

Economic Community of West African States, African Regional Bodies

Supplementary Act A/SP.8/02/12 Relating to the Common Rules on the Conditions of Access to Air Transport Markets in ECOWAS Member States

Act 2-SP8 of 2012

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Supplementary Act A/SP.8/02/12 Relating to the Common Rules on the Conditions of Access to Air Transport Markets in ECOWAS Member States

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Economic Community of West African States

Supplementary Act A/SP.8/02/12 Relating to the Common Rules on the Conditions of Access to Air Transport Markets in ECOWAS Member States

Act 2-SP8 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 Conditions of Access to Air Transport Markets in 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 on 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 holding a valid approval issued by a member State.

Airport: surface defined on land or water used for the arrival, departure and movements of the aircraft on the surface;

Air service: flight or series of flights carrying, passengers, freight or mail for hire or reward;

Capacity: Number of seats made available to the public or freight payload and mail on an air service for a determined period;

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

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;

Flight: Air routing of an aircraft departing from a given airport to an airport of destination.

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 service is operated;

Member States involved: Member State concerned or member States that have issued approval to the airlines operating the air services;

Non-scheduled air service: A commercial air service performed in a different way as compared with a scheduled service;

Public service obligations: Obligations imposed on an air carrier to make, with respect to any air services that it may operate under an air carrier approval issued by an Aeronautical Authority, any necessary arrangements to ensure/provide services of general public interest which meet the standards set as regards continuity, regularity, capacity and costs; such standards would not be met if the air carrier had to bear in mind the commercial interest alone;

Scheduled air service: a series of flights with all the following characteristics:

- i) it is performed, subject to consideration, 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 through its authorized agents;
- ii) 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;

Traffic right: Right for an air carrier to carry, subject to payment, passengers, freight and/or mail on an air link between two or several airports in West and Central Africa.

Article 2 – Object and scope

This Supplementary Act shall determine the conditions of access of the air carriers to scheduled and non-scheduled air services of the Community.

An ECOWAS designated air carrier shall be permitted to operate between any two airports within the Community.

Article 3 – Granting of traffic rights

Subject to compliance with the provisions of this Supplementary Act, the air carriers shall be designated and authorised by the member

States concerned to exercise traffic rights on air services within ECOWAS territory.

Article 4 – Designation and authorization

1. Each Member State shall have the right to designate in writing one or more air carrier(s) to operate air transport services in accordance with article 3 of this Supplementary Act. Such designation shall be notified to the other member State(s) concerned, accompanied by the operating license and AOC of the air carrier and the corresponding insurance policies, and the ECOWAS Commission.
2. A member State may also designate an air carrier from another member State [or other State Party to the Yamoussoukro Decision] to operate air services on its behalf.
3. A member State shall have the right to designate a multinational air carrier in which it (the State) and/or ECOWAS citizens have shares and the rights to operate its air services on their behalf.
4. On receipt of the notification of such designation, the other member State(s) concerned shall, subject to paragraphs 5 and 6 of this article, without delay but not later than 30 days, grant to the air carrier that has been authorized the appropriate authorization to the designated air carrier.
5. A member State concerned shall have the right to satisfy itself that the air carrier designated has been authorized and agreed to fulfill the conditions for the operation of the air routes for which it has been designated.
6. A member State concerned shall have the right to refuse to grant the authorization referred to in paragraph 4 of this article, or to impose such conditions as it may deem necessary on the rights specified in article 3 of this Supplementary Act, in any case where it is not satisfied that the designated air carrier has been certificated and licensed to fulfill the conditions for the operation of the routes for which it has been designated.

Article 5 – Public service obligations

1. A member State may, by decision based on general public interest requirements, notably the need for territory development, make provision for public service obligations on a given domestic link.
2. Two or several member States may, by decision based on general public interest requirements, notably the need for territory development, impose public service obligations on one or several specific intra-community links.
3. Decisions referred to in paragraphs 1 or 2 above may relate to obligations concerning the duration of operation of the services, and the conditions pertaining to air fares and rates, frequencies, capacity and taking into account specific categories of passengers or freight.

4. They shall be notified to the ECOWAS Commission for publication in the Official Bulletin of ECOWAS. The ECOWAS Commission, on its own initiative or acting at a Member State or air carrier's request, may organize consultations with member State(s) concerned on the compliance of decisions with the provisions of the law of ECOWAS and where necessary, on the duration of restrictions already complied with.
5. The ECOWAS Commission shall report to the Council the outcome of the above-mentioned consultations.
6. When the decision imposing a public service obligation route is published in the Official Bulletin of ECOWAS, but that no air carrier of a Member State has commenced, or considers to commence operating scheduled air services on that route, the concerned member State(s) may invite tenders with specifications for the purpose of selecting an air carrier.

Article 6 – Granting traffic rights to non-member States of ECOWAS

1. In compliance with international agreements in force, air carriers established in a non-member State may be authorized by a member State to operate traffic rights from its territory, on intra-community links provided that such a third State:
 - a) *de jure* or *de facto* grants to the air carriers a treatment comparable to that reserved by concerned member States to that State's carriers.
 - b) *de jure* or *de facto* grants to the air carriers the most favourable treatment offered to other countries' carriers.
 - c) has issued to them an air carrier approval on the basis of economic and technical criteria equivalent to those set forth in the Supplementary Acts relating to air carrier's approval.
2. Air carriers established in a non-member State that adheres to the Yamoussoukro Decision shall be considered as authorized by the member States to operate air services on the same conditions as an air carrier of ECOWAS on a reciprocal basis.

Article 7 – Operating rules

The exercise of traffic rights shall be subject to competition laws within the Community as enacted by the ECOWAS Treaty and community, national or local operating rules as published concerning aviation security, safety, and environmental protection and slot allocations.

Article 8 – Operational flexibility

In operating scheduled and non-scheduled services, an air carrier may, on any or all flights and at its option:

- (a) operate flights in both directions; and
- (b) combine air services and use the same flight number.

Article 9 – Cooperative arrangements

In operating the authorized services on the agreed routes, a designated air carrier of one State Party may enter into cooperative marketing arrangements such as blocked-space, code sharing, franchising or leasing arrangement, with an air carrier or air carriers of the other State Party.

Article 10 – Conditions for operating business

1. Air carriers shall have the right to establish offices in the territory of member States for the promotion and sale of their air services as well as other facilities needed for the provision of said air services. The

air carriers shall also be allowed, in conformity with national laws and Supplementary Acts pertaining to entry, residence and employment, to bring in and maintain in the territory of the member States concerned managerial, sales, technical, operational and other specialist staff required for the provision of these air services.

2. Air carriers shall be granted the right to convert and remit to the country of its choice, all local revenues from the sale of air services and associated activities directly linked to air transport in excess of sums locally disbursed, with conversion and remittance permitted promptly without restriction.
3. Air carriers shall be permitted to pay for local expenses such as handling and purchase of fuel in local currency.

Article 11 – Transitional provision

A Member State shall not be obligated to authorize the exercise of cabotage rights on its territory by air carriers holding a license issued by another Member State up to 12 months from the date of the coming into force of this Supplementary Act.

Article 12 – Safety

1. A Member State may request consultation with another Member State concerning the safety standards maintained by that other member State relating to the operation of the air carrier(s) approved by that other Member State, its aeronautical facilities and services, air crews and aircraft. If, following such consultations, the Member State finds that the other Member State does not effectively maintain and administer safety standards and requirements in any of the above areas that at least equal the minimum standards pursuant to the Chicago Convention or as established by ECOWAS it shall so notify the ECOWAS Commission indicating the appropriate remedial action.
2. Upon a notification according to paragraph 1 of this article the ECOWAS Commission shall without delay and at the latest within two weeks convene a consultative meeting with the concerned Member States in order to discuss the appropriate remedial action, if any.
3. The present Supplementary Act shall not prevent the aeronautical authority of a member State involved from reacting immediately to a safety problem where the authority concludes that immediate action is essential to the safety of an air carrier operation.
4. This may apply to a safety problem which becomes apparent as a result of a ramp inspection, a series of ramp inspections, a denial of access for ramp inspection, failure to implement prior recommendations made or otherwise. For this purpose immediate reaction may include, as appropriate, the suspension or withdrawal of permission for the exercise of traffic rights by the air carrier(s) concerned to the State involved. In such a case, the member State shall inform the other Member States and ECOWAS Commission of such decision.

Article 13 – Security

The Member States shall implement the provisions of the Supplementary Act A/SP.11/02/12/ establishing common rules on Civil Aviation Security in ECOWAS Member States.

Article 14 – 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 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

4. 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.
5. 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 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