

Economic Community of West African States, African Regional Bodies

Supplementary Act A/SP.6/02/12 Relating to the Common Rules on Tariffs Applicable to Passengers, Freight and Mail for Air Transport within, from and to ECOWAS Member States Act 2-SP6 of 2012

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Economic Community of West African States

Supplementary Act A/SP.6/02/12 Relating to the Common Rules on Tariffs Applicable to Passengers, Freight and Mail for Air Transport within, from and to ECOWAS Member States Act 2-SP6 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 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 Tariffs Applicable to Passengers, Freight and Mail for Air Transport Services within, from and to 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, the following terms shall have the meanings assigned to them hereafter:—

Aeronautical Authority: any governmental authority, corporate body or organ duly authorised to perform this function;

Air carrier: an air transport enterprise holding a valid air operating certificate issued by an Aeronautical Authority: pursuant to the Supplementary Acts on the approval of air carriers;

Air service: any flight or series of flights carrying, subject to consideration, passengers, freight and/or mail;

Air tariff (air fare and rate): prices expressed in any currency of a member State to be paid for the carriage of passengers, freight and mail on an air service together with the applicable conditions of such prices, including the remuneration and conditions offered to agencies and other ancillary services;

Basic passenger tariff: a fully flexible tariff (the lowest) for one-way trip or a round trip which is offered at least to the same extent as any other fully flexible tariff offered for the same air service;

Chicago Convention: Convention on International Civil Aviation signed in Chicago on 07 December 1944 incl. all its annexes;

Capacity: The number of seat offered to the public or freight or air post service for a determined period;

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;

ICAO: International Civil Aviation Organisation a Special Agency of the United Nations headquartered in Montreal, Canada;

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

Member States concerned: Member States between which or a member State within which an air services is operated;

Member States involved: Member State concerned and/or member States in which air carrier(s) that operate the air service are holders of an air carrier's license;

Right of Traffic: The right for carrier to transport passenger paying freight and or courier on air links between two (2) or many airports of ECOWAS;

Standard freight tariff: Freight tariffs generally applied by the air carrier excluding the regular discount agreed among air carriers.

Article 2 – Purpose and scope

1. The present Supplementary Act shall establish the necessary criteria and procedures for setting passengers, freight and/or mail tariffs applied by air carriers operating air traffic rights within, from or to the ECOWAS Member States.
2. This Supplementary Act shall also apply to any air carrier operating traffic rights within, from or to the ECOWAS Member States.

Article 3 – Air tariff setting

Air carriers shall freely set air tariffs applicable for the carriage of passengers, freight and mail within ECOWAS Member States.

Article 4 – Tariffs under public service obligations

The present Supplementary Act shall not be applicable to passengers, freight and mail tariffs determined under public service obligations in compliance with the Supplementary Act establishing common rules on conditions of access to air transport markets in ECOWAS Member States.

Article 5 – Filing of tariffs

1. In case of tariff increase, there shall be no approval required by the aeronautical authorities of the ECOWAS Member State concerned for tariff to be charged by the designated airlines of Member States for the carriage of passengers, freight and mail. The airlines shall in this case file such tariffs before competent authorities 30 working days before they enter into effect.
2. This provision is not applicable in the case of lowering tariff which takes immediate effect according to the will of the airline.

Article 6 – Tariff information

1. Air carriers operating within the Community shall make available at their headquarters, airport and sales outlets communicate their basic passengers tariffs and their standard freight tariffs to any interested passenger or shipper (individual or legal entity), at their request.
2. Air carriers operating within the Community shall include all compulsory taxes, fees and surcharges in published air ticket prices.

Article 7 – Tariff suspension

1. Where a member State establishes that an Air Carrier is applying an excessively high or abnormally low fare which has no relation to the economic value of the service, it may refer the matter to the competent competition or consumer protection authorities in accordance with Supplementary Act A/SA1/2/08 adopting the Community Competition Rules and the Modalities of their application within ECOWAS.
2. If within fourteen (14) days from the date of receipt of notification, neither a concerned member State, nor the Commission have notified their disapproval grounded on the criteria set forth in paragraph 1 above, the Member State which took the decision pursuant to the same paragraph, may order concerned air carriers to suspend the application of the tariff in question.
3. In case of disapproval, the Commission or any member State involved may seek consultations with the Member State concerned for the purpose of examining the situation. Such consultations shall be conducted within fourteen (14) days as a maximum from the date the consultations were requested unless otherwise agreed.
4. When consultations referred to in paragraph 3 above are not conclusive, the matter shall be submitted to the Council of Ministers who, if necessary, can rule through decision-making.

Article 8 – Consultations on tariffs

1. Once a year, the ECOWAS Commission shall consult air carriers and representatives of associations of air transport users within ECOWAS on air fares and rates (tariffs) and related issues; to this end, it shall provide participants with relevant information.
2. The ECOWAS Commission shall also promote consultations under its auspices between air carriers and associations of air transport users.

Article 9 – Information request

1. For the follow up of the present Supplementary Act, the ECOWAS Commission shall collect any useful information from member States and the air carriers concerned.
2. When the required information has not been provided within the prescribed deadline or when the information supplied is incomplete, the ECOWAS Commission shall request from the concerned aeronautical authorities to take necessary fines against the said air carriers.
3. Where the air carrier does not settle an imposed fine, the ECOWAS Commission shall request the suspension of the totality or part of the rights the air carrier has been enjoying under this Supplementary Act and the Supplementary Act establishing common rules on conditions of access to air transport markets in ECOWAS member States.
4. In the absence of a response from a State, the Commission shall take the appropriate action as provided for in the ECOWAS Treaty.

Article 10 – 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) 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 11 – 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 12 – 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 13 – 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 14 – 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