

Economic Community of West African States, African Regional Bodies

Draft Supplementary Act A/SP.7/02/12 Relating to the Common Rules on Compensation to Passengers in the Event of Denied Boarding, Cancellation or Major Delay of Flights in ECOWAS Member States Act 2-SP7 of 2012

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Draft Supplementary Act A/SP.7/02/12 Relating to the Common Rules on Compensation to Passengers in the Event of Denied Boarding, Cancellation or Major Delay of Flights in ECOWAS Member States
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Economic Community of West African States

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the Common Rules on Compensation to Passengers
in the Event of Denied Boarding, Cancellation or
Major Delay of Flights in ECOWAS Member States
Act 2-SP7 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 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 are in conflict with 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 Compensations for Passengers Denied Boarding, Cancellation or Major Delay of a Flight in ECOWAS Member States;

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 the functions of civil aviation;

Air carrier: An air transport enterprise operating air traffic rights to, from and within member States;

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

Confirmed reservation: The fact that an air ticket sold by the air carrier or its authorized agent, specifies the flight number, date and time, and; contains at the appropriate box the indication OK or any other indication or means by which the air carrier acknowledges that it has accepted and expressly confirmed the reservation;

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

Denied boarding: Refusal by the air carrier to board passengers who, altogether, have a valid air ticket, a confirmed reservation for the concerned flight and have presented themselves to the check-in within the required conditions and time limits;

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

Final destination: Destination shown on the air ticket presented at check-in, or in case of successive flights, the last flight of the passenger. Connecting flights that could be performed without any difficulty even if the denied boarding resulted in a delay shall not be taken into consideration;

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

Overbooked flight: A flight on which the number of passengers with a confirmed reservation and present at check-in within the required time limit and conditions is higher than the number of available seats;

Scheduled flight: A flight performed, subject to payment, with aircraft to carry passengers, freight and/or mail in such conditions that on each flight, individual seats are made available to the public, either directly by the air carrier, or by its authorized agents. It is organized for the purpose of connecting two airports or more either according to a published schedule or with such a regularity or frequency that it becomes part of an obvious systematic series:

Volunteer: A person who, having a confirmed reservation and present at check-in within the required time limit and conditions, is willing to give up, at the air carrier's request, the said reservation in return for compensation.

Article 2 – Scope

1. The present Supplementary Act establishes the minimum legal provisions applicable to Air Carriers and passengers in ECOWAS member States.
2. It defines and specifies the minimum rights of passengers when they are denied boarding, their flight is cancelled or delayed of a flight in ECOWAS Member States.
3. It also determines the modalities for compensation for any prejudice suffered by any passengers in ECOWAS member States regardless of the nationality of air carrier.

Article 3 – Boarding rules

1. The air carrier shall determine the rules governing the boarding of passengers in the event of an overbooked flight. It shall notify such rules and their possible amendments to the concerned Aeronautical

- Authorities, and ECOWAS Commission, which will make them available to other member States. Such amendments, if any, shall enter into force one month after their notification by the air carriers.
2. The rules referred to in paragraph 1 above shall be made available to the public in the sales offices and check-in desks of the air carrier in a visible, accessible and readable way.
 3. The rules referred to in paragraph 1 above shall provide for a call for volunteers willing to give up boarding.
 4. In any event, the air carrier operating in ECOWAS member States shall take into consideration the interests of the passengers who must be given boarding priority for legitimate reasons, such as persons with limited mobility and unaccompanied minors.

Article 4 – Compensations in the event of denied boarding

1. In the event of denied boarding, the passenger shall be free to choose one of the following compensations:
 - a) refund without any penalty of the air fare as soon as possible for the non-performed portion of the trip;
 - b) re-routing as soon as possible to the final destination or;
 - c) re-routing at a later date as the passenger deems convenient.
2. Irrespective of the passenger's choice in paragraph 1 above, the air carrier shall pay, immediately after the denied boarding, a minimum compensation equal to:
 - a) Fifty (50) U.S dollars to an Economy Class passenger and one hundred (100) U.S dollars to a Business Class passenger for flights less than two thousand five hundred (2,500) kilometers;
 - b) Two hundred (200) U.S dollars to an Economy Class passenger and four hundred (400) U.S dollars to a Business Class passenger for flights of two thousand five hundred (2,500) kilometers or more, based on the final destination shown on the air ticket.
3. When the carrier offers re-routing to the final destination on a flight whose arrival time does not exceed by three (3) hours the arrival time of the flight initially booked in the case of connections of less than two thousand five hundred (2,500) kilometers and by five hours in the case of connections of more than two thousand five hundred (2,500) kilometers, compensations provided for in paragraph 2 above may be reduced by the air carriers by half.
4. Distances set forth in paragraphs 2 and 3 of this article are measured based on the method of the great circle distance or orthodromic route.
5. In any event, compensation amounts shall be limited to the air fare corresponding to the final destination. Compensations shall be paid in cash or, with the passenger's consent, in travel vouchers and/or other services.
6. In the event of an overbooked flight, if a passenger accepts to travel in a class lower than that for which the ticket was bought, the passenger shall be entitled to a refund of 50% of the full fare.
7. The air carrier shall not be compelled to pay any compensation for denied boarding when a passenger travels with a free ticket or at discount fares not available to the public, directly or indirectly.
8. The air carrier shall not be compelled to pay any compensation when a passenger is denied boarding for reasons such as health, safety or security, or inadequate travel documentation.

Article 5 – Compensation in the context of a package tour

In case of denied boarding on a flight sold as part of a package tour, the air carrier must compensate the tour operator who shall, thereupon, compensate the passenger.

Article 6 – Compensation in case of a cancelled flight

In case of a cancelled flight, the following provisions shall apply, except if the air carrier or the tour operator demonstrates that such a decision was due to circumstances for which neither its liability nor the subcontractor's liability is involved:

- a) When, prior to the scheduled initial departure time, an air carrier or a tour operator cancels or expects the need to cancel a flight, it shall do its utmost to contact all concerned passengers and agree with them the conditions on which they would accept to give up their confirmed reservation. At the bare minimum, passengers should have the choice between:
 - i. the full refund of the air fare, at the price the ticket was bought for the non-performed portion(s) of the trip and for the portion(s) of the trip already performed and which became useless in relation to their initial travel plan as well as a return flight to their initial point of departure as soon as possible;
 - ii. re-routing soonest to their final destination, in comparable travel conditions, or
 - iii. re-routing to their final destination in comparable travel conditions at a suitable date.
- b) For passengers with whom the carrier or the tour operator could not reach an agreement in accordance with the provisions in paragraph 1 above and who presented themselves to check-in in compliance with the provisions of Article 3, paragraph 1 above, a compensation shall be offered to them as well as assistance in case of denied boarding, as set forth in Articles 4 and 5 above.

Article 7 – Compensation in the event of a major delay

1. When an air carrier or a tour operator reasonably expects that a flight will be delayed, with regard to the scheduled initial departure by three hours at least for flights of less than 2,500 kilometres and by five hours at least for flights of two thousand five hundred (2,500) kilometres or more, assistance referred to in Article 8 below shall be offered to passengers.
2. In any event, such assistance shall be proposed at the latest within three hours following the scheduled departure time for a flight of less than two thousand five hundred (2,500) kilometres and at the latest within five hours following the scheduled initial departure time in the case of a flight of two thousand five hundred (2,500) kilometres or more.
3. When an air carrier or tour operator reasonably expects that a flight will be delayed by three hours or more with respect to the scheduled initial departure time, it shall offer immediately to disabled passengers and their accompanying persons as well as other passengers with limited mobility and unaccompanied children the necessary assistance in compliance with the provisions of Article 8 below as well as any other form of assistance necessary for and meeting the specific needs of these passengers.

Article 8 – Other compensations

1. In addition to minimum compensations set forth in Article 4 above, the air carrier shall further offer, free of charge, to passengers who were denied boarding:
 - a) the cost of a telephone call and/or telex/fax message or email to the place of destination;
 - b) the possibility to get enough food to eat bearing in mind the waiting time,
 - c) hotel accommodation in the event passengers are delayed for one or several nights.
2. When a city or region has several airports and an air carrier proposes to a passenger who was denied boarding, to board a flight to an airport other than the airport reserved by that passenger, the travel expenses between the substitution airports or to a closer substitution destination as agreed with the passenger, shall be borne by the air carrier.

Article 9 – Information to passengers

Air carriers shall provide each passenger who was denied boarding, victim of a flight cancellation or major flight delay, with a leaflet containing the rules governing financial compensations.

Article 10 – Other remedial actions

1. The provisions of the Supplementary Act shall apply without prejudice to any civil liability proceedings that could be instituted by the passenger before the appropriate courts/jurisdictions.
2. Paragraph 1 above shall not apply to volunteers as defined in Article 1 above, who accepted to receive compensation pursuant to rules set out in Article 4 above.

Article 11 – 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 12 – 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 13 – 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 14 – 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 15 – 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 2011

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