

Economic Community of West African States, African Regional Bodies

A/P1/7/96 Protocol on Conditions governing application of the Community Levy

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Economic Community of West African States

A/P1/7/96 Protocol on Conditions governing application of the Community Levy

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Commenced in full

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The High Contracting Parties

MINDFUL of Article 7 of the Economic Community of West African States (ECOWAS) Revised Treaty establishing the Authority of Heads of State and Government and defining its composition and functions;

AND MINDFUL of Article 72 of the ECOWAS Revised Treaty introducing a Community levy to generate revenue for financing the activities of the community;

DESIROUS of concluding a Protocol defining the conditions for the application of the Community levy and the modalities for transfer of receipts and utilisation of resources:

HAVE HEREBY AGREED AS FOLLOWS:

I. Definitions

Article 1

For the purposes of this Protocol:

"**Treaty**" means the Revised Treaty of the Economic Community of West African States signed in Cotonou on 24 July, 1993;

"**Community**" means the Economic Community of West African States whose establishment is reaffirmed by Article 2 of the Treaty.

"**Member State**" or "Member States" means a Member State or Member States of the Community

"**Third country**" means any non-Member State of the Community.

"**Authority**" means the Authority of Heads of State and Government of the Community established under Article 7 of the Treaty.

"**Council**" means the Council of Ministers of the Community established under Article 10 of the Treaty.

"**Executive Secretariat**" and "Executive Secretary" means the Executive Secretariat and Executive Secretary of the Community referred to under Article 17 of the Treaty.

"**Fund**" means the ECOWAS Fund for Cooperation, Compensation and development established under Article 21 of the Treaty.

"**Administration and Finance Commission**" (AFC) means the Commission established under Article 22(h) of the Treaty.

II. Tax base, assessment and collection

Article 2

This Protocol defines the conditions for the application of the Community levy instituted in Article 72 of the Treaty.

Article 3

The taxable base of the Community levy shall be the taxable value of goods, originating from third countries imported into the Community and released for home consumption.

Article 4

The following shall fall outside the scope of the Community levy:

- a) products of ECOWAS origin (approved industrial products, unprocessed goods and traditional handicrafts);
- b) goods manufactured or obtained in Member States but which do not satisfy ECOWAS rules of origin;
- c) goods originating from third countries cleared for home consumption in a Member State and re-exported to another Member State.

Article 5

The following shall be exempted from the Community Levy:

- a) aid, gifts and non-repayable grants received by a state or by legal entities constituted under public law and destined for charitable works recognised as being for the common good;
- b) goods originating from third countries, imported as part of financing agreements with foreign partners, subject to a clause expressly exempting the said goods from any fiscal or para-fiscal levy;
- c) goods imported by enterprises under a stabilised fiscal regime in force at the date of entry into force of this protocol;
- d) goods on which the Community levy has been paid under an earlier regime.

Article 6

The Community tax shall be levied on the basis of:

- a) the CIF value at the port of disembarkation for imports arriving by sea;
- b) the CIF value at the point of entry into the Community's Customs territory in the case of imports arriving by road;
- c) the Customs value at the airport of disembarkation for imports arriving by air;
- d) the market value for products featuring on the market price list.

Article 7

The rate of the Community levy shall be fixed at one half percent (0.5%) of the value of imports originating from third countries. This rate may be amended, as necessary, every three years by the Authority on the recommendation of the Council of Ministers.

Article 8

1. The national Customs Administrations of a Member State shall be responsible for assessment and collection of the Community levy.
2. Customs collectors or heads of Customs offices shall assess and collect all amounts receivable in respect of the Community Levy.
3. Such collectors or heads of Customs offices shall open an additional column in their ledgers to record a daily account of amounts received.

Article 9

1. The securities and privileges granted to States in the collection of State fiscal revenue shall also apply to the collection of dues paid as community levy.
2. The proceeds from Community levy shall enjoy in all Member States, the privileges and immunities provided for in the Treaty, the General Convention on Privileges and Immunities of the Community, and the Headquarters Agreements.

III. Declaration and allocation of returns

Article 10

Amounts collected as Community levy shall be paid by the national Administration, within a period not exceeding one month from the date of collection, into an account opened by the Executive Secretary in the name of ECOWAS with the Central Bank of each Member State, for States which have their own Central Banks, and with the national office of the Banque Centrale des Etats de l'Afrique de l'Ouest (BCEAO) in the case of Member States of the Union Monétaire Quest Africaine (UMOA).

Article 11

Amounts collected as Community levy shall be allocated as follows:

- a) the ordinary budgets of the Community and of its institutions, with the exception of the budget of the Fund for Cooperation, Compensation and Development;
- b) the compensation budget for loss of revenue arising from trade liberalisation;
- c) the funding of development projects;
- d) any other uses as may be decided by the Authority or the Council including any increases to the capital of the ECOWAS Fund.

Article 12

The budgets and other uses referred to in Article 11 above shall be decided annually by the Council of Ministers as recommended by the Administration and Finance Commission.

IV. Surpluses and deficits

Article 13

Any surplus recorded on the Community levy pursuant to authorised expenditure for a financial year shall be carried over into the accounts of the Executive Secretariat.

Article 14

1. Any deficits between total authorised expenditure and proceeds from the Community levy shall, on the decision of the Council of Ministers, be corrected using funds carried over from surpluses from previous years.
2. Where such deficits cannot be offset from the surpluses carried over, they shall be reversed by either of the following methods:
 - i) by deferring execution of certain activities which may be postponed or for which alternative funding may be obtained;
 - ii) by requesting additional funds from Member States. The deficit shall then be spread between the different budgets according to their respective share within the entire budget. The additional contributions from Member States shall be determined on the basis of the different contribution quotas applied for the budgets of the Community.

Article 15

Where the deficit or surplus over three consecutive budget years exceeds 25% of the total vote, the Council of Ministers shall effect the necessary adjustments either by widening the tax base or, where there is a deficit, by raising the rate of the Community Levy or by reducing the rate in case of a surplus.

V. Administration of the Community levy

Article 16

In the Member States, regulations governing the management of disputes concerning Customs duties and taxes shall also apply to operations involving the tax base, assessment and collection of the Community levy. Proceeds from contentious cases shall, with the exception of the actual Community levy, be paid exclusively to the state.

Article 17

At the Community level, the Council of Ministers shall oversee all operations carried out by national Customs Administrations through the Executive Secretariat. The Administration and Finance Commission shall present an annual report to Council accordingly. Conditions governing this supervisory role shall be determined by Council.

Article 18

The Executive Secretariat shall, in its detailed annual report to Council on the application of the mechanism and subject to the provisions of Article 7, propose any amendments it may deem necessary or which may have been submitted by one or more Member States.

VI. Transitional provisions

Article 19

During a transitional period of three years, commencing from the date of entry into force of this protocol:

1. Collection of the Community levy may be executed through channels other than those stipulated under article 8 of this protocol.
However, the proceeds of the Community levy shall be paid in the manner and within the time-limit provided under article 10 of this protocol.
2. Total annual withdrawals from the proceeds of the Community levy by the Executive Secretary in each Member State, shall not exceed the total of its dues in respect of contributions to all budgets and grants combined.
3. Contributions from Member States and their share of any eventual call for additional funds shall be determined in accordance with existing criteria and rules of procedure.
4. Where there is a shortfall between revenue generated by the Community levy and the contributions due from a Member State towards all budgets and grants, the Member State concerned shall pay the difference.
5. Any surplus shall be used to settle arrears of contributions and any balance therefrom shall revert to the Member States.

Article 20

The Minister responsible for ECOWAS affairs in each Member State shall, on the 1st of January of each fiscal year, notify the bank in which the ECOWAS Community levy account has been opened, of the maximum amount which may be withdrawn from this account by the Executive Secretary of ECOWAS.

Article 21

The Executive Secretariat shall, in collaboration with the Member States and the ECOWAS national units, present an evaluation report to the Council of Ministers on the mechanism of the Community levy before the expiration of the transition period

Council shall, on the basis of this evaluation report, determine the arrangements necessary to ensure a smooth passage to the substantive regime.

VII. Final provisions

Article 22 – Settlement of disputes

1. Any dispute between a Member States and the Community with regard to the interpretation and application of this Protocol shall be settled amicably within a period of six months from the occurrence of the dispute.
2. Failing this, the dispute shall be referred to the Community Court of Justice whose decision shall be final and binding.

Article 23 – Sanctions

The sanctions specified in Article 77 of the Treaty shall be applicable to a Member State which fails to honour the obligations imposed on it by the provisions of this Protocol.

Article 24 – Amendment and revision

1. Any Members State may propose any amendment or revision of this Protocol.
2. All proposals shall be submitted to the Executive Secretariat which shall transmit them to Member States within thirty (30) days of their receipt. The Authority shall examine all proposals for amendment and revision at the expiration of the three-month period granted to Member States.

Article 25 – Deposit and entry into force

1. This Protocol shall enter into force upon ratification by at least nine (9) signatory States, in accordance with the constitutional regulations in force in each Member State.
2. This Protocol and all instruments of ratification shall be deposited with the Executive Secretariat which shall transmit certified true copies thereof to all member States, notify them of the date of deposit of the instruments of ratification and register the Protocol with the Organisation of African Unity, the United Nations and all other organisations as may be determined by the Council of Ministers.
3. This Protocol shall be annexed to the Treaty and shall form an integral part thereof.

In faith whereof, we, the Heads of State and Government of the Economic Community of West African States, have signed this Protocol.

Done at Abuja, this 27th day of July, 1996

(In single original in English, French and Portuguese, all three texts being equally authentic).