

Economic Community of West African States, African Regional Bodies

## Supplementary Act A/SP.5/02/12 Relating to the Common Rules on Air Carrier Liability in Case of Accident in ECOWAS Member States Act 2-SP5 of 2012

Legislation as at 17 February 2012

FRBR URI: /akn/aa-ecowas/act/2012/2-sp5/eng@2012-02-17

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PDF created on 23 August 2023 at 15:33.

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Supplementary Act A/SP.5/02/12 Relating to the Common Rules on Air Carrier Liability in Case of Accident in ECOWAS Member States

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Economic Community of West African States

## **Supplementary Act A/SP.5/02/12 Relating to the Common Rules on Air Carrier Liability in Case of Accident in ECOWAS Member States Act 2-SP5 of 2012**

*Published in official journal 60 on 17 February 2012*

**Commenced in full**

*[This is the version of this document at 17 February 2012.]*

### **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 7<sup>th</sup> December 1944 and its annexes;

**RECALLING** the Montreal Convention for the Unification of Certain Rules relating to International Carriage signed at Montreal 25 May 1999;

**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 14<sup>th</sup> 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 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Meetings of Ministers responsible for Civil Aviation in West and Central Africa, noted some discrepancies in national rules and Supplementary Acts 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 Air Carrier Liability in Case of an Accident in ECOWAS Member States;

**ON THE PROPOSAL** of the Meeting of transport Ministers held in Yamoussoukro on the 17<sup>th</sup> 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, the following terms shall have the meanings assigned to them hereafter:—

**Accident:** Event connected with the use of an aircraft which occurs from the time a person boards an aircraft with the intent to travel and the time all the persons who boarded an aircraft with the same intent disembarked and during which:

- a. a person is fatally or seriously injured due to the fact that the person is:
  - i. on board of an aircraft, or
  - ii. in direct contact with any part of the aircraft, including parts that came apart, or
  - iii. directly exposed to engine blast, except for lesions resulting from natural causes or when a person wounds himself/herself or in case a person is wounded by others or injuries to a stowaway hidden outside the areas generally accessible to passengers and crew members, or
- b. the aircraft suffers damage or structural breaking up:
  - i. which impairs its characteristics of structural resistance, performance or flying capacity, and
  - ii. which should normally require major repair or replacement of the damaged component, apart from an engine breakdown or damage to the engine when damage is limited to the engine, its overturning or accessories or damage limited to propellers, wing ends, antenna, pneumatics, brakes, wheel spats or small cuts or surface perforations
- c. the aircraft disappeared or is totally inaccessible;

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

**Air carrier:** an air carrier holding a valid approval issued by a member State in compliance with the provisions of the Supplementary Act relating to air carrier's approval;

**Commercial agreement:** an agreement, other than an agency agreement, made between carriers and relating to the provision of their joint services for carriage of passengers by air.

**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;

**Member State:** A State party to the ECOWAS Revised Treaty;

**Montreal Convention:** Convention for the Unification of Certain Rules relating to International Carriage signed at Montreal 25 May 1999;

**Person entitled to compensation:** the traveller or any person eligible for compensation with respect to the said traveller in compliance with the applicable law;

**Principal and permanent residence:** the one fixed and permanent abode of the passenger at the time of the accident. The nationality of the passenger shall not be the determining factor in this regard.

**SDR:** Special Drawing Rights as defined by the International Monetary Fund;

Warsaw Convention: Convention for the unification of certain rules on international air transport signed in Warsaw on 12 October 1929 modified by the Protocol signed at The Hague on 28 September 1955, supplemented by the Convention signed in Guadalajara on 18 September 1961, and modified by additional Protocols Nos. 1 and 2 and the Montreal Protocol No. 4 signed in Montreal on 25 September 1975.

## **Article 2 – Scope**

1. This Supplementary Act shall determine air carriers' obligations as regards to their liability with respect to passengers for the prejudice suffered during accidents, in case of death, injury or any other corporal lesions to a passenger whenever the accident which caused the prejudice occurred on board of an aircraft or during any embarkation or disembarkation operation in the Community's territory.
2. Furthermore, this Supplementary Act shall determine the requirements with respect to the information to be provided by air carriers to users.

## **Article 3 – Liability level**

1. An air carrier's liability for damage suffered in case of death, or bodily injury as a result of an accident during carriage by air shall not be the subject of financial limitation even if such limitation is determined by legislation, Convention or contract.
2. The insurance obligation set forth in Article 7 of the Supplementary Act establishing common rules on approval of air carriers in ECOWAS Member States relating to air carrier's approval means that any air carrier should take out insurance adequate to cover its liability set forth in paragraph 3 below and beyond for a reasonable amount.
3. The air carrier's liability shall exclude damage referred to in paragraph 1 above when the damage is higher than 100,000 Special Drawing Rights per passenger if it demonstrates:
  - a) that the damage is not caused by its negligence or any other action or oversight on the part of the carrier, its employees or agents; or
  - b) that the damage results from the negligence or any other detrimental action or oversight attributable to a third party.
4. The air carrier shall automatically apply the rules of the operator's country of origin whenever the provisions of such rules are more favourable to persons entitled to compensation than those provided for in this Supplementary Act and article 5 below.

## **Article 4 – Mutual liability/ air carrier's recourse**

In case of death, or bodily injury to a passenger caused by an accident, no provision of this Supplementary Act shall be interpreted as:

- a) designating the air carrier as the only party liable for damages; or
- b) limiting an air carrier's right to claim compensation from a third party in compliance with existing law.

## **Article 5 – Advance payment**

1. With all due diligence and in any event within fifteen (15) days after the person entitled to compensation has been identified, the air carrier shall pay to that person or his/her eligible party an advance payment that would enable him/her to meet his/her immediate needs, in proportion to the material prejudice suffered.

2. Without prejudice to paragraph 1 above, such an advance shall not be higher than 15,000 SDR per traveller in case of death.
3. An advance payment shall not constitute recognition of liability and such an advance may be deducted from any amount paid at a later date in respect of the air carrier's liability; the advance cannot be refunded except for cases referred to in paragraph 2 of Article 3 above or when it has been demonstrated later that the fault of the person to whom the advance was paid is the cause of the damage suffered or has contributed to it or the person was not entitled to compensation. However, accepting such an advance is not equivalent to a transaction.

### **Article 6 – Information to travellers**

1. Provisions of Articles 3 and 5 above shall appear in the conditions of contract of the air carrier.
2. Adequate information on the provisions of Articles 3 and 5 above shall be provided to travellers, at their request, by the air carrier's agencies, by travel agencies, check-in desks and sales points. The transport document or any equivalent document shall have a summary of the rules drafted in simple and intelligible terms.
3. Air carriers who apply more favourable conditions to users than those in Articles 3 and 5 above shall inform clearly and expressly travellers at the time of buying air tickets in the carrier's agencies, travel agencies or check-in desks located on the territory of a Member State. Air carriers shall provide travellers with a leaflet specifying their conditions. The fact that the transport document or an equivalent document indicates only that liability is limited shall not be viewed as sufficient information.

### **Article 7 – Competent jurisdiction**

1. An action for damages must be brought, at the option of the plaintiff, in the territory of one of the Member States, either before the court of the domicile of the carrier or of its principal place of business, or where it has a place of business through which the contract has been made or before the court at the place of destination.
2. In respect of damage resulting from the death or injury of a passenger, an action may be brought before one of the courts mentioned in paragraph 1 of this Article, or in the territory of a Member State in which at the time of the accident the passenger has his or her principal and permanent residence and to or from which the carrier operates services for the carriage of passengers by air, either on its own aircraft or on another carrier's aircraft pursuant to a commercial agreement, and in which that carrier conducts its business of carriage of passengers by air from premises leased or owned by the carrier itself or by another carrier with which it has a commercial agreement.
3. Questions of procedure shall be governed by the law of the court seized of the case.

### **Article 8 – Legal action time limit**

1. To avoid forfeiture, legal proceedings shall be instituted within two (2) years from the time of arrival at destination, or from the day the aircraft should have arrived or the day air transport ceased.
2. The mode of calculation of the time limit shall be determined by the court the matter was referred to.

### **Article 9 – Report and cooperation**

1. Member States and the ECOWAS Commission shall cooperate for the implementation of this Supplementary Act.



2. The ECOWAS Commission shall present a report to the Council on the enforcement of the Supplementary Act every two (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 10 – 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 member States shall communicate to ECOWAS Commission any measures concerning the implementation of the present Supplementary Act.

### **Article 11 – Amendments**

Any Member State may submit proposal for amendment or revision of this Supplementary Act to the ECOWAS Commission in accordance with the provisions of article 90 of the ECOWAS Treaty relating to the procedures of amendment and revision.

### **Article 12 – Entry into force and publication**

3. 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.
4. 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.

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

### **Article 13 – 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 17<sup>th</sup> day of February 2012

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