

Economic Community of West African States, African Regional Bodies

Supplementary Act A/SP.3/02/12 Relating to the Common Rules on Liberalization of Market Access to Ground Handling Services in Airports of ECOWAS Member States

Act 2-SP3 of 2012

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Economic Community of West African States

Supplementary Act A/SP.3/02/12 Relating to the Common Rules on Liberalization of Market Access to Ground Handling Services in Airports of ECOWAS Member States Act 2-SP3 of 2012

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Commenced in full

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The High Contracting Parties,

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

MINDFUL of article 32(1)(f) of the said Treaty which prescribes that Member States encourage co-operation in flight scheduling, leasing of aircraft and granting joint use of fifth freedom rights to airlines in the region;

MINDFUL of the Supplementary Act A/SA1/2/08 particularly article 4 adopting the Community Competition Rules and the Modalities of their application within ECOWAS;

MINDFUL of Decisions A/DEC.7/7/96 and A/DEC.6/12/03 of the Authority of Heads of State and Government on the conclusion of a Multilateral Air Transport Agreement among Member States and the Liberalization of the Air Transport Sector in West Africa respectively;

RECALLING the Convention on International Civil Aviation signed at Chicago, on the 7th December 1944 and its annexes;

MINDFUL of the Decision relating to the implementation of the Yamoussoukro Declaration concerning the liberalization of Access to Air Transport Markets in Africa adopted on the 14th of November 1999 by the African Ministers in charge of civil aviation; and endorsed by the OAU Heads of State in Lome, Togo, in July 2000;

MINDFUL also of the Memorandum of Understanding (MOU) on the implementation of the Decision on the Liberalization of Air Transport in West and Central Africa signed by 23 States of West and Central Africa on 14 November 1999;

ACKNOWLEDGING that the reports of the 3rd, 4th and 5th Meetings of Ministers responsible for Civil Aviation in West and Central Africa, noted some discrepancies in national rules and regulations concerning Slot Allocation, Denied Boarding, Ground Handling, Approval of Airline, Conditions for Market Access, Air Tariffs, Liability of Airline in case of an Accident, Rules of Competition and Exemption issued by the member States in West and Central Africa;

CONSIDERING that such disparities contradict the spirit and objectives of the Yamoussoukro Decision;

DETERMINED to address the disparities and to harmonize national legislations and regulations in matters of Air Transport Services;

DESIROUS to adopt a Common Community legal framework on the Liberalization of Market Access to Ground Handling Services at Airports of ECOWAS Member States;

ON THE PROPOSAL of the Meeting of transport Ministers held in Yamoussoukro on the 17th of September 2011;

HAVING received the opinion of the ECOWAS Parliament;

ON THE RECOMMENDATION of the Sixty-Seventh Session of the Council of Ministers held in Abuja, from 19 to 21 December 2011;

HEREBY AGREE AS FOLLOWS

Article 1 – Definitions

For the purpose of this Supplementary Act, unless otherwise stated, the following terms shall have the meanings assigned to them hereafter:—

Aeronautical Authority: any governmental authority, corporate body, or organ duly authorised to perform the functions of civil aviation;

Airport: Land specifically developed for landing, take-off and aircraft movements, including subsidiary facilities for traffic requirements and aircraft operations as well as necessary installations to assist commercial air services;

Airport User: Users carrying out activities at an airport such as air carriers, air navigation services, ground handling services, forwarding agencies, passengers and any other commercial business;

Community: The Economic Community of West African States as referred to in article 2 of the ECOWAS Revised Treaty;

Council: Council of Ministers as established under article 10 of ECOWAS revised Treaty

ECOWAS Commission: ECOWAS Commission established in article 17 of the ECOWAS Revised Treaty as amended in June 2006;

Ground Handling: Services provided at an airport to a user as described in the Annex;

Ground handling service user: Individual or legal entity carrying by air, passengers, mail and/or freight/cargo from or to the airport concerned.

Managing entity of the airport: Entity which, jointly (or not) with other activities, is vested under national legislation or regulations with the administration and management of the airport infrastructure and the coordination of the activities of the various operators present at the airport of member State;

Member State: A State party to the ECOWAS Revised Treaty

Self-handling: Situation in which a user provides directly to itself one or several categories of ground handling services and has signed no contract with any third party under any name, for the purpose of providing such services.

Service provider of ground handling: Any individual or legal entity providing one or several categories of ground handling services;

Article 2 – Purpose

The Supplementary Act aims at liberalizing access to the ground handling market in the ECOWAS member States.

Article 3 – Scope

The Supplementary Act and the attached Annex shall define the rules and modalities on the liberalization of access to ground handling markets at airports in ECOWAS member States.

Article 4 – Modalities of application

1. Member States shall ensure that service providers are granted free access to ground handling markets.

2. Member States shall ensure that the activity of a service provider at an airport is subject to an approval issued by the competent authority.
 - a) The criteria for granting an approval must refer to a sound financial situation, technical capability assessed according to tasks to be carried out and sufficient insurance coverage; such criteria shall also refer to the safety and security of facilities, aircraft, equipment or persons as well as environmental protection and compliance with the relevant social legislation.
 - b) The aforesaid criteria shall be made public and the service provider shall be notified before the approval procedures are initiated.
3. The approval may be refused or withdrawn if the service provider, for reasons under its control, does not meet the criteria set forth in paragraph 2 above. The reasons for such refusal or withdrawal shall be communicated in writing to the service provider concerned. In case of withdrawal, the managing entity of the airport shall be advised.

Article 5 – Centralized infrastructure

1. Member States may reserve, either to the managing entity of the airport or another entity, the management of the centralized infrastructure used for the provision of ground handling services and whose complexity, cost and impact on the environment do not allow division or duplication, such as systems for baggage sorting, water purification and fuel distribution. The use of such infrastructure by service providers may be made mandatory by member States.
2. Member States shall ensure that the management of this infrastructure is transparent, objective and non-discriminatory and in particular, it should not constitute an obstacle to its access by service providers within the limitations of the present Supplementary Act.

Article 6 – Separation of activities

1. The managing entity of an airport or any service provider carrying out ground handling activities, shall make a strict accounting separation in line with commercial practices, between activities relating to ground-handling and any other activity.
2. The effectiveness of such an accounting separation shall be controlled by an independent auditor appointed by the Civil Aviation Authority.
3. Each Member State shall verify the absence of financial flow between the ground handling activity and the service provider's other activities.

Article 7 – Airport users' Committee

1. After the entry into force of the present Supplementary Act, member States shall ensure that for each of the airports concerned, a Committee is established composed of users' representatives or organizations representing these users.
2. Any user shall be entitled to become a member of the above Committee and if he/she so wishes, to be represented by an organization vested with this mission.
3. The airport users' Committee shall be an advisory body. It shall give opinions on matters relating to the organization, notably on tariffs and ground handling operation.

Article 8 – Regional coordination

The Air Transport Committee shall be responsible for the regional coordination on the implementation and follow up of the present Supplementary Act.

Article 9 – Selection of service providers

1. Member States shall take the necessary action to develop a procedure for the selection of service providers approved to provide ground handling services at an airport when their number is limited in cases provided for in Article 10 below.
2. This procedure shall be based on standard conditions and technical specifications that service providers should comply with. Such conditions and specifications shall be developed after consultation with the airport users' Committee.
3. The selection criteria set forth in the specifications referred to above shall be relevant, objective, transparent and non-discriminatory.
4. Any decision taken accordingly shall be notified to the ECOWAS Commission, which shall publish it in the official Journal of ECOWAS.

Article 10 – Special provisions

1. When, at an airport:
 - a) the level of activity does not justify the existence of several service providers with guaranties of public service continuity;
 - b) specific constraints of space or available capacity, in particular based on congestion and utilization rate of surfaces, make impossible the liberalization of the ground handling market to the level provided for in the present Supplementary act;
 - c) specific security and safety constraints so require;

Member States may limit the number of service providers for one or several categories of ground handling services.

3. Any decision taken pursuant to paragraph 1 above shall:
 - a) specify the category (ies) of services to which an exemption is granted as well as the specific constraints of space and available capacity which justify it;
 - b) be accompanied by a set of appropriate measures aimed at removing such constraints;

Furthermore, the decision shall not:

- i) prejudice the purpose of this Supplementary Act;
- ii) result in distortion of competition between service providers.
- iii) extend further than necessary.

[Please note: numbering as in original.]

3. Member States shall notify the ECOWAS Commission, at least three months before its entry into force, any decision taken pursuant to paragraph 1 of this article as well as grounds for such a decision.
4. The ECOWAS Commission shall conduct an in-depth examination of the decision taken pursuant to paragraph 1 this article, presented by the member State.

Article 11 – Self-handling

For specific reasons, a member State may extend to self-handlers the provisions of the present Supplementary Act

Article 12 – Security, safety and facilitation

In the implementation of the present Supplementary Act, member States shall take necessary measures to comply with the Standards and Recommended Practices of International Civil Aviation Organization (ICAO) in matters of safety, security and facilitation at airports.

Article 13 – Reciprocity

1. Without prejudice to the international commitments of ECOWAS member States, when it appears that, as regards to market access to the ground handling services or self-handling, a third country does not:
 - a) *de jure* or *de facto*, offer to air carriers of ECOWAS member States a treatment comparable to that granted by member States to users and service providers of that country, or
 - b) *de jure* or *de facto*, grant national treatment to air carriers of a member State or grants to air carriers of member States other third countries. A member State may suspend in its entirety or partly the enforcement of certain obligations stemming from this Section with respect to service providers and self-handlers of that third country in compliance with ECOWAS law.
2. The Member State concerned shall inform the ECOWAS Commission of any suspension or withdrawal of rights or obligations.

Article 14 – Report and cooperation

1. Member States and the Commission shall cooperate in the enforcement of these Supplementary Acts. Information obtained through the enforcement of this Supplementary Act shall be treated as confidential.
2. The ECOWAS Commission shall present a report to the Council on the enforcement of the Supplementary Act every (2) years after their entry into force.
3. The ECOWAS Commission shall enter into cooperation with other international organizations for the purpose of implementing the present Supplementary Act.

Article 15 – Implementation of the Supplementary Act

1. The member States shall take all necessary legislative and regulatory measures for effective implementation of the present Supplementary Act.
2. The ECOWAS member States shall communicate to ECOWAS Commission any measures concerning the implementation of the present Supplementary Act.

Article 16 – Amendments

1. Any Member State may submit proposal for amendment or revision of this Supplementary Act to the ECOWAS Commission.
2. Such proposed amendment shall be subject to the provisions of article 90 of the ECOWAS Treaty relating to the procedures of amendment and revision.

Article 17 – Entry into force and publication

1. This Supplementary Act shall enter into force from the date of its signature by the Chairman of the Authority of the Heads of State and Government of ECOWAS.

2. It shall be published in the Official journal of the Community, within thirty (30) days of its signature by the Chairman of the Authority of the Heads of State and Government of ECOWAS.

Article 18 – Depositary authority

This Supplementary Act shall be deposited at the Commission which shall transmit certified copies thereof to all member States and register same with the African Union (AU), the International Civil Aviation Organization (ICAO) and such other organizations as may be decided by the Council.

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

Done in Abuja, this 17th day of February 2012

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

Annex

List of ground handling services

1. The administrative ground assistance and supervision shall include:
 - a) Representation and liaison services with local authorities or any other person, disbursements on behalf of the user and the provision of premises to his/her representatives;
 - b) loading, messages and telecommunications control;
 - c) Processing, stocking, handling and management of loading units;
 - d) Any other supervisory service before, during and after flight and any other administrative service requested by the user.
2. "Passenger" assistance shall include any form of assistance to departing or arriving passengers, passengers in transit or those waiting for their connecting flights, namely the control of air tickets, travel documents, baggage checking and their carriage up to the screening system.
3. "Baggage" assistance shall include baggage processing in screening rooms, their screening, their preparation with a view to departure, their loading or unloading from the systems intended to take them from the aircraft to the screening room and vice versa, as well as the baggage carriage from the screening room to the distribution room.
3. "Freight and mail" assistance shall include:
 - a) for import, export or transit freight, physical freight handling, processing of documents, custom formalities or any measure of conservation agreed between parties or required by circumstances;
 - b) for mail, upon arrival and departure, physical processing of mail, document processing and measure of conservation agreed between parties or required by circumstances.
4. The "runway operations" assistance shall include:
 - a) guiding the aircraft upon arrival and departure;
 - b) assistance to aircraft parking and provision of appropriate means;
 - c) communications between the aircraft and the service provider on air side;
 - d) loading and unloading the aircraft, including provision and implementation of necessary means, the transport of passengers and crew members between the aircraft and the airport terminal as well as the carriage of baggage between the aircraft and the terminal; excluding activities coming under the responsibility of air navigation services;

- e) assistance to aircraft start and provision of appropriate means;
 - f) aircraft moving upon departure and arrival, provision and implementation of necessary means;
 - g) transport, loading in the aircraft and unloading of food and drinks.
5. The "aircraft cleaning and servicing" assistance shall include:
- a) internal and external cleaning of the aircraft, the washroom service, the water service;
 - b) cabin air-conditioning and heating;
 - c) cabin arrangement with necessary equipment, stocking of such equipment.
6. The "fuel and oil" assistance shall include:
- a) organization and filling up fuel tank and fuel trade-in, including stocking, control of the quality and quantity of goods /items delivered;
 - b) Oil filling-up and other liquid ingredients.
8. The "on line maintenance" shall include:
- a) regular operations carried out before flight;
 - b) specific operations, as per the user's request;
 - c) provision and management of parts and maintenance equipment;
 - d) request or reservation of a parking point and/or shed for maintenance purposes.
- [Please note: numbering as in original.]*
9. The "air operations and crew management" assistance shall include:
- a) flight preparation at the departing airport or any other place;
 - b) in-flight assistance, including in-flight change of itinerary, where necessary;
 - c) after flight services;
 - d) crew management.
10. The "ground transport" assistance shall include:
- a) organizing and carrying passengers, crew members, baggage, freight and mail between various terminals of the same airport, but excluding any transport between the aircraft and any other point within the perimeter of the same airport;
 - b) any special transport as requested by the user.
11. The "catering service" assistance shall include:
- a) liaison with service providers and administrative management;
 - b) stocking food, drinks and accessories for their preparation;
 - c) accessory cleaning;
 - d) preparation and delivery of foodstuff and equipment.