

Regulatory and Institutional Instruments of the Yamoussoukro Decision

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Brief outline of Presentation

- ▶ Legal Basis
- ▶ History
- ▶ Enabling Regulations
- ▶ Powers, Functions and Operations

Legal Basis - Reference to YD

- ▶ Article 9.4 of the YD provides for the establishment of the Executing Agency, entrusted to AFCAC since 2007.
- ▶ It states that "To ensure successful implementation of the Decision, an African Air Transport Executing Agency will be established as soon as possible.
- ▶ The principal responsibility will include inter alia the supervision and management of Africa's liberalised air transport industry.

History

- ▶ EX.CL/Dec.359 (XI) wherein the Executive Council took note the Resolution of the 3rd 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
- ▶ Subsequently endorsed by the Assembly of HoG at Summit in 2007 in Accra, Ghana.

Adoption of Enabling Regulation

- ▶ Adopted by the Decision of the Assembly of HoG of the AU at its Thirtieth Ordinary Session held on the 28-29 January 2018 in Addis Ababa upon recommendation of the Executive Council.
- ▶ Ref of Decision: 'Assembly/AU/Dec.676 (XXX'.
- ▶ Prior to their adoption, the Texts had to go through various stages of consideration and validation by Air Transport and Legal Experts of the Member States of the African Union.
- ▶ The most recent being the meeting of the STC- Justice and Legal Affairs before recommendation to the Executive Council of the AU.

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

Scope of Application

The scope of this Regulation is to;

- ▶ Provide detailed rules for AFCAC as the Executing Agency to **supervise, manage, formulate and enforce measures** for the successful implementation of the Yamoussoukro Decision.

The Specific texts

The Institutional and Regulatory Texts under reference are:

- i) Regulations on the Powers, Functions and Operations of the Executing Agency of the Yamoussoukro Decision - Annex 4
- ii) Regulations on Competition in Air Transport Services in Africa - Annex 5
- iii) Regulations on Protection of Air Transport Services –Annex 6



Objective

- ▶ The Regulatory Texts have been developed with the approval of the African Ministers of Transport to empower the Executing Agency to manage and enforce appropriate rules and regulations in respect of the intra African air transport liberalisation.
- ▶ They are also intended to give fair and equal opportunities to all players and to promote healthy competition, protection of consumers' interest and the settlement of disputes:

REGULATION ON COMPETITION IN AIR TRANSPORT SERVICES WITHIN AFRICA.ART.7

► **Object**

The purpose of this Regulation is to promote and guarantee free and fair competition in Intra-Africa air transport services in order to develop the air transport industry and to contribute to the welfare of the citizens of the State Parties.

► **Scope of Application**

This Regulation shall apply to scheduled and non-scheduled intra-Africa air transport services, 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.

PROHIBITED PRACTICES, AGREEMENTS AND DECISIONS

- ▶ 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 an association of airlines and any concerted practice which negatively affects the liberalization of intra-Africa air transport services and which has as its object or effect the prevention, restriction or distortion of competition, is prohibited

ABUSE OF DOMINANT POSITION

Any abuse by one or more airlines of a dominant position within the African Air Transport market 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:

REGULATION ON CONSUMER PROTECTION (ARTICLE 9.6 OF YD)

▶ **Object**

- ▶ 1. The objective of these Regulations is to protect the consumer of air transport services against unfair treatment in the provision of services.
- ▶ 2. It provides a basis for compensation for the consumer for breach of the rights of the consumer by air transport services providers and a mechanism for the consumer to seek redress.

Scope of Application

This Regulation shall apply to the, implementation of Article 9.6 of the Yamoussoukro Decision

2. It prescribes rights of consumers of air transport services within Africa and lays down responsibilities of air transport undertakings.

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,

other commercial arrangement or programme by an airline or tour operator.

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OBJECTIVE OF DSM

- ▶ The objective of the said Regulation is to provide a framework for State Parties, airlines and other air transport service providers to resolve their disputes through various mechanisms;
- ▶ resolving disputes in a speedy and cost effective fashion and utilizing the dispute settlement measures e.g Negotiation (Art. 8) Consultation (Art. 11.4)

WITHDRAWAL OF DSM

Due to certain difficulties encountered during the re-alignment process, the Regulations on Dispute Settlement Mechanisms Relating to Implementation of the Yamoussoukro Decision –Annex 3 was withdrawn on the advice of the Legal Counsel of the African Union Commission

REASONS

- ▶ African Court of Justice created by a Protocol through the Abuja Treaty. Court has however not been operationalised
- ▶ the Regulations on the Dispute Resolution Mechanism create Institutions such as the African Aviation Tribunal and the Board of Appeal. The legal challenge is whether such tribunals can be established by instrumentality of Regulations.

EXISTING YD MECHANISMS

The withdrawal of the Dispute Resolution Regulations should however not be seen as hindrance to the implementation of the SAATM since the YD itself provides mechanisms for resolving disputes as they arise.

- ▶ Article 8 of the YD provides as follows:
- ▶ 8.1 “ If any dispute arises between States Parties relating to the interpretation or application of this Decision, the States Parties concerned shall in the first-place endeavour to settle the dispute by negotiation.”
- ▶ 8.2 “ If the State Parties concerned fail to reach a settlement of the dispute by negotiation within 21 days, either party may submit the dispute for arbitration in accordance with the arbitration procedures set forth in Appendix 2 hereof.”

EXISTING YD MECHANISMS

Article 11.4 CONSULTATION

A State Party may, at any time request consultation with other State Party (ies) in respect to the interpretation or application of this Decision. Such consultation shall begin at earliest possible date not later than 30 days from the date the other Party receives the request.