



**REGULATORY AND INSTITUTIONAL TEXTS FOR  
THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECISION  
AND FRAMEWORK TOWARDS THE ESTABLISHMENT OF A  
SINGLE AFRICAN AIR TRANSPORT MARKET**

## COMPETITION RULES AND GUIDELINES

### ANNEX 5 TO THE YAMOOUSSOUKRO DECISION: Regulations on Competition in Air Transport Services within Africa

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## PREAMBLE

WE, the Ministers responsible for Transport, Infrastructure, Energy and Tourism meeting at the First Ordinary Session of the African Union Specialized Technical Committee on Transport, Transcontinental and Interregional Infrastructure, Energy and Tourism in Lomé, Togo, 17th March 2017 have adopted these Regulations developed by the Bureau of the Conference of African Ministers of Transport, meeting in Malabo, Republic of Equatorial Guinea, on 18th and 19th December 2014, on the occasion of the Fourth Meeting of the Bureau of the Conference of African Ministers of Transport dedicated mainly to implement the Executive Council Decisions EX.CL/Dec.826(XXV) endorsing the report of the Third Session of the Conference of African Ministers of Transport (CAMT);

**CONSIDERING** the Constitutive Act of the African Union adopted in Lomé on 11<sup>th</sup> July 2000, namely its Article 3, 5, 6, 9, 13, 14, 15, 16 and 20;

**CONSIDERING** the Treaty establishing the African Economic Community signed in Abuja on 3<sup>rd</sup> June 1991, namely its articles 8, 10, 11, 13, 25 to 27;

**CONSIDERING** the Decision relating to the implementation of the Yamoussoukro Declaration concerning the liberalization of air transport markets access in Africa of 14<sup>th</sup> November 1999, hereinafter called the Yamoussoukro Decision;

**CONSIDERING** the African Union Commission's Statutes adopted by the Assembly of the African Union in Durban (South Africa) on 10<sup>th</sup> July 2002;

**CONSIDERING** EX.CL/Dec.359 (XI) wherein the Executive Council endorsed the Resolution of the 3<sup>rd</sup> Session of the Conference of African Ministers of Transport (CAMT) in Malabo, Equatorial Guinea in 2014 entrusting the functions of the Executing Agency of the Yamoussoukro Decision of 1999 to the African Civil Aviation Commission (AFCAC), hereinafter called the Executing Agency

**CONSIDERING** the Resolution on the follow-up of the implementation of the Yamoussoukro Decision of 1999 adopted by the First African Union Conference of Ministers responsible for air transport in Sun City (South Africa) in May 2005;

**CONSIDERING** the Resolution on air transport safety in Africa adopted by the Second Conference of African Union Ministers responsible for air transport in Libreville (Gabon) in May 2006;



**CONSIDERING** the need to speed-up the full implementation of the Yamoussoukro Decision with a view to giving a boost to the operations of African airlines and other air transport service providers and effectively meeting the challenges of globalisation of international air transport;

**DESIROUS OF** ensuring fair opportunity on a non-discriminatory basis for the designated eligible African airlines, to effectively compete in providing air transport services within the African Air Transport Market.

HEREBY MAKE THE FOLLOWING REGULATIONS:

## **CHAPTER ONE PURPOSE, DEFINITIONS, OBJECTIVES AND THE SCOPE OF APPLICATION**

### **Article 1 Definitions**

In these Regulations, unless the context otherwise requires:

**“Abuja Treaty”**: the Treaty Establishing the African Economic Community adopted at Abuja, Nigeria on the 3<sup>rd</sup> day of June, 1991 and which entered into force on 12 May 1994.

**“African Air Transport Executing Agency”**: the Executing Agency provided for in the Article 9 of the Yamoussoukro Decision.

**“Airline”**: an air transport enterprise holding a valid Air Operating Certificate and operating air transport services within the territory of a State Party.

**“Aeronautical Authority”**: any Governmental authority, body corporate or organ duly authorised to perform any function to which these Regulations relate.

**“Capacity”**: the number of seats and cargo space offered to the general public on air services over a given period and in a given sector.

**“Concerted practice”**: means co-ordination between airlines that, without having reached the stage where an agreement properly so-called has been concluded, knowingly substitutes practical co-operation to the exclusion of competition;

**“Competent authority”**: means anybody established in each State Party charged with regulating competition in the air transport sector, or in absence of such an institution, the Civil Aviation Authority.



**“Dominant position”**: means a position of one or more airlines which enables them to prevent effective competition being maintained within the market or apart of thereof, by giving them the power to behave to an appreciable extent independently of their competitors, their suppliers, their customers or end users.

**“Excessive capacity”**: means more capacity than that reasonably required on a route or in a given sector.

**“Excessively high price”**: means the price of a service which bears no reasonable relation to the economic value of that service and reasonable profit margin.

**“Excessively low price”**: means the price of a service which bears no reasonable relation to the economic value of those services.

**“Market”**: means a relevant geographic area, including routes or sector thereof and a relevant air transport service provided by an airline.

**“Member State”**: means a Member State of the African Union.

**“Regional competition authority”**: means an authority set up by a regional economic community with mandate to regulate and supervise the implementation of these regulations.

**“Regional Economic Community”**: means a regional economic community recognised as such by the African Union.

**“Regional YD Authority”**: means an authority set up by a regional economic community with mandate to regulate and supervise the implementation of the Yamoussoukro Decision within the territory of the regional economic community concerned.

**“State Party”**: means each African State signatory to the Abuja Treaty and such other African country which, though not a party to the said Treaty, has declared in writing its intention to be bound by the Yamoussoukro Decision and these Regulations.

**“Scheduled and non-scheduled air services”**: bear the same meaning assigned to them in the Chicago Convention of 1944 and in resolutions of the Council of the International Civil Aviation Organization (ICAO).

**“Trade association”**: an association of airlines with the aim of promoting co-operation activities of its members.



## **Article 2 Object and Scope of Application**

1. The purpose of these Regulations is to promote and guarantee free and fair competition in air transport services within Africa in order to develop the air transport industry and to contribute to the welfare of the citizens of the State Parties.
2. This Decision shall apply to scheduled and non-scheduled air transport services within the State Parties, including any practice, agreement or conduct thereto which might have an anti-competitive effect within the separate and joint territories of the regional economic communities and within the entire African continent.

## **CHAPTER TWO PROHIBITED PRACTICES, AGREEMENTS AND DECISIONS**

### **Article 3 Anti-competitive Practices, Agreements and Decisions**

1. Any practice, agreement or decision which negates the objective of free and fair competition in air transport services shall be prohibited. To this end, State Parties shall undertake to ensure that any agreement between airlines, any decision taken by associations of airlines and any concerted practice which negatively affect the liberalization of air transport services within the continent of Africa and which has as its object or effect the prevention, restriction or distortion of competition within the continent of Africa, is prohibited.
2. Subject to paragraph 2(a) and Article 7 of these Regulations, anti-competitive practices and agreements, shall be deemed illegal. Such practices include, but are not limited to, any agreement between airlines, any decision by associations of airlines and any concerted practice which:
  - (a) directly or indirectly fixes purchase or selling or any other trading conditions including charging prices on routes at levels, which are in the aggregate, insufficient to cover the direct operating costs of providing the services to which they relate;
  - (b) limits or controls markets, technical development, or investment;
  - (c) involves the addition of excessive capacity or frequency of services;
  - (d) divides markets or sources of supply by allocating passengers, territories, or specific types of services;



- (e) applies dissimilar conditions to similar transactions with other airlines, thereby placing them at a competitive disadvantage;
  - (f) makes the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contract; and; has a detrimental effect on consumers.
3. (a) Any practice, agreement or decision prohibited or deemed illegal pursuant to this Article shall be void unless a party proves that technological efficiency or other pro-competitive gain outweighs the alleged anti-competitive effect.
- (b) Without prejudice to the generality of paragraph (a) any practice, agreement or decision shall not be deemed to be anti-competitive unless:
- i. it is sustained rather than temporary;
  - ii. it has an adverse economic effect on or cause economic damage to any competitor;
  - iii. it reflects an apparent intent or has the probable effect of crippling, excluding or driving any competitor from the market; or
  - iv. it limits the rights or interests of consumers.

#### **Article 4 Abuse of Dominant Position**

Any abuse by one or more airlines of a dominant position within State Parties shall be prohibited insofar as it may affect air transport services at the regional or at the African continent level. Such abuse may include:

- a) directly introducing unfair trading conditions to the prejudice of competitors such as:
  - i. the introduction on a route or sector thereof of excessive capacity, which is likely to have an adverse impact upon any competing airline;
  - ii. the introduction by an airline on a route or sector thereof of an excessively low price, which is likely to have an adverse impact on any competing airline and is likely to be perceived as specifically designed, targeted and intended to keep out a new airline or to drive out another airline; or



- iii. the introduction by an airline on route or sector thereof of an excessively high price because of lack of a price competition or collusion.
- b) limiting capacity or markets to the prejudice of consumers such as:
- i. charging excessively high prices to the detriment of consumers;
  - ii. the introduction by an airline on a route or sector thereof of capacity, which is designed, targeted and intended to drive out another airline;
  - iii. the intentional under-supply, by an airline, of capacity contrary to the set objectives of healthy and sustained competition; or
  - iv. the allocation of capacity by an airline on a route in a manner which is unduly discriminatory including requiring consumers not to use the services of a competitor;
- c) applying dissimilar conditions to similar transactions with other trading parties, thereby, placing them and/or resulting in other airlines being placed at a competitive disadvantage including discriminating between different consumers and competitors in equivalent transactions of services of like quality in terms of:
- i. the price charged;
  - ii. any discount, allowance, or rebate given or allowed in relation to the supply of services;
  - iii. the provision of services;
  - iv. payment for services; or
- d) making the conclusion of contracts subject to acceptance by the other parties, of supplementary obligations, which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

**Article 5**  
**Non-discrimination in national and regional legislation and administrative measures**

1. Legislation or administrative measures in the territory of a State Party or of a regional economic community shall not discriminate against the provision of services by airlines or associations of airlines of State Parties.





2. A State Party or a regional economic community may, before enacting legislation or adopting administrative measures which in their view may have the effect of discriminating against airlines of other State Parties, invite The Executing Agency to review the legislation in question and recommend appropriate amendment of any provision that may directly or indirectly permit or promote anti-competitive behaviour.

### **Article 6 Subsidies**

1. These Regulations prohibit the granting of any subsidy by any State Party or regional economic community which distorts or threatens to distort competition.
2. The Executing Agency shall propose guidelines and implementing rules indicating circumstances under which subsidies may be granted.

### **Article 7 Exemptions and Safeguard Measures**

1. The Executing Agency may, by these Regulations, exempt any particular practices, agreements or decisions which may have been deemed illegal or prohibited under Article 3 hereof.
2. The Executing Agency may, on application by an airline of a State Party, approve measures designed to remedy any adverse effects the State may experience by reason of the implementation of the provisions of of these Regulations.
3. Copies of all applications for exemption under paragraph 1 hereof shall be sent to all relevant regional competition authorities and the Executing agency.
4. Notwithstanding paragraph 1 of this Article, in the event of negative economy factors prevailing in a State Party following the application of the provisions of these Regulations, the State Party concerned shall, after informing the relevant regional competition authority and the Executing Agency take the necessary safeguard measures pending the written approval of the regional competition authority and/or the Agency.
5. These safeguard measures shall remain in force for a maximum period of one year and shall not distort or threaten to distort competition.
6. The regional competition authority and or the Executing Agency shall examine the method of application and the effects of these safeguard measures while they remain in force and shall in all cases determine



whether any measure taken pursuant to Article 7(5) hereof distorts, threatens to distort or has the effect of distorting competition.

7. The regional competition authority and/or the Executing Agency shall recommend the withdrawal, determination or suspension of such a safeguard measure in the event of a negative determination in terms of the impact thereof.
8. Any recommendation for the withdrawal, termination or suspension shall clearly specify the grounds for making such determination, the latest date for the withdrawal, termination or suspension, and the grounds of appealing the recommendation. Such a recommendation shall be classified as a decision under the terms of Article 6 of the Regulation on the Powers, Functions and Operations of the Executing Agency of the Yamoussoukro Decision]
9. The regional competition authority and or the Executing Agency may decide to take interim measures that it deems fit when it determines that the State Party concerned has failed to take any action to address the recommendation addressed to it pursuant to Article 7(5) hereof.
10. Such interim measures shall apply for a period not exceeding ninety (90) days.
11. The relevant authority may extend the interim measures for a period not exceeding thirty (30) days thereafter in the event that subsequent to an objective assessment of the circumstances such extension is deemed necessary.

### **CHAPTER THREE ENFORCEMENT, INVESTIGATION, NEGOTIATION, ARBITRATION AND JUDICIAL REVIEW**

#### **Article 8 The Executing Agency and Regional Competition Authorities**

The Executing Agency shall be responsible for supervising and implementing these regulations and shall be responsible for:

- a) implementing measures to increase transparency in the air transport sector;
- b) implementing measures to develop public awareness of the provisions of these Regulations;
- c) investigating and evaluating alleged violations of these regulations;



- d) granting, refusing or revoking exemptions in terms of Article 7;
- e) reviewing legislation or administrative measures of Member States in terms of Article 5;
- f) reporting to CAMT on any matter relating to the application of these Regulations; and
- g) performing any other function assigned to it under these Regulations.

### **Article 9 Complaints**

1. Any State Party, undertaking, regional competition authority or any interested party may lodge a complaint with the Joint Competition Authority against an undertaking concerning an alleged breach of these Regulations by that undertaking.
2. The Executing Agency may, on its own motion, initiate an investigation into a suspected breach of these Regulations by an undertaking.
3. The Executing Agency shall within 30 days of receipt of a complaint made under paragraph 1, forward a copy of such complaint to the competent authorities of the Member States.
4. Such competent authorities shall have the right of audience before the Executing Agency.

### **Article 10 Investigation and Procedural Fairness**

1. In the execution of its duties under these Regulations, the Executing Agency, the relevant regional competition authority, or the competent authorities of State Parties as required by the relevant competition authorities may undertake all necessary investigations into undertakings and associations of undertakings.
2. The Executing Agency shall within a reasonable time, prior to the envisaged investigation inform the competent authorities of the State Parties of the proposed investigation and the identity of the authorised officials. The competent authorities of the Member States shall assist the officials of the Executing Agency if so requested.
3. In the execution of its duties, the Executing Agency shall act with due regard for the rules of natural justice.



### **Article 11 Hearing of the Parties Concerned**

Before taking any decision under these Regulations affecting undertakings or associations of undertakings, the Executing Agency shall give the undertakings or associations of undertakings concerned the opportunity of being heard. There shall be a written record of the hearing.

### **Article 12 Outcome of Complaint**

1. Where the Executing Agency finds that there has been an infringement of any provision of Chapter Two of these Regulations, it shall direct the undertaking or association of undertakings concerned to bring such an infringement to an end.
2. If the Executing Agency, acting on a complaint concludes that, on the evidence before it, there are no grounds for intervention in respect of any agreement, decision or concerted practice, it shall reject the complaint.
3. The Executing Agency shall simultaneously send a copy of its decision to the competent authorities of the Member States in whose territory the head office of the undertaking or association of undertakings is situated.

### **Article 13 Provisional Measures**

1. Where there is *prima facie* evidence before the Executing Agency that certain practices are contrary to these Regulations and have the object or effect of directly jeopardising the existence of an undertaking it may decide to take such provisional measures that it deems fit to ensure that these practices are not implemented, or where implemented they are stopped.
2. Such provisional measures shall apply for a period not exceeding ninety (90) days.
3. The Executing Agency may extend the provisional measures for a period not exceeding thirty (30) days.

### **Article 14 Cooperation with Member State Authorities and Access to Information**

1. The Executing Agency shall execute its powers and procedures in collaboration with the regional competition authorities and competent authorities of the Member States.



2. In carrying out the duties assigned to it by these Regulations, the Executing Agency may request all necessary information from the competent authorities of the Member States and from an undertaking or association of undertakings.
3. A copy of the request to an undertaking or association of undertakings shall also be sent to the competent authorities of the Member States in whose territory the head office of the undertaking or association of undertakings is situated.
4. The Executing Agency shall in its request clearly state the legal basis and purpose of the request and also the penalties for the supply of incorrect information or non-supply of information within a fixed time limit.

### **Article 15 Penalties**

1. The Executing Agency may decide, depending on the gravity and the duration of the infringement, to impose penalties on an undertaking or association of undertakings where they intentionally or negligently:
  - (a) infringe any provision of these Regulations; or
  - (b) supply incorrect or misleading information in connection with an application; or
  - (c) supply incorrect information in response to a request made, or do not supply information within the time limit fixed by a decision.
2. The Executing Agency shall from time-to-time review such penalties.
3. In the case of a second or subsequent infringement, the Executing Agency may impose a stiffer penalty.

### **Article 16 Review of the Decisions of the Executing Agency**

Any party whose rights, interests or legitimate expectations have been affected by a decision of the Executing Agency may have recourse to Part One of the Dispute Settlement Regulation.

### **Article 17 Dispute Settlement among State Parties**

If any dispute arises between State Parties relating to the interpretation or application of these Regulations, the State Parties concerned shall have recourse to the Dispute Settlement Regulation.



**Article 18**  
**Professional secrecy**

1. Information acquired as a result of the application of these Regulations shall be used only for the purpose of the relevant request or investigation.
2. The Executing Agency and the competent authorities of the State Parties, their officials and other servants shall not disclose information of a kind covered by the obligation of professional secrecy and which has been acquired by them as a result of the application of these Regulations.

**Article 19**  
**Publication of decisions**

1. The Executing Agency shall publish the decisions which it makes under these Regulations.
2. In publishing any decision the Executing Agency shall state the names of the parties and the main contents of the decision. In so doing, the Executing Agency shall have regard to the legitimate interest of undertakings in the protection of their business secrets.

**Article 20**  
**Implementation provisions**

The Executing Agency shall formulate implementing provisions for adoption by the relevant institutions on, *inter alia*:

- a) guidelines on subsidies in terms of Article 6;
- b) rules of procedure on exemptions granted in terms of Article 7;
- c) the standard form, content and other details pertaining to:
  - (i) applications submitted in terms of Article 7; and
  - (ii) complaints submitted in terms of Article 9 and outcomes of complaints in terms of Article 12;
- d) the rules on hearings provided for in Article 11;
- e) penalties imposed in terms of Article 15;
- f) guidelines and rules of procedure for the implementation of these Regulations; and
- g) guidelines dealing with frivolous complaints.



**Article 21  
Amendments**

1. Each State Party may propose amendments to this Decision.
2. Any proposal for amendment to these Regulations shall be submitted to the Executing Agency in writing, which shall within thirty (30) days of its receipt communicate it to the State Parties.
3. Amendments to this Decision shall enter into force after their approval by the Conference of Heads of State and Government of the African Union.

**Article 22  
Entry into Force**

This Regulation shall enter into immediately force following its endorsement by Assembly of Heads of State and Government.



**APPENDIX A TO ANNEX 5 TO THE YAMOOUSSOUKRO****GUIDELINES AND PROCEDURES FOR THE IMPLEMENTATION OF THE  
REGULATIONS ON COMPETITION IN AIR TRANSPORT SERVICES  
WITHIN AFRICA**

Whereas the Regulations on Competition in Air Transport Services within Africa (hereinafter cited as the Competition Regulations) calls for a number of guidelines, implementing provisions and rules of procedure for the application of the Regulations by the regional competition authorities and the Executing Agency:

Now therefore the following Guidelines and Procedures shall apply:

**Article 1**

The following airline industry standards shall normally not be considered as a violation of Article 3 of the Competition Regulations and shall be presumed excepted under Article 3 (3) (a) (b) of the Competition Regulations:

- (a) certain technical agreements and concerted practices, to the extent that their sole object and effect is to achieve technical improvements or co-operation: the introduction or uniform application of mandatory or recommended technical standards for aircraft, aircraft parts, equipment and aircraft supplies, where such standards are set by an organisation normally accorded international recognition, or by an aircraft or equipment manufacturer; the introduction or uniform application of technical standards for fixed installations for aircraft, where such standards are set by an organisation normally accorded international recognition; the exchange, leasing, pooling, or maintenance of aircraft, aircraft parts, equipment or fixed installations for the purpose of operating air services and the joint purchase of aircraft parts, provided that such arrangements are made on a non-discriminatory basis; the introduction, operation and maintenance of technical communication networks, provided that such arrangements are made on a non-discriminatory basis; and the exchange, pooling or training of personnel for technical or operational purposes;
- (b) agreements or concerted practices between airlines with respect to capacity, frequency and scheduling co-operation, provided that joint planning and co-ordination of capacity, frequencies and flight schedules to be provided on scheduled air services be limited to agreements and practices that help to ensure a spread of services at the less busy times of a week or day, or on less busy routes, and/or improve inter-regional connectivity, provided any partner may withdraw without penalty from agreements or practices by giving not more than three months' notice of its intention not to participate in





such joint planning and co-ordination for future (summer or winter) seasons;

- (c) consultations and agreements on interlining and tariff co-ordination, for the purpose of promoting the establishment of fully interlineable air fares and rates, upon the following conditions: that the inter-carrier consultations (inside or outside the framework of global or regional airlines organizations) on the development of interlineable tariffs (passenger fares and cargo rates) be transparent and open to all carriers operating direct or indirect services on air routes concerned; and that the consultations are not binding upon participants that is, following consultations, airline participants retain the right to act independently in respect of passenger and cargo tariffs;
- (d) provision of common rules for the appointment of airlines agents, whether developed inside or outside the IATA (International Air Transport Association) Agency Conferences, as long as those rules are limited to the professional and financial fitness of agents (accreditation) and do not limit the number of agency establishments in any Member State, and do not fix agency commission rates; systems for the clearing of accounts between airlines or between airlines and agents should normally not be considered as anti-competitive;
- (e) airline alliances and other commercial arrangements between airlines, provided that these arrangements do not go beyond code-sharing and blocked space agreements, and that in the case of blocked space agreements the purchasing airline will sell the purchased seats as its own, at its own prices and at its own risk; where the arrangements go beyond code-sharing and blocked space agreements, and involve common pricing, common capacity provision, common scheduling and/or revenue and/or cost pooling (joint ventures), such arrangements shall normally not be permissible under Article 3 of the Regulations, save where an exemption is obtained from the relevant authority under Article 7 of the Regulations;
- (f) slot co-ordination agreements and practices between airlines at airports, provided that all air carriers concerned are entitled to participate in such agreements and arrangements, that the national and multilateral procedures (including, but not limited to IATA Scheduling Conferences) for such agreements and arrangements are transparent, and that they take into account any constraints and distribution rules defined by national and international authorities and any rights which air carriers may have historically acquired; and
- (g) agreements and arrangements on the joint ownership and operation or participation in Global Distribution Systems (GDS), on condition that all airlines of State Parties have access to such systems on equal



terms, that participating carriers have their services listed on a non-discriminatory basis, that any participant may withdraw from the system on giving reasonable notice, and that the system operate in accordance with the policies and regulatory framework of the International Civil Aviation Organization (ICAO).

## **Article 2**

The following shall apply to the implementation of State subsidies under the terms of Articles 6 of the Competition Regulations:

- a) in the context of granting or denying subsidies, State Parties shall not discriminate between publicly-owned, state-owned and privately-owned airlines;
- b) a State Party may grant a subsidy to an airline, provided that it is for airline restructuring purposes, or in extraordinary circumstances beyond the control of the airline, including acts of war; and
- c) the prohibition on subsidies does not prevent the operation by a State Party of an essential air services programme or of public service obligations, where certain air services cannot be operated profitably.
- d) Where the relevant authority finds that a subsidy has been granted illegally by a State Party or is about to be given by a State Party, it may issue a cease and desist order against the State Party in question; and
- e) Where the relevant authority finds that a subsidy, illegally given by a State Party, has already been paid in fact, it may order that the moneys given as illegal subsidy be paid back to the State Party in question, in whole or in part.

## **Article 3**

Where a State Party wishes to obtain a prejudicial ruling from the regional competition authority or the Executing Agency (hereafter, relevant authorities) on non-discrimination in national legislation and administrative measures under Article 5 of the Competition Regulations:

- a) that State shall submit a written request to that effect to the relevant authority through diplomatic channels, giving reasons for its request;
- b) the relevant authority shall endeavour to respond to such a request within ninety days from its reception in an advice;
- c) where the relevant authority is the opinion that the proposed legislation or administrative measure in question needs amendment, it shall give reasons therefore in its advice; and



- d) the relevant authority shall send copies of its advice to all competent authorities of the State Parties.

#### **Article 4**

Applications by any undertaking, or association of undertakings to the EXECUTING AGENCY for exemptions under Article 7(1) of the Regulations shall be made using Form A provided for in the Schedule to these Guidelines, Provisions and Procedures.

#### **Article 5**

In addition to the information and procedures contained in Form A of the Schedule mentioned in Article 5, the relevant authority:

- a) shall render decisions on applications for exemptions under Article 7 of the Regulations within ninety days from their submission;
- b) shall not take legal action under the Regulations against an applicant for an exemption, before the application has been decided upon; and
- c) may revoke an exemption granted, before its normal expiry date, considering also that the maximum duration of validity of an exemption is five years, where there has been any material change on any of the facts upon which the exemption was based; or where the parties breach any condition attached to the exemption; or the granting of the exemption was based on incorrect information or induced by deceit; or where the parties abuse the exemption as provided for under Article 4 of the Regulations.

#### **Article 6**

Where a State Party wishes to apply to the relevant authority to approve safeguard measures under Article 7(2) of the Regulations:

- a) the application shall be in writing, through diplomatic channels, giving reasons for the application;
- b) the relevant authority shall send copies of such applications for approval of safeguard measures to the competent authorities of the State Parties;
- c) the relevant authority shall decide upon an application for approval of safeguard measures within ninety days from its reception, giving reasons for its decision;
- d) The relevant authority may approve or disapprove the application, or approve it subject to conditions; and



- e) The approval of an application for safeguard measures may be valid for one year. A State Party may apply for an extension provided such State Party shall furnish proof that it has taken the necessary and reasonable steps to overcome or correct imbalances for which safeguard measures are being applied and that the measures applied are on the basis of non-discrimination.

## **RULES OF PROCEDURE**

### **Article 7**

- (a) Complaints, lodged with the relevant authority by any undertaking or association of undertakings, shall be made using Form B provided for in the Schedule to these Guidelines and Procedures; and
- (b) Relevant shall advise the complainant of its decision within a period of ninety days from receipt of the complaint. Where it is not in a position to do so, it shall advise the complainant of the procedure to be followed under Articles 7 8, 9, 10, and 11 of these Guidelines, Provisions and Procedures.

### **Article 8**

In addition to the provisions contained in Form B of the Schedule to these Guidelines, Provisions and Procedures, the relevant authority, in carrying out investigations under Article 8 of the Competition Regulations, shall:

- a) appoint and empower officials to examine the books and other business records, make copies of or extracts from the books and business records, demand oral or written explanations and enter any premises, land and vehicles used by undertakings or associations of undertakings provided that, in performing their duties, the authorised officials shall respect applicable national laws and regulations pertaining to privileged information on the part of the undertakings;
- b) ensure its authorised officials shall exercise their powers upon production of written authorisation, specifying the subject matter and purpose of the investigation and the penalties provided for in Article 13 of the Regulations in cases where production of the required books or business records is incomplete, provided that the relevant authority shall inform the competent authority of the State Party, in whose territory same is to be made, of the investigation and the identity of the authorised officials;
- c) specify the subject matter and purpose of the investigation, indicate the date on which the investigation will commence, indicate the



penalties as provided for in Article 13 of the Competition Regulations and the right to have the decision of the Executing Agency under Article 10 and any penalties reviewed under Article 16 of the Regulations.

In addition:

- d) Undertakings and associations of undertakings shall submit to investigations authorised by the Executing Agency. The authorisation shall specify the subject matter and purpose of the investigation, appoint the date on which it is to begin and indicate the penalties provide for in Article 15 of the Competition Regulations, and the right to have the decision of the Executing Agency under Article 12 and any penalties reviewed under Article 16 of the Competition Regulations;
- e) Officials of the competent authorities of the State Parties in whose territory the investigation is to be made should assist the officials of the relevant authority in carrying out their duties, at the request of such authority, and they shall observe the privileges and secrecy of information as provided under Article 10(b) of these Guidelines and Procedures; and
- f) Where an undertaking or association of undertakings opposes an investigation authorised pursuant to these procedures, the State Party concerned shall afford the necessary assistance to the officials authorized by the Executing Agency to enable them to carry out their investigation.

### **Article 9**

Where, under the Competition Regulations, the Executing Agency must hear an undertaking or association of undertakings, the following rules of procedure shall apply:

- a) Before taking a decision negatively affecting an undertaking or association of undertakings, the Executing Agency shall give such undertaking or association the opportunity to be heard on (the) matter(s) to which the Agency objects; affected undertakings and associations of undertakings shall be so informed in writing;
- b) Officials of interested State Parties shall be entitled to attend oral hearings;
- c) If the Agency, upon its own motion or upon the recommendation of interested State Parties, finds it necessary, it may also hear other natural or legal persons. Applications to the Executing Agency by such persons to be heard shall be granted when they show sufficient interest;



- d) Before the oral hearing, the affected undertaking or association of undertakings may submit its views on the objection(s) raised in writing; it may in its written comment set out all matters relevant to its defense; it may attach any relevant documents in proof of the facts set out. It may also propose that the Executing Agency hear persons who may corroborate those facts;
- e) The Executing Agency shall in its decision deal only with those objections raised against undertakings and associations of undertakings in respect of which they have been afforded the opportunity of making known their views;
- f) The Executing Agency shall summon the persons to be heard to attend on such date as it shall appoint; copy of the summons shall be sent to the officials of interested State Parties;
- g) Hearings shall be conducted by the persons appointed for that purpose by the Agency;
- h) Persons summoned to attend shall either appear in person or by a duly authorised legal representative, and may be assisted by lawyers, duly admitted to the practice of law in their respective States of principal residence;
- i) Hearings shall not be public. Persons shall be heard separately or in the presence of other persons summoned to attend. In the latter case, regard shall be had to the legitimate interests of the undertakings in the protection of their business secrets; and
- j) The essential content of the statements made by each person heard shall be recorded in minutes, which shall be read and approved by such person. In case of refusal to approve, the person in question shall nevertheless sign that he has read the minutes.

### **Article 10**

The Executing Agency shall, in making decisions in accordance with Article 12 of the Regulations, adhere to the following rules of procedure:

- a) where the Executing Agency is of the opinion that there has been an infringement in terms of Article 12(1) of the Regulations, it may render a decision containing a cease and desist order;
- b) the decision shall be in writing and accompanied by reasons for judgment;
- c) the decision may be accompanied by an imposition of penalties in accordance with Article 15 of the Regulations;



- d) in the event of a prohibited subsidy under Article 6 of the Regulations, the Executing Agency may, in addition to the cease and desist order, order that the moneys given as prohibited subsidy be paid back to the relevant State Party, in whole or in part;
- e) in the event of abuse of an exemption under Article 7 of the Regulations, the Executing Agency may also revoke such exemption;
- f) where the Executing Agency is of the opinion that a complaint is ill founded in law and/or in fact in the sense of Article 12(2) of the Competition Regulations, it shall reject the complaint in a written decision accompanied by reasons for judgment;
- g) where the Executing Agency is of the opinion that a complaint is frivolous in the sense of Article 20(g) of the Regulations, it may dismiss it summarily;
- h) the Executing Agency shall apportion the costs among the parties engaged in the proceedings; and
- i) in all cases, the Executing Agency shall abide by the rules of Article 12(3) of the Regulations.

### **Article 11**

Where the Executing Agency is of the opinion that provisional measures must be ordered in terms of Article 13 of the Regulations, the following rules of procedure shall apply:

- a) where there is evidence of anti-competitive behaviour by one undertaking or association of undertakings, seriously threatening the existence of another undertaking, the Executing Agency may suspend the practices, agreements or decisions of the former undertaking or association for a period not exceeding ninety days, provided that such suspension can only be renewed once for thirty days. Such decision by the Executing Agency shall be taken within a period of thirty days from the receipt of the complaint; and
- b) without limiting the generality of the foregoing, such suspension may include the withdrawal of the excessively high or excessively low prices charged by the undertaking or association of undertakings involved, and, where excessively high or excessively low frequencies have been introduced by the undertakings involved, either decrease or increase them accordingly.



### **Article 12**

Where, in terms of Article 14 of the Regulations, the Executing Agency finds it necessary to communicate with Member States or undertakings or associations of undertakings, the Executing Agency shall:

- a) conduct such communications preferably through diplomatic channels; and
- b) conduct communications with undertakings or associations of undertakings through registered mail or other appropriate means.

### **Article 13**

In imposing penalties under Article 15 of the Regulations, the Executing Agency shall apply the following rules of procedure and schedule of penalties and fines:

- a) The Executing Agency may impose fines on undertakings or associations of undertakings, not less than one hundred special Drawing Rights and not more than five thousand special Drawing rights per infringement, where, intentionally or negligently, they supply incorrect or misleading information in connection with an application for an exemption or in connection with the revocation of an exemption, or where they file a frivolous complaint, or where they supply incorrect information in response to a request made, or do not supply information within the limit fixed by the Executing Agency, or do not or incompletely produce books or business records in the framework of an investigation, or refuse to submit to an investigation;
- b) the Executing Agency may impose fines on undertakings or associations of undertakings of no less than one thousand Special Drawing Rights and no more than one hundred thousand Special Drawing Rights, or a sum in excess thereof but not exceeding 10 percent of the turnover in the preceding business year of the undertaking or association of undertakings participating in the infringement, where, either intentionally or negligently, they infringe Articles 3 and/or 4 of the Regulations, or do not comply with a cease and desist order under Article 12 of the Regulations;
- c) in fixing the amount of the fine, regard shall be had both to the gravity and to the duration of the infringement;
- d) in the event of a second or subsequent infringement of the same nature and perpetrated by the same offending undertaking or association of undertakings, the Executing Agency may double or triple a previously imposed fine, without nevertheless exceeding the maximum amounts indicated in (a) and (b) above; and
- e) The Executing Agency shall periodically review the Schedule of penalties and fines.





**SCHEDULE****Form A****Application for an exemption**

By the Executing Agency  
Under Article 7(1) of the Competition Regulations for competition in air transport services

**Identity of the parties:****1. Identity of applicant**

Full name and address, telephone, telex and facsimile numbers, and brief description of the undertaking(s) or association(s) of undertakings submitting the application.

**2. Identity of other parties**

Full name and address and brief description of any other parties to the agreement, decision or practice (hereinafter referred to as the “arrangements”)

**Purpose of the application:**

Applicant(s) to state for which length of time an exemption is sought. The maximum duration is five years.

**Full description of the arrangements:**

Applicant(s) should provide details of the arrangements, including financial details (which enjoy professional secrecy under Article 18 of the Regulations) (if necessary, Appendixes to the application may be used)

**Reasons for an exemption:**

Applicant(s) must state why the sought exemption is merited, in fact and in law (if necessary, Appendixes to the application may be used). In particular, applicant(s) must comment upon the effects of the sought exemption on competition in the relevant geographical markets (air routes) and product markets (air transportation *versus* other modes of transportation).



**Notice to applicant(s)**

- (a) Copy of this signed application and any Appendixes thereto will be sent to the competent authorities of State Parties according to Article 7(3) of the Competition Regulations;
- (b) Applicant(s) will receive an acknowledgement of receipt of the application, accompanied by the text of the Regulations, any implementing provisions and rules of procedure;
- (c) The Joint Competition Authority may ask applicant(s) for any additional information (which will enjoy professional secrecy under Article 18 of the Regulations) and may set a deadline for the provision of such information;
- (d) Applicant(s) should realise that the provision of any late, incorrect or misleading information may lead to the imposition of a penalty under Article 16 of the Regulations;
- (e) Where the Joint Competition Authority, on the basis of the written evidence, is of the opinion that an exemption should be granted, it may do so in writing for a period not exceeding five years, either unconditionally or subject to conditions;
- (f) Where the Joint Competition Authority tends towards a rejection of the application, it shall so inform the applicant(s) who remain(s) entitled to a hearing under Article 11 of the Regulations;
- (g) Where the Joint Competition Authority rejects the application, it shall give written reasons therefore;
- (h) An exemption that has been granted may be revoked for reasons set out in the implementing provisions, referred to under (b) above.

**Place and date:****Signature(s):**

**Form B****Complaint**

To the Executing Agency  
Under Article 9 of the Competition Regulations for competition in air transport services

**Identity of the complainant(s):**

Full name and address, telephone, telex and facsimile numbers of the complainant or complainants.

**Object of the complaint:**

Complainant(s) to state which practice(s), agreement(s), decision(s), abuse(s) of dominant position or abuse(s) of exemption it contests.

**Subject of the complaint:**

Complainant(s) to state against which undertaking(s) (or association[s] of undertakings) the complaint is addressed.

**Remedy(ies) sought:**

Complainant(s) to state which remedy or remedies they seek under Article 12 (cease and desists orders) and/or Article 15 (penalties)

**Full description of the fact(s):**

Complainant(s) to describe the fact or facts leading to the complaint, including financial details (which enjoy professional secrecy under Article 18 of the Regulations) (if necessary, Appendixes to the complaint may be used)

**Reasons for the complaint:**

Complainant(s) to state why the complaint is justified, in fact and in law (if necessary, Appendixes to the complaint may be used). In particular, complainant(s) must comment upon the effects of the attacked practice, agreement, decision, abuse of dominant position or abuse of exemption on competition in the relevant geographical markets (air routes) and product markets (air transportation *versus* other modes of transportation).



**Notice to applicant(s):**

- (a) Copy of this signed complaint and any Appendixes thereto will be sent to the competent authorities of Member States according to Article 9(3) of the Regulations;
- (b) Complainant(s) will receive an acknowledgement of receipt of the complaint, accompanied by the text of the Regulations, any implementing provisions and rules of procedure. The Executing Agency shall advise the complainant of its decision within ninety days or advise the complainant of further procedures to be followed;
- (c) The Executing Agency may ask complainant(s) for any additional information (which will enjoy professional secrecy under Article 18 of the Regulations) and may set a deadline for the provision of such information;
- (d) Complainant(s) should realise that the provision of any late, incorrect or misleading information may lead to the imposition of a penalty under Article 15 of the Regulations;
- (e) The undertaking (or association of undertakings) against whom a complaint has been made be entitled to a hearing under Article 11 of the Regulations;
- (f) The Executing Agency shall endeavour to render a decision on the complaint under Article 12 of the Regulations (cease and desist orders) and/or Article 15 of the Regulations (Penalties) within a period of thirty days from receipt of the complaint;
- (g) Complainant(s) is (are) reminded that frivolous complaints are forbidden and may result in fines under the Regulations and provisions implementing these.

**Place and date:****Signature(s):**

**ANNEX 6 TO THE YAMMOUSSOUKRO DECISION:  
REGULATIONS ON THE PROTECTION OF CONSUMERS OF AIR TRANSPORT  
SERVICES**

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## **Regulation on Protection of Consumers of air transport services**

### **Preamble**

**WE**, the Ministers responsible for Transport, Infrastructure, Energy and Tourism meeting at the First Ordinary Session of the African Union Specialized Technical Committee on Transport, Transcontinental and Interregional Infrastructure, Energy and Tourism in Lomé, Togo, 17th March 2017 have adopted these Regulations developed by the Bureau of the Conference of African Ministers of Transport, meeting in Malabo, Republic of Equatorial Guinea, on 18th and 19th December 2014, on the occasion of the Fourth Meeting of the Bureau of the Conference of African Ministers of Transport dedicated mainly to implement the Executive Council Decisions EX.CL/Dec.826(XXV) endorsing the report of the Third Session of the Conference of African Ministers of Transport (CAMT);

**CONSIDERING** the Constitutive Act of the African Union adopted in Lomé on 11<sup>th</sup> July 2000, namely its Article 3, 5, 6, 9, 13, 14, 15, 16 and 20;

**CONSIDERING** the Treaty establishing the African Economic Community signed in Abuja on 3<sup>rd</sup> June 1991, namely its articles 8, 10, 11, 13, 25 to 27;

**CONSIDERING** the Decision relating to the implementation of the Yamoussoukro Declaration concerning the liberalization of air transport markets access in Africa of 14<sup>th</sup> November 1999, approved by the Conference of Heads of State and Government of OAU and signed by the current Chairman in Lomé on 12<sup>th</sup> July 2000, hereinafter called the Yamoussoukro Decision;

**CONSIDERING** the African Union Commission's Statutes adopted by the Assembly of the African Union in Durban (South Africa) on 10<sup>th</sup> July 2002;

**CONSIDERING** the Decision EX. CI/Dec.369 (XI) of the Assembly of Heads of State and Government of the African Union establishing the Executing Agency of the Yamoussoukro Decision of 1999, hereinafter called the Executing Agency of 27<sup>th</sup> July 2007;

**CONSIDERING** the resolution on the follow-up of the implementation of the Yamoussoukro Decision of 1999 adopted by the First African Union Conference of Ministers responsible for Air Transport in Sun City(South Africa) in May 2005;



- CONSIDERING** the resolution on air transport safety in Africa adopted by the Second Conference of African Union Ministers responsible for air transport in Libreville (Gabon) in May 2006;
- CONSIDERING** the need to speed-up the full implementation of the Yamoussoukro Decision with a view to giving a boost to the operations of African airlines and other air transport service providers and effectively meeting the challenges of globalisation of international air transport;
- OBSERVING** the need to strike a balance between the right of airlines to operate efficiently in a liberalised and increasingly competitive market and the right of the consumer to be assured of sufficient protection and information of his rights;
- RECOGNISING** the need to assist the travelling public through time saved by the legitimate (non-targeted) passenger while undergoing normal arrival formalities and thereby enhance quality of travel;
- NOTING** that passengers suffer considerable delays, overbookings, flight cancellations and often live in uncertainties;
- CONCERNED** that the increasingly liberalised environment requires the protection of consumers on the African continent.

HEREBY MAKE THE FOLLOWING REGULATIONS:

#### **Article 1 – Citation**

These Regulations shall be cited as “*Regulation on Protection of Consumers, provision of an African Air Transport Fund and liability of service providers in passenger air transport services*”.

#### **Article 2 – Definitions**

For the purposes of this Regulation, the following expressions shall mean:

‘**Airport**’ means any area of land especially adapted for the landing, taking-off and manoeuvres of aircraft, including the ancillary installations which these operations may involve for the requirements of aircraft traffic and services including the installations needed to assist commercial air services.





**'Airlines'**, unless the context otherwise requires include eligible airlines, non-eligible African Airlines, and non African airlines as defined in these Regulation;

**'Consumer'** means the person who takes or agrees to take the package ('the principal contractor'), or any person on whose behalf the principal contractor agrees to purchase the package ('the other beneficiaries') or any person to whom the principal contractor or any of the other beneficiaries transfers the package ('the transferee');

**'Consumer Protection Agency'** means the institution or organisation authorised by this Regulation to regulate consumer protection under the Yamoussoukro Decision, by the regional economic communities or by state parties;

**'Eligible airline'** mean any airline licensed duly licensed by a State Party and Certificated as an eligible airline to operate under the terms of the Yamoussoukro Decision and actually operating the flight in question under these regulations.

**'Ground handling'** means the services provided to airlines at airports and comprise the following sub-categories;

**Passenger handling** comprises any kind of information and assistance including those provided to arriving, departing, transfer or transit passengers, including checking tickets and travel documents, registering baggage and carrying it to the sorting area;

**Baggage handling** comprises handling baggage in the sorting area, sorting it, preparing it for departure, loading it on to and unloading it from the devices designed to move it from the aircraft to the sorting area and vice versa, as well as transporting baggage from the sorting area to the reclaim area;

**Freight handling** comprises physical handling of export, transfer and import freight, handling of related documents, customs procedures and implementation of any security procedure agreed between the parties or required by the circumstances;

**Mail handling** includes physical handling of incoming and outgoing mail, handling of related documents and implementation of any security procedure agreed between the parties or required by the circumstances;

**Ramp handling** comprises marshalling the aircraft on the ground at arrival and departure; assistance to aircraft packing and provision of suitable devices; communication between the aircraft and the air-side supplier of services; the loading and unloading of the aircraft, including the provision and operation of suitable means, as well as the transport of crew and passengers between the aircraft and the terminal, and baggage transport between the aircraft and the



terminal; the provision and operation of appropriate units for engine starting; the moving of the aircraft at arrival and departure, as well as the provision and operation of suitable devices and the transport, loading on to and unloading from the aircraft of food and beverages;

**Aircraft services** comprise the external and internal cleaning of the aircraft, and the toilet and water services; the rearrangement of the cabin with suitable cabin equipment, the storage of this equipment;

**Fuel and oil handling** comprises the organization and execution of fuelling and refuelling operations, including the storage of fuel, also if adjacent to the airport, and the control of the quality and quantity of fuel deliveries; the replenishing of oil and other fluids;

**Aircraft maintenance** comprises routine services performed before flight; non-routine services requested by the airline; the provision and administration of spare parts and suitable equipment; the request for or reservation of a suitable parking and/or hangar space;

**Flight operations and crew administration** comprise the preparation of the flight at the departure airport or at any other point; in-flight assistance, including re-dispatching if needed; post-flight activities; crew administration;

**Surface transport** comprises the organization and execution of crew, passenger, baggage, freight and mail transport between different terminals of the same airport, but excluding the same transport between the aircraft and any other point within the perimeter of the same airport and any special transport requested by the airline;

**'Licence'** means a valid licence granted by the Civil Aviation Authority or its equivalent under valid Regulations of States Parties to an airline, a travel agent, a tour operator;

**'Non-eligible African airline'** means any airline duly licensed by a State Party and authorised to operate international routes but has not been certificated as an eligible airline to operate under the terms of the Yamoussoukro Decision and actually operating the flight in question under these regulations;

**'Non-African airline'** means an airline licensed by a third party state and authorised by a state party to lift and put down passengers, cargo and mail in the territory of one or more state parties and actually operating the flight in question under these regulations;



**'State Party'** shall include each African State signatory to the Abuja Treaty and such other African country which, though not a party to the said Treaty, has declared in writing its intention to be bound by the Yamoussoukro Decision.

### **Article 3 – Scope of application of the Regulations**

- (1) This Regulation shall apply to the implementation of Article 9.6 of the Yamoussoukro Decision.
- (2) It prescribes rights of the passengers originating from or destined for the territory of a State Party and lays down responsibilities of airlines and other service providers.
- (3) This Regulation shall not apply to passengers travelling free of charge or at a reduced fare not available directly or indirectly to the public. However, it shall apply to passengers having tickets issued under a frequent flyer programme or other commercial programme by an airline or tour operator.

### **Article 4 – Objectives and principles**

The objective of these Regulations is to protect the consumer of air transport services provided in the territories of state parties of the Yamoussoukro Decision from suffering unfair treatment in the provision of services and lack of or inadequate information on services provided leading to a poor treatment.

## **PART ONE CONSUMER LOSSES**

### **Article 5 – Interruption of services**

- (1) No airline, travel agency, consolidator, packaged tour operator, shall accept payment to lift passengers, mail and cargo from the territory of any state party into another state party or the territory of a state not party to the Abuja Treaty unless it has insurance coverage to fulfill the contract with consumers in case of interruption of services.
- (2) The Executing Agency shall establish a framework for mitigating losses incurred by consumers resulting from the interruption of services by airlines, travel agents, consolidators and packaged tour suppliers.
- (3) An airline, travel agent, package tour operator, consolidator or any other individual or organisation may not be permitted to accept payment for any service for air transportation, tour or tour component from a



consumer, unless it has a valid insurance as required by Article 6.7 of the Yamoussoukro Decision.

## **PART TWO PROHIBITIONS**

### **Article 6 – Prohibitions: Unfair and deceptive practices**

- (1) On the initiative of the Executing Agency, a Regional YD Authority, a State Party (hereafter, Consumer Protection Agency), or the complaint of a consumer, an association or associations of consumers, an eligible airline, a non-eligible African airline, a non-African airline, or a air ticket agent, and if the Executing Agency, the Regional YD Authority or the State Party considers it is in the public interest, it may investigate and decide whether an eligible airline, a non-eligible African airline, a non African airline or ticket agent has been or is engaged in an unfair or deceptive practice in air transportation or the sale of air transportation.
- (2) If the Consumer Protection Agency in question, after notice and an opportunity for a hearing, finds that an airline or ticket agent is engaged in an unfair or deceptive practice, it shall order that eligible airline or ticket agent to stop the practice or method.
- (3) In enforcing this Article against an eligible airline, the Consumer Protection Agency may opt to apply Article 4 (1) of the Competition Regulations].
- (4) Subject to the power of the Consumer Protection Agency to review, the following are inherently unfair practices and in breach of paragraph 1 of this provision:
  - a) Misleading Advertising
    - i. It shall be considered a misleading advertisement; an unfair marketing and deceptive practice for any seller of scheduled air transportation within, to or from any country in Africa, or of a tour (i.e., a combination of air transportation and ground or cruise accommodations), or tour component (e.g., a hotel stay) that includes scheduled air transportation within, to or from any state party, to increase the price of that air transportation, tour or tour component to a consumer, including but not limited to an increase in the price of the seat, an increase in the price for the carriage of passenger baggage, or an increase in an applicable fuel surcharge, after the air transportation has been purchased by the consumer, except in the case of an increase in a government-



imposed tax or fee. A purchase is deemed to have occurred when the full amount agreed upon has been paid by the consumer.

- ii. No airline or travel agent shall charge or collect additional fare (whether taxes, commissions, brokerage fees, administrative charges, or any other fees) from passengers not expressly advertised, displayed in the marketing material or expressly communicated to the consumer at the initial inquiry displayed.

b) Disclosure Requirement for Sellers of Tickets for Flights

- (5) Where an eligible airline, a non-eligible African airline, a non-African airline, or a air ticket agent fails to disclose, whether verbally in oral communication or in writing in written or electronic communication, prior to the purchase of a ticket

- i. (A) the name of the air carrier providing the air transportation; and
- ii. (B) if the flight has more than one flight segment, the name of each air carrier providing the air transportation for each such flight segment.

c) Internet offers

- (6) In the case of an offer to sell tickets described in subsection (l) on an Internet Web site, disclosure of the information required by paragraph (1) shall be provided on the first display of the Web site following a search of a requested itinerary in a format that is easily visible to a viewer.
- (7) It is an unfair and deceptive practice if an airline persistently denies boarding to passengers involuntarily, without requesting for volunteers or where so requested fails to allow a reasonable time for passengers to volunteer or persistently fails to pay the accepted amount of compensation.
- (8) It is an unfair and deceptive marketing practice if an airline persistently denies checked-in passengers their right to sit on the seat classes they have paid for and / or have been assigned to them at check-in as a result of the imposition of a free seating policy.
- (9) The Consumer Protection Agency shall monitor the terms, conditions and extent of compliance by airlines of their obligations under the Warsaw Convention applicable in any State Party. Where it is observed that any practice, conduct, policy or procedure adopted by an airline consistently falls short of the required obligations including but not limited to compelling consumers to accept compensation regimes less than what they are entitled to, imposing additional burdens calculated at or capable of frustrating their efforts to obtain compensation, or where compensation, though paid is paid



under such terms as to nullify the usefulness of such compensation. Such practices shall be considered as unfair and deceptive practice.

- (10) Failure by an eligible airline to obtain and, at all material times, maintain the required insurance cover shall be adjudged unfair practice and deceptive practice. The Consumer Protection Agency may demand that details of the insurance schedule and any amendments thereto be filed with it.
- (11) A chronically delayed flight shall be considered as unfair and defective practice. Flights shall be considered chronically delayed flight as a flight by an airline, that is operated at least 30 times in a calendar quarter and arrives more than 15 minutes late, or is cancelled, more than 70 percent of the time during that quarter.

### **Article 7 - Obligations of Service Providers**

This section lays down general and specific obligations of service providers providing services directly to the passenger and includes airlines, tour operators, consolidator, travel agents, airport operators, Air Navigation Services Providers, Caterers and ground handling agencies whether operating as agents of one provider or not.

## **PART THREE OBLIGATIONS ON SERVICE PROVIDERS**

### **General Obligations**

#### **Article 8 - Maintaining adequate third party insurance cover**

- (1) Each service provider shall at all material times maintain an insurance cover as required by the laws of the state party in which it operates, including but not limited to third party liability, and shall visibly display the insurance schedule or certificate at a reception visited by or accessible to passengers visiting the premises.
- (2) Where demanded by public officials inspecting the airline under Article 19 of the Executive Council Regulation on the Powers and Functions of the Executing Agency, the service provider shall demonstrate compliance with this Article by providing the officials with a deposit of an insurance certificate or other evidence of a valid insurance from a recognised third party insurance company.



- (3) The Executive Council may, on a proposal from the Executing Agency approved by the Council of Ministers for Air Transport in Africa adopt rules on insurance designed to benefit the end-consumer.

#### **Article 9 – Non-Discrimination**

- (1) Within the scope of application of this Regulation, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality, race, sex, age, colour, creed, physical ability, physical stature, shall be prohibited.
- (2) The Executive Council may, on a proposal from the Executing Agency and adoption by the Conference (Committee) of Ministers of Transport of the Subcommittee of Ministers responsible for civil aviation and after consulting the African Parliament adopt rules designed to prohibit such discrimination.

#### **Article 10 – Means of communication**

- (1) Airlines, tour operators, consolidators and agents shall be obliged at all material times to obtain and hold a telephone number or email address of the passenger or, in the case of a group, the group leader or the person responsible for arranging the booking or for payment of the booking, and where more than one mode of communication is offered, obtain from the person concerned the preferred mode of communication in emergencies.
- (2) Subject to the data protection rules applicable in the territories of state parties, the contact details, including telephone number, fax or email address obtained shall only be used to contact the passenger to rearrange a flight, inform him of any possible delay or arrange for alternative means of transport or pass any essential information relevant to the flight in question.
- (3) Where a passenger is unable to offer either a telephone number or an email for any destination, the airline shall inform him of a telephone number at which the local office at the destination in question may be reached, in which language he can contact the local office and at what times the office will be open. Where such information is available on the website of the airline, it shall suffice that a reference is made either on the ticket, or the website, at the airport check-in desk, on board each flight, at the destination airport or in a leaflet made available to each passenger. In applying this provision the airline shall pay particular attention to the language barriers in the territories of the state parties, and any difficulty any particular passenger may have in reading in any particular language.



- (4) Service providers concerned shall ensure that they utilise the preferred mode of contact of each passenger in cases involving anticipated cancellations, overbooking, delays, save that where the notice is in less than 12 hours of the departure of the flight in question, unless the passenger has confirmed that he is able to retrieve his emails on a mobile device, such notice shall be communicated by phone or SMS.
- (5) The burden of proof as to whether the preferred details of a passenger was obtained and when it was used to contact the passenger or alternatively whether alternative means of communication has been furnished and under what circumstances shall rest with the service provider in question.

### **Article 11 - Information to the consumer**

- (1) The travel agent, airline, tour operator, and the ground handling agent shall be obliged at the time of purchase of the ticket and at check-in by the passenger shall be obliged to inform the passenger in a language understood by the passenger of his rights in the following situations:
  - a. to be informed in his own language of his obligation to supply a means of communication for emergencies;
  - b. to be informed at least 12 hours before the flight of any planned cancellations or long term delays anticipated;
  - c. to be informed of the airline's obligations in case of denied boarding, free seating, flight cancellation, delayed flight in particular in relation to alternative solutions and compensation
  - d. to request for documents, policies procedures on insurance, compensation, assistance, complaints procedures in line with these Regulations;
  - e. as an illiterate and/or visually impaired, and/or physically challenged to appropriate alternative means of communication;
  - f. Any other information the consumer protection agency may demand to be displayed to the passenger under the terms of this provision.
- (2) Airlines, travel agents, tour operators, airports, cargo handling agents, shall visibly display information at their premises, on their websites, marketing materials and brochures stating the rights of the consumer in relation to specific services provided by them to the consumer.
- (3) Information displayed under the terms of sub-paragraph 2 of this Article shall include (a) mission of the institution with specific regard to customer service, (b) right of the client to specific information regarding the services provided





by the institution (c) right to complain against the institution in case of a failure of the service provider in question to meet the minimum service standard, (d) complaints procedures indicating the agency to whom the complaint may be submitted, and e) right to specific redress including but not limited to compensation as prescribed in this regulation and its Appendixes.

### **Article 12 - Complaints Procedures**

Every service provider shall establish a consumer relations desk and particularly at every airport it operates and shall appoint an officer to manage the desk for the purpose of receiving, resolving and channeling complaints to their Head offices, as well as liaising with the Civil Aviation Authority of the state party where necessary.

### **Article 13 – Filing of advanced flight and Passenger Information**

- (1) Airlines shall transmit in advance of arrival into the territory of a state party information on each flight and on each passenger carried on board into an airport of a state party whether or not the passenger in question is destined to enter the state.
- (2) The advanced flight and passenger information which shall be filed in accordance with national legislation of each state party shall be transmitted to the authorised recipient notified in schedule of this regulation and shall contain no less than the standard set of information notified numbers 1 and 2 of schedule 1. States party who require further information listed in number 3 of schedule 1 shall submit a specific requirements list to the airline.
- (3) The Executing Agency shall liaise with states parties and propose further measures to the Sub Committee on Transport of the Specialised Technical Committee (STC) No.4 on Transport, Intercontinental and Interregional Infrastructure, Energy and Transport. State parties may submit formal complaints to the Executing Agency against an airline which persistently fails to supply the required advanced information.
- (4) Without prejudice to paragraph 3 of this Article, the Executing Agency shall conduct a thorough review within 5 years of entry into force of these Regulations including but not limited to the need for a continental or regional administration of the data.

### **Article 14 - Compliance with Warsaw Liability Regimes**

Airlines shall strictly comply with compensation requirements under the Warsaw Liability as applicable to each passenger and shall not impose any onerous terms and conditions on the passenger or otherwise apply policies and procedures or



make any such demands of the consumers as is calculated or may be interpreted as limiting or having the effect of limiting its relevant liabilities

### **Article 15 - Denied Boarding**

- (1) An airline shall, in overbooking a flight, utilise intelligent market analysis tools to assist it analyse regular loading patterns which may eventually result in certain flights being oversold but shall take all necessary measures including offering passengers SMS or online boarding facilities.
- (2) When, upon utilising pre-boarding facilities an airline reasonably expects to deny boarding on a flight, it shall, (where such can be established in excess of six hours before the flight, contact passengers by phone, SMS or email, where a passenger has offered to accept email in emergency communication) first call for volunteers to surrender their reservations in exchange for benefits under conditions to be agreed between the passenger concerned and the airline but at any rate not which shall not be lower than the compensation scheme applied in **Article 23** to these Regulations. Airlines shall, in this regards, pay particular attention to passengers travelling furthest from the departing airport as a measure of preventing unnecessary hardship in aborted and shall for this matter compile information on which part of the territory passengers are likely to travel from.
- (3) In the event of the airline having to deny boarding at check-in or during boarding on the day of the flight, the airline shall be permitted to make discrete requests for volunteers subject to requested volunteers being informed of their rights as prescribed under Article (6 (iv), above under right of information).
- (4) If an insufficient number of volunteers come forward, the airline may then deny boarding to passengers against their will subject to the following conditions:
  - a) that the smallest practicable number of persons holding confirmed reserved space on that flight are denied boarding involuntarily;
  - b) that passengers are compensated in accordance with its compensation scheme which shall not be lower than the compensation scheme applied in **Article 23** to these Regulations

### **Article 16 – Delay**

When an airline reasonably expects a flight to be delayed beyond its scheduled time of departure:

- a. between two and four hours the airline shall:



- i. inform the passengers every 45 minutes of the earliest time they will be expecting to depart, the specific reasons for the delay and, where the flight that is supposed to last for less than 3 hours, informed of their right to reschedule their flight without incurring any penalties and travel within an agreed period on the same route on a flight operated by the same airline;
  - ii. refreshments including water, soft drinks, confectioneries or snacks;
  - iii. two international telephone calls, SMS or e-mails, and
  - iv. that an announcement will be made at their airport of arrival of the new estimated time of arrival.
- b. for four hours or more, the airline shall:
- i. inform the passengers every 45 minutes of the earliest time they will be expecting to depart, the specific reasons for the delay and, where the flight is supposed to last for less than 2 hours, informed of their right to reschedule the flight without incurring any penalties and travel within an agreed period on the same route on a flight operated by the same airline;
  - ii. refreshments including water, soft drinks, confectioneries or snacks;
  - iii. a meal;
  - iv. hotel accommodation;
  - v. two international telephone calls, SMS or e-mails, and
  - vi. transport between the airport and place of accommodation (hotel or other accommodation); and
  - vii. that an announcement will be made at their airport of arrival of the new estimated time of arrival.
- c. when the reasonably expected time of departure is at least six hours after the time of departure previously announced, the airline shall:
- i. inform the passengers of their right to immediate reimbursement of the full cost of the ticket at the price at which it was bought, for the part or parts of the journey not made, and for the part or parts already made if the flight is no longer serving any purpose in relation to the passenger's original travel plan, together with, when relevant, a return flight to the first point of departure, at the earliest opportunity;



- ii. re-routing, under comparable transport conditions, to their final destination at the earliest opportunity; or
  - iii. re-routing, under comparable transport conditions, to their final destination at a later date at the passenger's convenience, subject to availability of seats.
- d. In applying this provision the following additional terms shall apply when arrangements are made under paragraphs a – c above:
- i. In instances where a passenger opts to reschedule a flight under paragraph a(1) or b(1) above, the airline shall ensure itself of the availability of seats on the flight the passenger is requesting.
  - ii. When an airline offers a passenger a flight to an airport alternative to that for which the booking was made, the operating air carrier shall bear the cost of transferring the passenger from that alternative airport either to that for which the booking was made, or to another close-by destination agreed with the passenger.
  - iii. The airline shall, at all materials times, prioritize the needs of persons with reduced mobility and any persons accompanying them, as well as to the needs of unaccompanied minors.

### **Article 17 - Cancellation of Flight**

- (1) In case of cancellation of a flight,
- a) Where the decision to cancel the flight is taken less than 24 hours before the scheduled departure of the flight in question and the passengers are informed at the airport, or where the passenger on a connecting flight may have begun the earlier part of his flight hours before the decision to cancel the flight and may only know of the cancellation on arrival at the airport, the airline shall:
    - i. inform the passengers of the specific reasons for the cancellation and, inform them of their rights under this provision including but not limited to:
      - (i) Right to cancel their booking in accordance
      - (ii) Right to be re-routed or offered an alternative means of transport, where convenient to the passenger in question, and
      - (iii) Right to compensation.



- (iv) Offer refreshments including water, soft drinks, confectioneries or snacks;
    - (v) two international telephone calls, SMS or e-mails.
  - b) Where the decision to cancel is taken at least 24 hours before the flight the airline shall immediately contact passengers affected by the decision, offer them the option not to travel to the airport if they have not already set off and advise them of their rights under this provision including but not limited to:
    - i. Right to cancel their booking;
    - ii. Right to be re-routed or offered an alternative means of transport, where convenient to the passenger in question; and
    - iii. Right to compensation.
- (2) When passengers are informed of the cancellation, an explanation shall be given concerning possible alternative transport which may include but not be limited to travel on the same airline but on a different date or time whether or not from the same airport, travel on another airline from the same airport on a different date or time whether or not from the same airport, travel on another mode of transport, where reasonable and convenient to the passenger.
- (3) Passengers shall have the right to compensation by the airline for a cancelled flight unless:
  - a) they are informed of the cancellation at least two weeks before the scheduled time of departure; or
  - b) they are informed of the cancellation between two weeks and seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than two hours before the scheduled time of departure and to reach their final destination less than four hours after the scheduled time of arrival; or
  - c) they are informed of the cancellation less than seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than one hour before the scheduled time of departure and to reach their final destination less than two hours after the scheduled time of arrival.



- (4) An airline shall not be obliged to pay compensation in accordance with Article 22, if it can prove that the cancellation is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.
- (5) The burden of proof concerning the questions as to whether and when the passenger was informed of the cancellation of the flight or of the alleged extraordinary circumstances shall rest with the airline.

### **Article 18 – Downgrading**

- (1) If an airline places a passenger in a class lower than that for which the ticket was purchased, including but not limited to operating a free seating policy, it shall within seven days reimburse,
  - (a) 25 % of the price of the ticket for all flights of 3 hours duration or less, or
  - (b) 50 % of the price of the ticket for all flights of more than 3 or more hours duration.
- (2) If an airline places a passenger in a class higher than that for which the ticket was purchased, it shall not be entitled to any supplementary payment.

### **Article 19 – Travel Agents and Package Tour Operators**

Subject to the general obligations in this Part of the Regulations, where applicable the travel agent and or tour operator, in a contract that involves air travel provided by an airline as well as other services including but not limited to accommodation and other tourist services, shall:

- a) provide the consumer, in writing or any other appropriate form, before the contract is concluded, with general information on passport and visa requirements applicable to nationals of the State Party concerned and in particular on the periods for obtaining them, as well as with information on the health formalities required for the journey and the stay;
- b) provide the consumer, in writing or any other appropriate form, with the following information in good time before the start of the journey:
  - i. the times and places of intermediate stops and transport connections as well as details of the place to be occupied by the consumer;



- ii. the name, address and telephone number of the organizer's and/or retailer's local representative or, failing that, of local agencies on whose assistance a consumer in difficulty could call.
- iii. Where no such representatives or agencies exist, the consumer must in any case be provided with an emergency telephone number or any other information that will enable him to contract the agent;
- iv. in the case of journeys or stays abroad by minors, information enabling direct contact to be established with the child or the person responsible at the child's place of stay;
- v. information on the optional conclusion of an insurance policy to cover the cost of cancellation by the consumer or the cost of assistance, including repatriation, in the event of accident or illness.
- vi. Where the consumer is prevented from proceeding with the package, he may transfer his booking, having first given the organizer or the retailer reasonable notice of his intention before departure, to a person who satisfies all the conditions applicable to the package. The transferor of the package and the transferee shall be jointly and severally liable to the organizer or retailer party to the contract for payment of the balance due and for any additional costs arising from such transfer.

### **Article 20 - Airport Operators**

Subject to the general obligations in this Part of the Regulations, Passengers and all other persons attending the airport in any capacity excluding those waving off, dropping off, picking up or welcoming passengers, shall, subject to national security and safety legislation, be entitled to:

- a) Visible notices on passengers rights
- b) decent and healthy toilet facilities
- c) reasonable seating space before check-in, after security and passport checks and while waiting for arriving or departing aircraft, and
- d) reasonably clean and safe environment



## **PART FOUR RIGHTS OF THE CONSUMER**

### **Article 21 – Right to reimbursement**

- (1) When reference is made in this Regulation to the right of the passenger to reimbursement, reimbursement shall be made within seven days of the full cost of the ticket at the price at which it was bought, for the part or parts of the journey not made, and for the part or parts already made if the flight is no longer serving any purpose in relation to the passenger's original travel plan, together with, when relevant, a return flight to the first point of departure, at the earliest opportunity.
- (2) The reimbursement shall be paid in cash, by electronic bank transfer, bank orders or, with the signed agreement of the passenger, in travel vouchers and/or other services.

### **Article 22 - Right to be re-routed**

Where passengers are offered the right of re-routing, passengers shall have the choice of:

- reimbursement within seven days of the full cost of the ticket at the price at which it was bought, for the part or parts of the journey not made, and for the part or parts already made if the flight is no longer serving any purpose in relation to the passenger's original travel plan, together with, when relevant,
- a return flight to the first point of departure, at the earliest opportunity and accommodation;
- re-routing, under comparable transport conditions, to their final destination at the earliest opportunity and accommodation; or :
  - a) re-routing, under comparable transport conditions, to their final destination at a later date at the passenger's convenience, subject to availability of seats.
  - b) When, in the case where a town, city or region is served by several airports, an airline offers a passenger a flight to an airport alternative to that for which the booking was made, the airline shall bear the cost of transferring the passenger from that alternative airport either to that for which the booking was made, or to another close-by destination agreed with the passenger.





### **Article 23 - Right to compensation**

- (1) Where reference is made to this Regulation to the passenger's right to compensation, other than compensation pursuant to the Warsaw Convention as applicable in the state party, passengers shall receive compensation amounting to:
  - a) USD 250 for all flights with an estimated duration of 3 hours or less for the entire flight;
  - b) USD 400 for all flights an estimated duration between 3 hours and 6 hours for the entire flight;
  - c) USD 600 for all flights with an estimated duration of more than 6 hours for the entire flight.
- (2) In determining the duration of the flight, the basis shall be the last destination at which the denial of boarding or cancellation will delay the passenger's arrival after the scheduled time and shall include all scheduled stop over, transit or any other scheduled break in the flight.
- (3) When passengers are offered re-routing to their final destination on an alternative flight pursuant to Article 22, the arrival time of which does not exceed the scheduled arrival time of the flight originally booked:
  - a) by two hours, in respect of all flights of 3 hour duration or less; or
  - b) by three hours, in respect of flights lasting between 3 and 6 hours; or
  - c) by four hours, in respect of all flights in excess of 6 hours.
- (4) The airline may reduce the compensation provided for in paragraph 1 by 50%.
- (5) The compensation shall be paid in cash, by electronic bank transfer, bank orders or, with the signed agreement of the passenger, in travel vouchers and/or other services.

## **PART FIVE ADMINISTRATION**

### **Article 24 - Administrative Procedures**

- (1) Each Civil Aviation Authority shall appoint a customer relations officer at each airport to whom complaints may equally be addressed.



- (2) The Executing Agency and the Regional Yamoussoukro Decision (RYA) Authority shall establish consumer protection units and advertise their details, including but not limited to their contact details and their procedures on a website dedicated to the implementation of this regulation.
- (3) A complainant may make a complaint to the Civil Aviation Authority against a service provider, or failing a satisfactory resolution to the RYA or the Executing Agency, in relation to the breach of these Regulations by filling and submitting a Complaint Form, after the consumer must have notified the service provider in question of such a breach and the complaint remains unresolved.
- (4) A complaint may be made in writing as in the prescribed form and transmitted to the Civil Aviation Authority.
- (5) Every complaint shall be accompanied by:
  - a) a copy of the airline ticket;
  - b) a copy of the letter to the air service provider in question stating a claim for breach of the regulations;
  - c) any response or responses or correspondence thereto;
  - d) any other relevant document(s).
- (6) Where a Complaint has been made in a representative capacity, the representative shall provide the complainant's written authority to act on his or her behalf.
- (7) Complainants can present a class action before the Civil Aviation Authority especially in relation to a service provider that owes them a duty of care under Article 25, but must appoint a representative for the class.

#### **Article 25 – Investigation**

- (1) The Executing Agency, the RYA or the Authority shall cause an investigation to be carried out on the substance of the complaint and the response of the service provider within a reasonable period of time after the receipt thereof.
- (2) In carrying out any assessment under these Regulations, an officer designated by the Authority shall have all the powers of investigation under national law or under the provisions of the Dispute Resolution Regulation, and in addition may request for submissions to be made by any interested person(s) in relation to a complaint.



- (3) The Authority shall amongst other things:
  - (a) Notify the Respondent that a request has been lodged under these rules;
  - (b) Require the Respondent to respond to the complaint within 7 days;
  - (c) Require the Respondent to describe the procedure it has taken to resolve the matter.

#### **Article 26 - Determination of Complaints**

- (1) After every assessment, the investigator shall make an assessment report and shall make recommendations therein.
- (2) Upon a consideration of the assessment report, the nature of the conduct alleged against the Respondent, the extent of the claim by the complainant, public interest and other relevant factors, the Authority shall make a determination in one of the following respects:
  - a) the complaint lacks merit pursuant to which the complaint would be struck out;
  - b) the complaint is of such a nature as to advise the parties to resolve the dispute through mediation;
  - c) the complaint is of such a nature as to be subjected to the Authority's administrative hearing procedure in accordance with national law.
- (3) The Authority shall give notice of its determination to the interested parties.

#### **Article 27 – Penalty**

- (1) Any service provider that violates any provision of these Regulations shall, subject to national law, be liable to penalties imposed by the Authority.
- (2) The penalties imposed by the Authority under Section shall be dissuasive, proportionate to both the gravity of the case, and the economic capacity of the service provider concerned. The defaulter's compliance record shall also be considered.
- (3) It shall be unlawful for any service provider, their employees or agent to obstruct or prevent the Authority or any of its designated officers from carrying out investigations or refuse to provide information requested by the Authority, relating to any violation of these Regulations.



- (4) The Executive Council may, on a proposal from the Executing Agency and adoption by the Council of Ministers for Air Transport and after consulting the African Parliament adopt and maintain in place a schedule of penalties to be imposed for breach of provisions of this regulation.

## **PART SIX MISCELLANEOUS**

### **Article 28 - Duty of Care**

- (1) Consumers shall have no claim against air navigation service providers, airports, ground handling companies, travel agents, consolidators, cargo handling companies, freight forwarders, tour operators and other service providers for any delay, cancellation or overbooking of their flights or the failure by the airline to transport their cargo and or mail which delay, cancellation, overbooking or failure to transport cargo or mail is the direct action or omission of the airline.
- (2) Without prejudice to the generality of the paragraph 1 of this Article [7], service providers in a contractual relationship with the airline owe a duty of care to the consumer not to negligently or recklessly provide unsafe services to the airline as may if relied on by the airline without exceptional caution make the aircraft or the operation of the aircraft unsafe and endanger the lives of passengers on board the aircraft or cause damage to cargo or mail on board the aircraft.
- (3) The consumer shall, without prejudice to paragraph 2 of this Article, be required to prove the damage, the negligence or recklessness of the third party service provider and the causal relationship between defective service rendered to the airline and damage sustained.
- (4) Consumers shall have no claim on any service provider for the delay, or cancellation of their flights or the failure by the service to transport or effect the transportation of their cargo and or mail which delay, cancellation, or failure to transport cargo or mail is the direct consequence of a natural disaster and over which no service provider shall have been able to control.
- (5) Where, as a result of the provisions of this Regulation, two or more service providers are liable for the same damage, they shall be liable jointly and severally, without prejudice to the provisions of national law concerning the rights of contribution or recourse.



- (6) The Executive Council may, on a proposal from the Executing Agency and adoption by the concerned Ministerial Organ of the African Union and after consulting the African Parliament adopt appropriate rules on liability of service providers in relation to unsafe services.

#### **Article 29 - Service providers right of redress**

In cases where an airline pays compensation or meets the other obligations incumbent on it under this Regulation, no provision of this Regulation may be interpreted as restricting its right to seek compensation from any service provider, including third parties, in accordance with the law applicable in the state party. In particular, this Regulation shall in no way restrict the airline's right to seek reimbursement from a travel agent, ground handling company, airport operator, air navigation service provider, tour operator or another person with whom the operating air carrier has a contract. Similarly, no provision of this Regulation may be interpreted as restricting the right of a travel agent or tour operator or a third party, other than a passenger, with whom an airline has a contract, to seek reimbursement or compensation from the airline in accordance with applicable laws.

#### **Article 30 - Review by the Executing Agency**

Within 2 years of entry into force of this Regulation, the Executing Agency shall report to the concerned Ministerial Organ of the African Union on the operation and the results of this Regulation. The report shall be accompanied where necessary by legislative proposals.

#### **Article 31 - Entry into Force**

This Regulation shall enter into force immediately following its endorsement by the Assembly of Heads of State and Government.



## Schedule 1

In relation to Article 13 the following constitute the data to be supplied by each airline:

<u>Data relating to the flight</u>		
No.	Data Required	Data Description
1	<b>Flight Identification</b>	IATA Airline code and flight number
2	<b>Scheduled Departure Date</b>	Date of scheduled departure of aircraft based on local time of departure location
3	<b>Scheduled Departure Time</b>	Time of scheduled departure of aircraft (based on local time of departure location)
4	<b>Scheduled Arrival Date</b>	Date of scheduled arrival of aircraft (based on local time of arrival location)
5	<b>Scheduled Arrival Time</b>	Time of scheduled arrival of aircraft (based on local time of arrival location)
6	<b>Last Place/Port of Call of Aircraft</b>	Aircraft departed from this last foreign place/port of call to go to "place/port of aircraft initial arrival"
7	<b>Place/Port of Aircraft Initial Arrival</b>	Place/port in the country of destination where the aircraft arrives from the "last place/port of call of aircraft"
8	<b>Subsequent Place/Port of Call within the country</b>	Subsequent place/port of call within the country
9	<b>Number of Passengers</b>	Total number of passengers on the flight

<u>Data relating to each individual passenger :</u>		
(a) Core Data Elements as may be found in the Machine Readable Zone of the Official Travel Document		
1	<b>Official Travel Document Number</b>	Passport or other official travel document number
2	<b>Issuing State or Organization of the Official Travel Document</b>	Name of the State or Organization responsible for the issuance of the official travel document
3	<b>Official Travel Document Type</b>	Indicator to identify type of official travel document
4	<b>Expiration Date of Official Travel Document</b>	Expiration date of the official travel document
5	<b>Surname/Given Name(s)</b>	Family name and given name(s) of the holder as it appears on the official travel document.
6	<b>Nationality</b>	Nationality of the holder
7	<b>Date of Birth</b>	Date of birth of the holder
8	<b>Gender</b>	Gender of the holder
(b) Additional Data elements		
9	<b>Visa Number</b>	Number of the Visa issued
10	<b>Issue Date of the Visa</b>	Date of the Visa issuance



11	<b>Place of Issuance of the Visa</b>	Name of the place where the Visa was issued
12	<b>Other Document Number Used for Travel</b>	The other document number used for travel when the official travel document is not required
13	<b>Type of Other Document used for Travel</b>	Indicator to identify type of document used for travel
14	<b>Primary Residence</b>	
a.	<b>Country of Primary Residence</b>	Country where the traveller resides for the most of the year
b.	<b>Address</b>	Location identification such as street name and number
c.	<b>City</b>	City
d.	<b>State/Province/County</b>	Name of the State, Province, County, as appropriate
e.	<b>Postal code</b>	Postal code
15	<b>Destination Address</b>	
a.	<b>Address</b>	Location identification such as street name and number
b.	<b>City</b>	City
c.	<b>State/Province/County</b>	Name of the State, Province, County, as appropriate
d.	<b>Postal code</b>	Postal code
16	<b>Place of Birth</b>	Place of birth such as city and country
17	<b>Traveller's Status</b>	Passenger, Crew, In-transit
18	<b>Place/Port of Original Embarkation</b>	Place/port where traveller originates foreign travel, refer to 8.1.6
19	<b>Place/Port of Clearance</b>	Place/port where the traveller is cleared by the border control agencies
20	<b>Place/Port of Onward Foreign Destination</b>	Foreign place/port where traveller is transiting to, refer to 8.1.7
21	<b>Passenger Name Record Locator Number (or unique identifier</b>	As available in the traveller's Passenger Name Record in the carrier's airline reservation system



## Schedule 2

### Details of Recipients of API Data and required mode of communication

Country	Main Contact Point	Receiving Authority	Address	Mode of Communication
<a href="#">People`s Democratic Republic of Algeria</a>				
<a href="#">Republic of Angola</a>				
<a href="#">Republic of Benin</a>				
<a href="#">Republic of Botswana</a>				
<a href="#">Burkina Faso</a>				
<a href="#">Republic of Burundi</a>				
<a href="#">Republic of Cameroon</a>				
<a href="#">Republic of Cape Verde</a>				
<a href="#">Central African Republic</a>				
<a href="#">The Republic of Chad,</a>				
<a href="#">Union of the Comoros</a>				
<a href="#">Republic of the Congo</a>				
<a href="#">Republic of Cote d'Ivoire</a>				
<a href="#">Democratic Republic of the Congo</a>				
<a href="#">Republic of Djibouti</a>				
<a href="#">Arab Republic of Egypt</a>				
<a href="#">Republic of Equatorial Guinea</a>				
<a href="#">State of Eritrea</a>				
<a href="#">Federal Democratic Republic of Ethiopia</a>				
<a href="#">Gabonese Republic</a>				
<a href="#">Republic of the Gambia</a>				
<a href="#">Republic of Ghana</a>				
<a href="#">Republic of Guinea</a>				
<a href="#">Republic of Guinea-Bissau</a>				
<a href="#">Republic of Kenya</a>				
<a href="#">Kingdom of Lesotho</a>				
<a href="#">Republic of Liberia</a>				
<a href="#">Libya</a>				





Country	Main Contact Point	Receiving Authority	Address	Mode of Communication
<a href="#">Republic of Madagascar</a>				
<a href="#">Republic of Malawi</a>				
<a href="#">Republic of Mali</a>				
<a href="#">Republic of Mauritania</a>				
<a href="#">Republic of Mauritius</a>				
<a href="#">Kingdom of Morocco</a>				
<a href="#">Republic of Mozambique</a>				
<a href="#">Republic of Namibia</a>				
<a href="#">Republic of Niger</a>				
<a href="#">Federal Republic of Nigeria</a>				
<a href="#">Republic of Rwanda</a>				
<a href="#">Republic Arab Saharawi Democratic</a>				
<a href="#">Democratic Republic of sao Tome and Principe</a>				
<a href="#">Republic of Senegal</a>				
<a href="#">Republic of Seychelles</a>				
<a href="#">Republic of Sierra Leone</a>				
<a href="#">Somali Republic</a>				
<a href="#">Republic of South Africa</a>				
<a href="#">Republic of South Sudan</a>				
<a href="#">Republic of The Sudan</a>				
<a href="#">Kingdom of Swaziland</a>				
<a href="#">United Republic of Tanzania</a>				
<a href="#">Togolese Republic</a>				
<a href="#">Tunisian Republic</a>				
<a href="#">Republic of Uganda</a>				
<a href="#">Republic of Zambia</a>				
<a href="#">Republic of Zimbabwe</a>				
<a href="#">Republic of Wesrtern Sahara</a>				



**ANNEX 4 TO THE YAMOOUSSOUKRO DECISION:  
REGULATIONS ON THE POWERS, FUNCTIONS AND OPERATIONS OF THE  
EXECUTING AGENCY OF THE YAMOOUSSOUKRO DECISION**

**Executing Agency**

WE, the Ministers responsible for Transport, Infrastructure, Energy and Tourism meeting at the First Ordinary Session of the African Union Specialized Technical Committee on Transport, Transcontinental and Interregional Infrastructure, Energy and Tourism in Lomé, Togo, 17th March 2017 have adopted these Regulations developed by the Bureau of the Conference of African Ministers of Transport, meeting in Malabo, Republic of Equatorial Guinea, on 18<sup>th</sup> and 19<sup>th</sup> December 2014, on the occasion of the Fourth Meeting of the Bureau of the Conference of African Ministers of Transport dedicated mainly to implement the Executive Council Decisions EX.CL/Dec.826(XXV) endorsing the report of the Third Session of the Conference of African Ministers of Transport (CAMT);

**CONSIDERING** the Constitutive Act of the African Union adopted in Lomé on 11<sup>th</sup> July 2000, namely its Article 3, 5, 6, 9, 13, 14, 15, 16 and 20;

**CONSIDERING** the Treaty establishing the African Economic Community signed in Abuja on 3<sup>rd</sup> June 1991, namely its articles 8, 10, 11, 13, 25 to 27;

**CONSIDERING** the Decision relating to the implementation of the Yamoussoukro Declaration concerning the liberalization of air transport markets access in Africa of 14<sup>th</sup> November 1999, , hereinafter called the Yamoussoukro Decision;

**CONSIDERING** the African Union Commission's Statutes adopted by the Assembly of the African Union in Durban (South Africa) on 10<sup>th</sup> July 2002;

**CONSIDERING** EX.CL/Dec.359 (XI) wherein the Executive Council took note of the Resolution of the 3<sup>rd</sup> Session of the Conference of African Ministers of Transport (CAMT) in Malabo, Equatorial Guinea in 2014 entrusting the functions of the Executing Agency of the Yamoussoukro Decision of 1999 to the African Civil Aviation Commission (AFCAC), hereinafter called the Executing Agency ;

**CONSIDERING** the Resolution on the follow-up of the implementation of the Yamoussoukro Decision of 1999 adopted by the First African Union Conference of Ministers responsible for Air Transport in Sun City(South Africa) in May 2005;



- CONSIDERING** the Resolution on air transport safety in Africa adopted by the Second Conference of African Union Ministers responsible for air transport in Libreville (Gabon) in May 2006;
- CONSIDERING** the need to speed-up the full implementation of the Yamoussoukro Decision with a view to giving a boost to the operations of African airlines and other air transport service providers and effectively meeting the challenges of globalisation of international air transport;
- RECOGNISING** the need for an effective institutional structure to manage liberalization of the air transport sector on the continent and direct safety, security, dispute resolution, consumer protection among others;
- NOTING** the importance of the harmonization of legislation and policies in air transport necessary to achieve the objectives of the Yamoussoukro Decision;
- MINDFUL** of the interests of the African consumer and the need to protect such interests through active continental, regional and national policies that enhance their sense of safety and eases their burden on travelling in the continent;
- CONSIDERING** the important role that airlines and other air transport service providers play in the process of liberalization and the integration of African economies and the need to support their efforts.

**HEREBY MAKE THE FOLLOWING REGULATIONS:**

**Article 1  
Definitions**

For the purposes of this Decision, the following expressions shall mean:

In these Regulations, unless the context otherwise requires:

**“Abuja Treaty”**: the Treaty Establishing the African Economic Community adopted at Abuja, Nigeria on the 3<sup>rd</sup> day of June, 1991 and which entered into force on 12 May 1994.

**“Aeronautical Authority”**: any Governmental authority, body corporate or organ duly authorised to perform any function to which these Regulations relate.



**“Executing Agency”**: the Executing Agency provided for in Article 9 (4) of the Yamoussoukro Decision.

**“Airline”**: an air transport enterprise holding a valid Air Operators Certificate and operating air transport services.

**“Air Transport Services”** mean any scheduled or unscheduled air service performed by aircraft for the public transport of passengers, mail or cargo.

**“Air Transport Service Providers”** shall include airports, air navigation service providers, airport ground passenger and cargo handling companies, travel agents, suppliers of computer reservations systems or global distribution systems, and all other categories of services provided to airlines directly at the airports.

**“African Aviation Tribunal”** means the arbitral tribunal established by the Regulations on Dispute Settlement Mechanisms Relating to the Implementation of the Yamoussoukro Decision.

**“Board of Appeal”** means the Board of Appeal established by the Regulations on Dispute Settlement Mechanisms Relating to the Implementation of the Yamoussoukro Decision Yamoussoukro Decision.

**“Organ of the African Union”** shall refer to Organs of the African Union as provided for in the Constitutive Act of the African Union.

**“Organ of the Decision”** means the bodies in the Yamoussoukro Decision tasked with the supervision and follow up of its implementation and includes include the Executing Agency, the Monitoring Body, the Sub-Committee on Air Transport of the Committee on Transport, the Conference of African Ministers of Transport or any such body or bodies as are appointed to replace them by them.

**“Regional Yamoussoukro Decision Authority”** means the authority or agency established or constituted by a regional economic community recognized by the African Union under the Abuja Treaty and invested with powers to supervise and manage the implementation of the Yamoussoukro Decision within the region.

**“State Party”** means a Member State that has ratified and acceded to the Abuja Treaty and such other African country which, though not a party to the said Treaty, has declared in writing its intention to be bound under the Yamoussoukro Decision



## **Article 2 Scope of Application**

1. This Regulation shall apply to the implementation of the Yamoussoukro Decision and the liberalisation of air transport throughout the territories of State Parties.
2. It prescribes rights and obligations, and shall be binding on relevant organs of the African Union, regional economic communities, State Parties to the Decision, organs of the Decision and airlines.

## **Article 3 Object and Basic Principles**

1. The key objective of this Regulation is to empower AFCAC as the Executing Agency (Hereinafter Executing Agency or Agency) and enable it to supervise and manage the liberalisation of air transport in Africa and the effective implementation of the Decision and its implementing rules and regulations.
2. To achieve this objective the Executing Agency, the State Parties, Organs of the African Union and of the Decision, the regional economic communities and airlines shall be guided by the following basic principles:
  - a. All air transport activities undertaken on the African continent shall aim at achieving smooth, safe, comfortable and efficient intra-African travel.
  - b. All air transport activities shall be conducted in the interest of the consumer and whose interests shall be considered as protected by all stakeholders.
  - c. Airlines shall be encouraged to operate profitably with least operating cost, preferably utilising all logical fifth freedom routes and assisted to identify potentially attractive routes based on long term focused economic activities in different localities of Africa.
  - d. Maximum utilisation of airport slots and airports infrastructure and services during the day and thereby encourage economic activities at and around all African airports.
  - e. Active cooperation between eligible airlines and multiple establishment in different regional economic communities.
  - f. The consideration of liberalised routes as a public good held for the use of and interest of the African continent.



## **Article 4 Criteria for eligibility**

Subject to Article 6.9 of the Yamoussoukro Decision, the Agency may develop rules and regulations regarding the eligibility of airlines for consideration and approval of organs of the African Union.

### **Chapter 1 Powers and Functions**

## **Article 5 Functions of the Executing Agency**

1. For the purpose of implementing the Yamoussoukro Decision and in particular paragraph 4 of Article 9 thereof, the African Civil Aviation Commission is entrusted with the responsibility of the Executing Agency and charged to supervise and manage and enforce the liberalization of African air transportation.
2. The Executing Agency shall specifically undertake the following functions:
  - a. Outline, stipulate and enforce conditions under which a state may limit its commitment under Article 3.2 of the Yamoussoukro Decision;
  - b. Continuously review, recommend and, where applicable, enforce modern and effective measures of tariff notification under Article 4, frequency and capacity notification under Article 5.1, designation and authorization of eligible airlines under Article 6.1, 6.2 and 6.3 of the Yamoussoukro Decision;
  - c. Develop and enforce the criteria for eligibility under Article 6.9 of the Yamoussoukro Decision and safety of airline operations;
  - d. Conduct studies, monitor and enforce competition and consumer protection rules;
  - e. Ensure ICAO safety and security standards;
  - f. On its own initiative, or at the request of the Monitoring Body any Organ of the African Union, undertake action aimed at assisting and advising the Monitoring Body in relation to its function provided for under sections a, b, d, g, h, l, j, k of Annex A to the Yamoussoukro Decision.

## **Article 6 Powers of the Agency**

1. The Agency shall have the power to:



- a. Ensure that the Decision is applied consistently throughout the African continent;
  - b. Enforce relevant decisions, resolutions, regulations and directives of the Organs of the African Union and the Monitoring Body.
  - c. Formulate opinions, make decisions, guidelines and guidance materials including clarifications of provisions of the Decision and acceptable means of compliance.
  - d. Ensure that senior management of civil aviation authorities or any such senior personnel in State Parties who are directly involved in the implementation of the Decision are reasonably trained in the understanding of their global responsibilities in relation to the Decision.
  - e. Request specific action of State Parties and other stakeholders, including but not limited to, data and reports.
  - f. Make determinations on the state of compliance of the Decision and any relevant implementing rules and regulations and recommend or take appropriate remedial action.
  - g. Make recommendations to the Monitoring Body or organs of the African Union on imposition of sanctions on State Parties, where appropriate.
  - h. Impose sanctions on airlines including fines, penalty payments.
  - i. Require that a breach or infringement be brought to an end.
  - j. Order interim measures.
  - k. Accept commitments of compliance from State Parties and eligible airlines.
  - l. Report annually or as often as is determined from time to time on the status of implementation of the Decision.
  - m. Conduct investigations in the territories of the State Parties and undertake all necessary measures within the powers conferred on it by this Regulation or other legislation.
  - n. Exercise such other powers and perform such other functions as are vested in or conferred on it by the Executive Council, or any other organ of the African Union or the Yamoussoukro Decision.
2. In exercising the above functions the Executing Agency shall have full regard of the sovereign rights of State Parties and the commercial interests



of eligible airlines, save that no civil aviation authority shall of its own have the power to dictate the terms and conditions of operations of the Agency.

### **Article 7 Acts of the Agency**

Subject to the provisions of Articles 13, 15, 17, 18, 20, and 21 of the Constitutive Act of the African Union and paragraphs 1 and 3 of Article 9 of the Decision, the Agency shall, where appropriate:

- a. make **recommendations** for the consideration of the relevant organs of the African Union and the Decision.
- b. issue **opinions** either on its own initiative or upon request of the Monitoring Body, relevant organs of the African Union.
- c. take appropriate **decisions** for the application of Article 5 of this Regulation.
- d. issue **guidelines and recommendations** to State Parties, airlines and other service providers.

## **Chapter 2 Operations of the Agency**

### **Article 8 Implementing Measures at National and Regional Levels**

The Agency shall recommend the establishment by regional economic communities and states parties of regional and national monitoring groups for the implementation of the Decision.

### **Article 9 Training of Senior Management**

1. Having regard to its function under paragraph e of Article 6 of this Regulation, the Agency shall encourage, conduct or facilitate training of senior management personnel directly involved in national authorities' implementation of the Decision and are likely to be involved in any investigations and inspections to be conducted under Articles 12 and 13 of this Regulation.
2. The training may be conducted at the regional level or continental levels and, in the case of regional training, shall be conducted or facilitated by the regional economic communities.





3. The Agency shall adopt rules on training and sponsorship of senior personnel.

### **Article 10**

#### **Monitoring, Evaluation and Reporting**

1. Having regard to the object of this Regulation, the Agency shall, in close cooperation with the regional economic communities, monitor the application of the Decision by civil aviation authorities, airlines and other service providers.
2. The Agency shall submit annual reports to the Monitoring Body and the Conference of African Ministers of Transport (Hereafter CAMT) or any other organ of the African Union as appropriate.
3. The Agency shall, in fulfillment of its reporting function outlined in this Article, shall:
  - a. conduct regular investigations,
  - b. carry out evaluations,
  - c. request for and review national aviation regulations including but not limited to economic regulations, air services agreements, and operational statistics of air transport falling within its field of competence.
4. The Agency shall publish a **state report** on each State Party every 5 years on the level and effectiveness of application of the Decision and any relevant implementing rules and regulations.
5. The Agency shall submit the following additional annual reports to the relevant organs of the African Union:
  - a. report of its activities including a summary of activities of each regional economic community and in particular the state of implementation by eligible airlines of regional routes.
  - b. report on implementation of competition regulations,
  - c. report on implementation consumer protection regulations,
  - d. reports on sanctions imposed or recommended,
  - e. report on complaints and dispute resolution and,
  - f. Request reports from regional economic communities, State Parties, airlines and other service providers.



## **Article 11 Research and Development**

1. The Agency shall encourage research in areas of its competence.
2. It shall encourage African universities, other educational institutions and research institutes to conduct such research as will enhance understanding and further promote air transport liberalisation in Africa
3. The Agency shall maintain a publicly available database of research undertaken by itself, State Parties, regional economic communities, organs of the African Union and other regional organisations, academic and research institutions.
4. The Agency may develop, finance and undertake financed research in so far as it relates to the improvement of activities in its field of competence and particularly under the following conditions:
  - a. It shall coordinate its research activities with those of the African Union, the regional economic communities and State Parties so as to ensure that policies and actions are mutually consistent and to prevent duplication of efforts.
  - b. Results of research funded, facilitated, coordinated by or in any way owned by the Agency that are not classified as confidential shall be published in the manner the Agency deems it. Where published as a commercial publication, at least the executive summary of such reports shall be made available on the Agency's website and shall be made freely available to interested parties.

## **Article 12 Annual Planning**

1. The Agency shall, within 6 months of the entry into force of this Regulation, submit an annual work plan to the relevant organs of the African Union for approval.
2. The Agency shall, within 6 months of entry into force of this Regulation, submit an annual list of proposed regulatory activities to be undertaken in pursuance of Article 16 of this Regulation to the relevant organs of the African Union for approval.
3. The annual work plan and the list of proposed regulatory activities shall be submitted on the anniversary of the date of submission in accordance with paragraphs 1 and 2 above.



**Article 13**  
**Database, Website, Privacy and Publication**

1. The Agency, civil aviation authorities, regional economic groupings, airlines, and the African Union Commission and the Monitoring Body, shall be encouraged to exchange information among themselves using the most secure, expeditious, efficient and cost effective means of communication. In this regard, the Agency shall:
  - a. encourage the use of modern means of information technology to transact its business.
  - b. ensure that national authorities and members of the regional implementation groups have direct access to its information network and database and are able to communicate seamlessly and securely using such information technology.
  - c. facilitate the use by airlines and other service providers to utilise the website of the Agency to communicate with the Agency, State Parties, regional economic communities and other institutions.
  - d. The Agency shall create an internet platform and establish conditions for consumer and hazard reporting.
2. The Agency shall compile a central database of air transport on all aspects of its competence.
3. In giving effect to this Regulation the Agency shall be guided by openness, transparency and a willingness to publish relevant documentation to all interested parties, including the general public.
4. Without prejudice to paragraph 3 of this Article, measures for the dissemination to interested parties of information shall be based on the need:
  - a. to provide persons and organisations with the information they need to enable them undertake their obligations under the Yamoussoukro Decision;
  - b. to limit the dissemination of information to what is strictly required for the purpose of its users, in order to ensure appropriate confidentiality of that information.
5. Civil aviation authorities and regional economic communities, organs of the Union and airlines shall take necessary measures to ensure appropriate confidentiality of the information received by them in application of this Regulation.



6. The Agency shall have an official publication.

#### **Article 14 Investigation**

1. In supervising and managing the liberalisation of air transport in Africa, the Agency shall, working closely with the regional economic communities, monitor the application of this regulation and its implementing rules by conducting investigations of civil aviation authorities of State Parties. Investigations shall be carried out in compliance with the legal provisions of State Parties in which they are undertaken.
2. The Agency shall only be entitled to conduct investigations in a State Party after exhausting the following:
  - a. Making a determination of non-compliance or persistent breaches of provisions of the Decision and submitting the same to the Monitoring Body.
  - b. Offering the State Party the opportunity to comply within a specified time period.
  - c. Taking a decision of non-compliance of its determination made under sub-paragraph a and reporting the same to the Monitoring Body.
3. Officials of the Agency, regional economic communities, or of State Parties shall be authorised to undertake such tasks for and on behalf of the Agency and are thus empowered in compliance with the legal provisions of the State Parties concerned to:
  - a. examine statutes, rules, policies, statements, guidelines, relevant records, data, procedures and any other material relevant to the achievement of the objectives of the Decision in accordance with this Regulation and implementing rules and regulations;
  - b. take copies of or extracts from such records statutes, rules, policies, statements, guidelines, relevant records, data, procedures and other material relevant;
  - c. request for oral interviews and explanation;
  - d. enter any relevant premises.
4. The officials of the Agency, regional economic communities and State Parties authorised for the purpose of these investigations shall exercise their powers upon the production of an authorisation in writing specifying



the subject matter, the purpose of the investigation and the date on which it is to begin. In good time before the inspection, the Agency shall inform the State Party concerned of the investigation of the identity of the authorised officials.

5. The State Party concerned shall assist the agency in conducting its investigations.
6. Reports drawn up in application of this Article shall be made available in the official language of the State Party concerned.

### **Article 15** **Inspections of service providers**

1. The Agency may itself conduct or allocate to the regional economic community, civil aviation authorities, or qualified entities all necessary investigation of eligible airlines and other service providers. Inspections shall be carried out in compliance with the legal provisions of State Parties in which they are undertaken. To that end the persons authorised under this Regulation are empowered:
  - a. To examine the relevant records, data, procedures and any other relevant material;
  - b. Take copies of or extracts from such records, data, procedures and other material;
  - c. Request for oral interviews and explanation;
  - d. To enter any relevant premises.
2. The persons authorised for the purpose of these investigations shall exercise their powers upon production of an authorisation in writing specifying the subject matter and the purpose of the investigation.
3. In good time before the investigation, the Agency shall inform the State Party concerned in whose territory the investigation is to be made, of the investigation and of the identity of the authorised persons. Officials of the State Parties shall, at the request of the Agency or the regional economic community, assist the authorised persons in carrying out their duties.

### **Article 16** **Imposition of Sanctions**

1. The Agency may determine the appropriate sanctions to be imposed for breaches of the Yamoussoukro Decision and its implementing rules and regulations.



2. The Agency shall submit a Regulation on sanctions to be imposed under the Yamoussoukro Decision and its Implementing Regulations to the relevant organs of the African Union.
3. The regulation shall clearly stipulate:
  - a. detailed conditions under which the sanctions regulation will be implemented;
  - b. modality for the enforcement of imposed sanctions;
  - c. conditions for prior notification of intended sanction;
  - d. confidentiality in the period before the imposition of any intended sanction;
  - e. publication of any sanction imposed;
  - f. the right of subjects of any intended sanction to be permitted to rectify the cause of the intended sanction;
  - g. right of appeal against the sanction; and
  - h. liability of the Executing Agency for wrongful imposition of a sanction.

#### **Article 17**

##### **Procedures for development of opinions, procedures, plans, specifications**

1. When the Agency develops opinions, procedures, plans, specifications of eligible airlines, and guidance material to be applied by State Parties, it shall establish a procedure for consulting the State Parties, the regional economic communities, eligible airlines, service providers and all interested parties.
2. The Agency shall adopt rules through the procedure of Notification of Proposed Rulemaking on the Yamoussoukro Decision (Hereinafter, YDNPR).
3. The Agency shall, within 6 months of entry into force of this Regulation, adopt detailed procedures for issuing opinions, taking decisions and making recommendations, guidelines and guidance material.
4. The Agency shall submit the procedures to the Chairperson of the African Union for approval.



5. Those procedures shall:
  - a. Draw on expertise available in standing and ad-hoc AFCAC Committees, civil aviation authorities and the regional economic communities and airlines;
  - b. Involve appropriate experts from relevant interested parties, including but not limited to African Universities and Research institutions;
  - c. Ensure that the Agency publishes documents widely with interested parties according to a timetable and a procedure which includes an obligation on the Agency to submit written responses to the consultation process.

**Article 18**  
**Procedures for taking enforcement decisions**

1. The Agency shall establish transparent procedures for taking decisions affecting State Parties, eligible airlines and other service providers.
2. Those procedures shall:
  - a. If they are intended to affect State Parties, ensure that State Parties have been given ample time to remedy the cause of the eventual decision and that such an enforcement decision is based on an Executive Council Directive;
  - b. If they are intended to affect eligible airlines or service providers, ensure a hearing of the airlines to be addressed in the decision and of any other party with a direct and individual interest;
  - c. Provide for notification of a decision to an airline or service provider and its publication;
  - d. Provide for information to the eligible airline or service provider to whom a decision is addressed, and any other parties to proceedings, of the legal remedies available to that airline or service provider under this Regulation;
  - e. Ensure that the decision contains adequate reasons



### **Chapter 3 Institutional Arrangements**

#### **Article 19 Management of the Executing Agency**

1. In accordance with Section II of the AFCAC Constitution, the Plenary of AFCAC, acting as the supreme organ of the Executing Agency shall:
  - a. adopt the reports of the Agency in accordance with Article 8 and cause further action to be taken;
  - b. adopt the Agency's annual programme in accordance with Article 10
  - c. establish procedures for making decisions by the Secretary General;
  - d. carry out its functions relating to the Agency's budget pursuant to Chapter 4 of this Regulation;
  - e. recommend a list of the members of the African Aviation Tribunal, the Board of Appeal and Mediators pursuant to Appendix 2 to the Decision for approval by the Chairperson of the African Union;
  - f. make recommendations for the imposition of sanctions against a State Party
  - g. approve sanctions imposed by the Secretary General on eligible airlines and service providers;
  - h. approve the Notification of Proposed Rulemaking on the Yamoussoukro Decision pursuant to Article 17.
2. The Plenary may advise the Secretary General on any matter strictly related to strategic development of air transport liberalisation, including research as defined in Article 10.
3. The Plenary shall, in coordination with regional economic communities, encourage the establishment of the national YD Implementation groups.

#### **Article 20 The Secretary General**

1. The Agency shall be managed by the Secretary General of AFCAC, who shall be completely independent in the performance of his/her duties. Without prejudice to the respective competencies of the Plenary, the Secretary General shall neither seek nor take instructions from any government or from any other body.





2. Relevant organs of the African Union may invite the Secretary General of the Agency to report on the carrying out of his/her tasks.

**Article 21**  
**Functions and Powers of the Secretary General**

1. In addition to the function and powers provided for in Article 11 of the AFCAC Constitution, the Secretary General shall have the following functions and powers to:
  - a. approve the measures of the Agency as defined in Article 5 of this Regulation, its implementing rules and any applicable law;
  - b. liaise with the regional economic communities and other organs of the African Union to ensure the implementation of harmonised rules necessary to ensure the liberalisation of air transport
  - c. decide on investigations and inspections as provided for in Articles 14 and 15;
  - d. allocate tasks to the Regional YD Authority (RYA);
  - e. take all necessary steps, including the adoption of internal administrative instructions and the publication of notices, to ensure the functioning of the Agency in accordance with the provisions of this Regulation;
  - f. prepare each year a general report and all other reports stipulated in Article 9 and submit it to the Plenary and relevant organs of the African Union;
  - g. prepare a provisional budget for Agency pursuant to Article 22, and implement the budget pursuant to Article 23;
  - h. delegate his/her powers to other members of the Agency's staff.

**Chapter 4 Financial Arrangements**

**Article 22**  
**Budget**

1. The revenues of the Agency shall consist of:
  - a. contributions the African Union and any State Party,
  - b. grants from stakeholders and development partners.



- c. Donations, penalties, charges for publications, training, and any other services provided by the Agency as may be approved from time to time.
2. The expenditure of the Agency shall include the staff, administrative, infrastructure and operational expenses.
3. The Agency shall, within 6 months of this Regulation, at the latest, adopt the estimates, including the approved or preliminary work plan, and forward the same to the Chairperson of the African Union Commission.
4. Any modification to the budget shall follow the procedure referred to in paragraphs 3 of this Article.

**Article 23**  
**Implementation and control of the budget**

1. The Secretary General shall implement the budget of the Agency.
2. Control of commitment and payment of all expenditure and control of the existence and recovery of all revenue of the Agency shall be carried out by the Financial Controller of the African Union Commission.
3. By 31<sup>st</sup> December each year at the latest, the Secretary General shall submit to the AU Commission, Plenary and the AU Auditors the detailed accounts of all revenue and expenditure from the previous financial year.
4. The relevant organ of the Union shall give a discharge to the Secretary General of the Agency in respect of the implementation of the budget.

**Article 24**  
**Fees**

1. The Agency shall within 90 days of the entry of this Regulation submit a regulation on fees and charges for approval by the relevant organs of the African Union and in consideration of ICAO policies.
2. The fees and charges regulation shall determine in particular the matters for which fees and charges are due, the amount of the fees and charges and the way in which they are to be paid. All fees and charges shall be expressed, and payable, in US Dollars.



**Final Provisions**

**Article 25  
Entry into force**

This Regulation shall enter into force following its endorsement by the Assembly of Heads of State and Government.



**APPENDIX A TO THE REGULATIONS ON POWERS, FUNCTIONS AND  
OPERATIONS OF THE EXECUTING AGENCY OF THE YAMOUSSOUKRO  
DECISION**

**Procedure to be applied by the Executing Agency for the Issuing of  
Decisions, Regulations and Guidelines  
("Rulemaking Procedure")**

**Section 1 – basic principles and applicability**

**Article 1  
Scope**

This Decision prescribes the procedures for the development and issuing of recommendations, opinions, decisions, guidelines and guidance material by the Agency.

**Article 2  
Definitions**

For the purposes of this Decision:

'Rulemaking' shall mean the development and issuance of rules for the implementation of the YD.

'Rules' comprises the following:

- decisions of the Agency;
- opinions concerning the scope, implementation, compliance with and content of the Yamoussoukro Decision and its implementing rules;
- recommendations of the Agency to the Monitoring Body, CAMT or any organ of the African Union intended to result in the application of a sanction against a State Party;
- guidelines;
- guidance material, which is non-binding material that helps to illustrate the logical procedures, processes and materials in implementing a rule and which does not provide presumption of compliance.



## Section 2 – Rulemaking Procedure

### Article 3 Programming

1. The Secretary General shall establish an annual rulemaking programme in consultation with the Monitoring Body and the regional economic communities.
2. The rulemaking programme shall take account of:
  - i. the object and basic principles set out in Article 3 of the Regulation on the Powers and Functions of the Executing Agency;
  - ii. the object of implementing a liberalised air transport market in Africa;
  - iii. significant protection of the interest of the African air transport consumer;
  - iv. the need to ensure a vibrant but safe, economically viable, efficient and healthy African airline sector; and
  - v. the objective of developing an efficient, transparent and responsive continental regulatory system.
3. Any person or organisation may propose the development of a new rule or an amendment thereto. The Secretary General shall consider such requests in the context of the revision of the rulemaking programme.
4. Proposals, including the identification of the proposer, the proposed text and the justification for the proposal, shall be sent to the Agency and shall be individually acknowledged.
5. The Secretary General shall provide the proposer with justification for his or her decision on whether to act on his or her proposal.
6. The rulemaking programme shall be supported by an analysis of the priority accorded to each task taking into account the resources at the disposal of the Agency and potential continental impact of the proposal.
7. The Secretary General shall adapt the rulemaking programme as appropriate in the light of unforeseen and urgent rulemaking demands. The Monitoring Body shall be informed of any such changes.
8. The adopted rulemaking programme shall be published in the Agency's official publication.



9. The Secretary General shall conduct regular reviews of the impact of the rules issued under this Regulation on Rulemaking Procedure.

#### **Article 4 Initiation**

1. Rulemaking activities shall be initiated in accordance with the rulemaking priorities set out in the annual rulemaking programme.
2. The Secretary General shall draw up terms of reference for each rulemaking task after consulting the Monitoring Body. The terms of reference, which shall be published in the Agency's official publication, shall include the following:
  - i. a clear definition of the task;
  - ii. a timetable for completion of the task; and
  - iii. the format of the deliverable.

Where a drafting group is set up, whether by recourse to the standing Committee on Air Transport or its ad hoc Committee on Legal Issues or other ad hoc group, the terms of reference shall also include details of the composition of the group, its working methods and reporting requirements.

3. The Secretary General shall choose between the use of a drafting group, consultants or Agency resources for the fulfillment of each rulemaking task, taking into account the complexity of the task at hand and the need to draw upon the expertise of persons involved in the implementation of the rule envisaged. This decision shall be taken after consulting the Monitoring Body.
4. When a drafting group is convened, the Secretary General shall determine its exact composition, which shall draw upon technical expertise available among national authorities and, where necessary, airlines and other interested parties, as well as within the Agency itself.
5. The Agency shall provide drafting groups with the administrative and logistical support necessary for the fulfillment of their tasks, including the provision of standard operating procedures, to be adapted as necessary by the groups themselves according to their specific circumstances.
6. The Agency shall adopt standardised working methods for drafting groups, in particular the following:
  - i. Chair/Secretary elections;



- ii. obtaining of consensus and resolution of conflicts;
- iii. the preparation of minutes; and
- iv. access to the AFCAC website or online facilities to assist in drafting.

### **Article 5 Drafting**

1. New rules or amendments thereto shall be drafted in accordance with the terms of reference referred to in article 4 of this Regulation on Rulemaking Procedure.
2. The Secretary General may amend the terms of reference as appropriate in the light of progress with the rulemaking task.
3. The Secretary General shall inform the Monitoring Body of any such changes.
4. Drafting of rules shall take into account the following:
  - i. The Abuja Treaty and Constitutive Act of the African Union;
  - ii. The Yamoussoukro Decision, Regulation on Legal Powers and Functions of the Executing Agency including subsidiary rules and regulations;
  - iii. Competition Rules;
  - iv. Consumer Protection Rules;
  - v. ICAO Standards and Recommended Practices;
  - vi. Timely implementation of the proposed rules, taking into account translation delays;
  - vii. Compatibility with existing rules and in particular rules adopted by the regional economic communities and the courts.
5. Upon completion of the drafting of the proposed rule, the Secretary General shall verify that the rule satisfies the terms of reference established for the rulemaking task and shall publish a Notice of Proposed Rulemaking (YDNPR) in the Agency's official publication, including the following information:
  - the proposed rule;
  - an explanatory note describing the development process;



- full details of significant or contentious or interface issues identified during the drafting process;
  - details of the situation with respect to the Yamoussoukro Decision;
  - the role of the regional economic communities, the Monitoring Body and other organs of the African Union.
6. As regards guidance material, it is sufficient that the Notice of Proposed Rulemaking contains a justification (including a paragraph showing that the material complies with the definition of guidance material) and the proposed new or amended guidance material.

### **Article 6 Consultation**

1. All State Parties all eligible airlines and any person or organisation with an interest in the rule under development shall be entitled to comment on the basis of the published Notice of Proposed Rulemaking.
2. All consultation shall be treated in accordance with the rules on access to documents under relevant provisions of the Executive Council Decision on Legal Functions and Powers of the Executing Agency.
3. Copies of all YDNPR shall be transmitted to States Parties, the regional economic communities, the Pan-African Parliament, NPCA and the African Development Bank.
4. The consultation period shall be 4 months from the date of publication of the YDNPR.
5. The Secretary General may, prior to the start of the consultation period, specify a shorter or longer consultation period to that specified in paragraph 4. This decision shall take account of the potential impact and complexity of the rules envisaged and the opinions of the Monitoring Body. Notification of the length of this revised period shall be published at the same time as the YDNPR in question.
6. During the consultation period, the Secretary General may, in exceptional and strictly justified circumstances, extend the consultation period specified in paragraphs 4 and 5 at the request of States Parties, airlines or interested parties. Such changes to the length of the consultation period shall be published in the official publication of the Agency.





7. Comments shall be forwarded to the Secretary General and shall contain the following elements:
  - i. identification of the commentator.
  - ii. YDNPR reference code; and
  - iii. position of the commentator, relative to the proposal (including justification for the position taken).

### **Article 7** **Review of comments**

1. The Secretary General shall ensure that comments are reviewed by appropriately qualified experts not directly involved in the drafting of the proposed rule together with the Agency staff or drafting group tasked with the drafting of the rule in question.
2. Further consultation with consultees may be undertaken as necessary for the sole purpose of securing a better understanding of comments submitted.
3. The Secretary General shall review the comments received from consultees and publish detailed a Response to YDNPR in the Agency's official publication within 3 months of the expiry of the consultation period.
4. The Response to YDNPR shall include the following:
  - a. a summary of the original YDNPR;
  - b. publication and commentary dates;
  - c. summary of key rules;
  - d. a list of all parties commenting on the rule in question; and
  - e. a summary of comments received and the Agency's responses thereto.
5. If, based on the number of comments received, the Secretary General is unable to publish the Response to YDNPR referred to in paragraph 4 by the deadline specified, he or she shall publish an amended timetable for the rulemaking process.
6. If the result of the review of comments is that the revised text differs significantly from that circulated at the start of the consultation process, the Secretary General shall consider a further consultation round in accordance with this Decision.



7. If the comments received from State Parties/civil aviation authorities indicate major objections to the proposed rule, the Secretary General shall consult the Committee on Air Transport to discuss the rule further. In those cases where additional consultation results in continuing disagreement regarding the rule, the Secretary General shall include in the Response to YDNPR the results of this consultation and the impact and consequences of his/her decision regarding the issue at stake.

### **Article 8 Adoption and Publication**

1. The Secretary General shall issue his/her decision in respect of the rule in question no earlier than 2 months following the date of publication of the Response to YDNPR in order to allow sufficient time for consultees to respond to its contents.
2. Rules issued by the Agency shall be published in the Agency's official publication, together with an explanatory memorandum.

