obligations, the Member State under sanctions shall inform the President of the Commission of its compliance. The President of the Commission, after ensuring that this is the case, shall present a report to the Council of Ministers by way of a Memorandum. The Council of Ministers, after

having noted that the sanctions are no longer necessary, shall recommend their immediate removal to the Authority of Heads of State and Government.

2. Sanctions shall be lifted if, from the opinion of the Heads of State and Government, and on the basis of a substantiated report prepared by an independent body set up by the President of the Commission, the concerned Member State failed to honour its obligations due to reasons and circumstances beyond its control and if, the defaulting Member State satisfies conditions allowing for the sanctions against it to be lifted.

## **Chapter 4**

### **Final provisions**

#### **Article 22 – Amendment and revision**

1. Any Member State, the Council of Ministers or the ECOWAS Commission may submit proposals for the amendment or revision of this Supplementary Act.
2. Any proposal not originating from the ECOWAS Commission shall be submitted to it. The Commission shall notify Member States no later than thirty (30) days after receipt of such proposals. The Authority shall consider proposals on amendments and revisions after the three (3) month notice period given to Member States.
3. Amendments and revisions shall be adopted by the Authority and shall enter into force upon their publication in the Official Journal of the Community.

#### **Article 23 – Publication**

This Supplementary Act shall be published by the ECOWAS Commission in the Official Journal of the Community within thirty (30) days of its signing by the Heads of State and Government. It shall also be published by each Member State in its National *Gazette* within thirty (30) days of notification by the Commission.

#### **Article 24 – Entry into force**

This Supplementary Act shall enter into force upon its publication. Consequently, Member States shall undertake to commence implementation of its provisions upon its entry into force.

#### **Article 25 – Miscellaneous provisions**

The Supplementary Act shall supersede any other contrary provisions.

#### **Article 26 – Depository authority**

This Supplementary Act shall be deposited at the Commission which shall forward certified copies to all Member States and shall register same with the African Union, United Nations Organisation and all other organisations selected by the Council.

IN FAITH WHEREOF, WE, the Heads of State and Government of the Member States of the Economic Community of West African States (ECOWAS), have signed this Supplementary Act

Done at Abuja, this 19<sup>th</sup> day of August 2011

In single original in English, French and Portuguese languages, all texts being equally authentic