



SINGLE AFRICAN AIR TRANSPORT MARKET. Towards One African Sky

DECISION RELATING TO THE IMPLEMENTATION OF THE
YAMOUSSOUKRO DECLARATION CONCERNING THE
LIBERALISATION OF ACCESS TO AIR TRANSPORT
MARKETS IN AFRICA

GUIDELINES FOR THE NEGOTIATION OF AIR SERVICES
AGREEMENTS BETWEEN MEMBER STATES OF THE
AFRICAN UNION AND
NON-AFRICAN STATES AND REGIONS

AFRICAN CIVIL AVIATION COMMISSION (AFCAC)
YAMOUSSOUKRO DECISION COMPLIANT AIR SERVICE
AGREEMENT

AFRICAN CIVIL AVIATION POLICY (AFCAP)



United Nations
Economic Commission for Africa



FOREWORD

The launching of the Single African Air Transport Market on 28 January 2018, marked a momentous beginning for the aviation industry in Africa. The Single African Air Transport Market was designated as a flagship project of the African Union Agenda 2063 by the Assembly of Heads of State and Government during the 24th Ordinary Session held in January 2015 in Addis Ababa, Ethiopia [Assembly/ AU/Dec 565(XXIV)], thus placing implementation of the 1999 Yamoussoukro Decision on the Liberalisation of Air Transport Market in Africa in the context of Agenda 2063. The Heads of State and Government also adopted the Declaration on the Establishment of a Single African Air Transport Market [Assembly/AU/Decl.1 (XXI)]



As the Chairperson of the African Union Commission, privileged to invite and assist President Paul Kagame, Chairperson of the African Union and * of the Republic of Rwanda, in launching the Single African Air Transport Market on 28 January 2018 during the 30th Ordinary Session of the Assembly of the Union held in Addis Ababa. The Assembly Decision establishing the Single African Air Transport Market [Assembly/ AU/Dec.665 (XXX)] provides for the single market to be operationalised through full implementation of the 1999 Yamoussoukro Decision.

Thirty years ago in 1988, African Aviation Ministers met in the city of Yamoussoukro, in Cote d'Ivoire, and crafted a vision for the African Aviation Industry, then known as the Yamoussoukro Declaration on a New African Air Transport Policy. Ten years later, the Ministers met again at the same venue and elaborated concrete measures for ensuring the liberalisation of air transport markets in Africa through the Decision Relating to the Implementation of the Yamoussoukro Declaration concerning the Liberalisation of Access to Air Transport Markets in Africa, also known as the **Yamoussoukro Decision (YD)**. The Decision was adopted by the Assembly of Heads of State and Government in July 2000, in Lomé, Togo [AHG/OUA/AEC/ Dec.1 (IV)]. In this regard, I would like to commend the United Nations Economic Commission for Africa (UNECA), which played an instrumental role in facilitating the formulation of both the 1988 Yamoussoukro Declaration and the 1999 Yamoussoukro Decision.

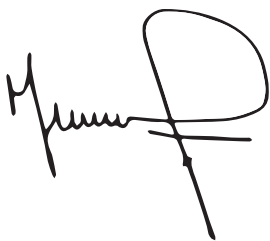
I am pleased to have the opportunity to write this foreword to the current edition of the Yamoussoukro Decision, which includes a reprint of the initial decision with some updates. It includes a revision to **Annex 2** on Duties and Responsibilities of the Monitoring Body of the Yamoussoukro Decision, as provided for in article 9.2 of the Decision, with the United Nations Economic Commission for Africa as the secretariat of the Monitoring Body. This edition also includes key Institutional and Regulatory Texts of the Yamoussoukro Decision, adopted at the 30th African Union Summit in January 2018, namely: Annex 4 on Regulations on the Powers, Functions and Operations of the Executing Agency, **Annex 5** on Regulations on Competition in Air Transport Services within Africa, and **Annex 6** on Regulations on the Protection of Consumers of Air Transport Services. These instruments will be completed with **Annex 3** on Dispute Settlement Mechanism which is expected to be finalised and adopted in 2019.

These Institutional and Regulatory Texts are essential for the successful operation of the Single African Air Transport Market. **Annex 4** on the Powers and Functions of the Executing Agency clearly defines the jurisdiction and regulations that would enable the Agency to effectively manage and supervise the Single African Air Transport Market. The Agency is also tasked with promoting healthy competition and ensuring that consumer rights are protected as guided by Annex 5 and Annex 6, which provide the necessary legal framework to that effect. More specifically, the full application of the competition regulations address issues such as abuse of dominant position, prohibition of discrimination in national regulations and regulations on other anti-competitive behaviors. Passengers within the Single African Air Transport Market

can expect to be treated fairly. Consumers of air transport services are now protected against unfair treatment in the provision of services and can expect compensation for the breach of their rights by air transport service providers, including a mechanism for the consumers to seek redress.

Within the establishment of the Single African Air Transport Market, Africans and other travelers within the continent should expect their travel experience to change in many ways. We expect to see an increase in flight availability and greater inter-regional connectivity between various cities, commercial centers and other important destinations in Africa, not just capitals. Furthermore, there will be a massive reduction in air ticket prices and reduced journeys times, thanks to the elimination of unnecessary interchanges and overlay times at airports. The growth in intra-African traffic should enable African airlines to carry more passengers and freight, hence, improving their profitability. The Single African Air Transport Market has great potential for the integration of the Continent. It is critical for the successful operation of the African Continental Free Trade Area the African Passport.

This reprint of the initial Yamoussoukro Decision and its **new annexes** will assist the Regulators of the African Aviation industry to achieve the objective of a fully-liberalised African air transport market. The African Aviation industry also needs to maintain high standards in safety and security in order to ensure a secure and efficient air transport market. On behalf of the African Union, I wish to express our profound gratitude to the United Nations Statesman Commission for Africa, the African Civil Aviation Commission, the African Airlines Association, the international Civil Aviation Organisation, the International Airlines Association, staff at the African Union Commission, Regional Economic Communities and other partners of the African Aviation industry, for the diligent work undertaken and continuous support towards the operationalisation of the Single African Air Transport Market. I also wish to commend the Member States that have subscribed to the Solemn Commitment to fully implement the Yamoussoukro Decision towards the establishment of the Single African Air Transport Market. Particular thanks go to the Airbus Africa & Middle East for sponsoring the publication and printing of this document and to the Boeing Company for supporting the launch activity. I believe that the full operationalisation of the Single African Air Transport Market will provide us with the essential impetus towards **the AFRICA WE WANT: An integrated, prosperous and peaceful Africa.**

A handwritten signature in black ink, appearing to read 'Moussa Faki Mahamat'. The signature is stylized with a large loop at the end and a horizontal line across the middle.

Moussa Faki Mahamat

Chairperson of the African Union Commission

Addis Ababa, Ethiopia

PREFACE

The Economic Commission for Africa (ECA) has always recognized the importance of air transport to Africa's regional integration and the continent's economic development in general. It is in this context that it continues to play a leading role in the development of Africa's civil aviation policy. The Commission helped in shaping the content of the Yamoussoukro Declaration on the liberalization of access to air transport markets in Africa. It also spearheaded the process that led to the adoption of the Declaration in October 1988. The Declaration aimed at creating a conducive environment for the development of intra-African and international air services.



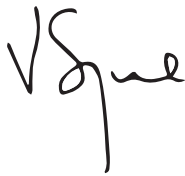
ECA was equally actively involved in formulating the Decision relating to the implementation of the Yamoussoukro Declaration in 1999. The Decision establishes the arrangement among State Parties for the gradual liberalization of scheduled and non-schedule intra-African air transport services. The factors that underpinned the adoption of the Yamoussoukro Declaration and the Decision relating to its implementation are still relevant today. These factors include globalization of the world economy; the imperative for regional integration in Africa, particularly the free movement of persons, goods and services; and the desire to stimulate the development intra-African air transport. Specifically, the Yamoussoukro Decision aims at eliminating non-physical barriers that hamper the sustainable development of air transport services on the continent; creating a conducive environment for the development and provision of safe, reliable and affordable air transport services; establishing a liberalized intra-African aviation market in relation to, among others things, traffic rights, capacity, frequency and pricing; enhancing cooperation among African airlines; and improving the quality of service to the consumers.

The signing of the African Continental Free Trade Area (AfCFTA) agreement in Kigali in March 2018 by 44 African countries - and by 5 more countries in Nouakchott in July 2018 - was a major milestone in the continent's regional integration process. The fact that this momentous event was quickly followed by the ratification of the agreement by four countries - Ghana, Kenya, Rwanda and Niger - illustrates the determination of member States to operationalize the agreement. The potential benefits of the free trade area cannot be overestimated. ECA estimates that AfCFTA has the potential to boost intra-African trade by 52.3 per cent by eliminating import duties, and to double this trade if non-tariff barriers are also reduced.

However, inadequate intra-African air transport services could hamper the full realization of the benefits of AfCFTA. The urgent need to improve connectivity within Africa in the context of AfCFTA therefore provides impetus to the implementation of the Yamoussoukro Decision. It also underscores the importance of the Single African Air Transport Market (SAA TM), a flagship project of African Union's Agenda 2063, that seeks to address the challenge of connectivity and high air transport fares through the full implementation of the Yamoussoukro Decision. A study by the African Civil Aviation Commission (AFCAC) and the International Airlines Association (ATA) in 2015 indicated that full air transport liberalization between 12 African countries (Algeria, Angola, Egypt, Ethiopia, Ghana, Kenya, Namibia, Nigeria, Senegal, South Africa, Tunisia and Uganda) would add USD 1.3 billion per annum to their GDP and create over 155,000 new jobs. Consumers will also benefit from a 75 per cent increase in direct services, and fare savings of 25-35 per cent, worth US\$500 million.

It's therefore encouraging that 26 African countries, so far, have signed the solemn commitment to SAA TM. This is a step in the right direction, but it is desirable for all African countries to commit to SAA TM and to fully implement the Yamoussoukro Decision. It is envisaged that this document will contribute to that goal. The document is a reprint of the initial Decision and includes a revised version of the annex on

the duties and responsibilities of the Monitoring Body of the Decision, of which ECA is the Secretariat. It also includes regulatory texts on the powers, functions and operations of the Executing Agency; competition in air transport services within Africa; and protection of consumers. The document will facilitate the implementation of the Yamoussoukro Decision as it is a tool to guide the functioning of its governance structures; raise awareness and enhance the knowledge of key stakeholders of the Decision, particularly on the benefits of its full implementation. I am delighted that ECA is part of a partnership towards a fully operational single African air transport market led by the African Union Commission (AUC) and that includes, among others, AFCAC, African Airlines Association (AFRAA), International Civil Aviation Commission (ICAO), and IA TA. A fully operational single African air transport market would attract private sector investment, and increase competition as well as efficiency in the sector. This would contribute in deepening regional integration on the continent and help optimize the gains of the African Continental Free Trade Area.

A handwritten signature in black ink, appearing to read 'V Songwe', with a stylized, cursive script.

Vera Songwe

Executive Secretary

Economic Commission for Africa

PREFACE

First of all, I would like to start my remarks by expressing our sincere gratitude to His Excellency, President Faure Ezzozimma Gnassingbe, President of Togo and Champion of the Single African Air Transport Market (SAATM), for his indefatigable efforts in the promotion of the full implementation of SAATM. We also express our appreciation to the President of Senegal, the host country of AFCAC, President Mack Sall. I wish to congratulate and thank the AFCAC Bureau and the Secretary General including their team for their remarkable achievements and the excellent work done in deploying the new approach towards accelerating the full implementation of SAATM through the launch of the SAATM Pilot Implementation Project (PIP) during the YD Anniversary on 14 November 2022 in Dakar, Senegal at which 14 African Ministers of Transport/Aviation fully participated,



Let me also express our appreciation to all our Member States Civil Aviation Authorities, ICAO, AFRAA, IATA, ACI-Africa, African Development Bank, World Bank, European Union, and all those who are contributing in one way or another towards strengthening AFCAC's ability to fulfil its mandate as the Executing Agency of the Yamoussoukro Decision and the operationalization of the Single African Air Transport Market (SAATM), my sincere gratitude for your endeavour and availability to undertake the present gathering.

Noticeable efforts have been made at various levels by the African States notably the 35 SAATM Member States to comply with the requirements of the Yamoussoukro Decision and the SAATM, but a lot of challenges are remaining such as high aviation charges and fees, insufficient cooperation among airlines, rising jet fuel costs, economic and social crisis affecting passengers incomes, etc. especially in the ongoing efforts to advocate for the remaining 20 African States to join the SAATM.

There is a need to overcome these numerous constraints and to address also the other challenges facing air transport liberalization in Africa.

The following questions are to be asked today in Africa:

i) Why, at the moment of the creation of the SAATM, and given the imperatives of integration of the continent, we continue to think that it is necessary to restrict the granting of 5th Air Traffic Freedom Rights and to create only national airlines?

ii) How does "protectionism" enable us to build an integrated continent air transport system capable to compete efficiently with other world regions, and, how these national airlines intend to finance the investments required for their development, access to credit, comply with the international standards of aviation safety and security? Must of our countries continue to struggle to support structurally deficient airlines in competition with profitable foreign airlines operating in our markets?

Successful Liberalization of air transport services through the YD and the SAATM in Africa will enable our member States to fast track their social-economic development through easier access to their territories and resources, consolidate their international and trade relations with donors and partners as well as reduce negative effect of famine, war and epidemics by rapid conveyance of foodstuffs and medicines. Indeed, aviation should be a catalyst of socio-economic development and integration of the continent.

The future growth of aviation strongly supports the realization of the African Union (AU) Agenda 2063 by promoting inclusive growth and sustainable development and accelerating the integration in the African economies.

The increased air connectivity feeds into aviation re-investment, creating a dynamic and healthy cycle of complementary national aviation and economic development with world-class infrastructure.

Yes, we believe it is time to change track by adopting a new approach to improve the readiness of the African States to better volunteer for the full liberalization of air transport in Africa and the integration of the continent in response to the needs of our airlines and the African population in line with the decision of the 18th Ordinary Session of the Assembly of Heads of State and Government of the AU (Addis Ababa, Ethiopia, January 2012), which adopted the establishment of a Continental Free Trade Area (AfCFTA).

The objective of the AfCFTA is, inter alia, to expand intra-African trade through better harmonization and coordination of trade liberalization including air transport, and, facilitation regimes.

I wish to confirm the African Union Commission's support to AFCAC in advancing the sustainable development of air transport industry on the continent. Fast tracking the operationalisation and implementation of SAATM has been one of our topmost priorities since 2020 in order not only to support the restart and recovery of the industry after COVID-19 pandemic but to also reposition African aviation sector on a renewed path that will enable the socio-economic integration of our continent.

I wish to reiterate our commitment to engage all our partners to support AFCAC in this critical period of the recovery of the air transport industry. In addition to the institutional strengthening of AFCAC through the AFDB funded project, AUC mobilized Technical Assistance to AFCAC through the EU infrastructure Support Mechanism (ISM) to support various components of the SAATM joint prioritized action plan. Also through the AU/EU partnership.

I am glad to inform you that AFCAC has recently received an additional support of 5 Million Euro through the European Aviation Safety Agency (EASA) with main objective to accelerate some of the outstanding and new actions under the SAATM Joint Prioritized Action Plan (JPAP), especially the issue of the high cost of air transport on the continent and addressing dispute settlement under the framework of the YD. While improving connectivity. It is also important to establish an aviation industry that is affordable to Africans and competitive with other modes of transport with the overall objective to facilitate intra-African trade and free movement of people and goods.

I am also glad to inform you that the SAATM Dispute Settlement Mechanism has been recently adopted by the STC TTIIE in June 2022 and approved by the AU Executive Council in July 2022. This Dispute Settlement Mechanism will assist to address any disputes related to the application and interpretation of the provisions of the YD and SAATM implementation.

As Africa recently hosted the COP27 in Sharm Al-Sheikh-Egypt, with notable recommendations and actions on climate change and environmental sustainability, the ongoing efforts by AFCAC to finalize the continental aviation environmental protection plan is very key to ensure Aviation sector is not left behind in the efforts to reduce and subsequently eliminate the CO2 emissions from Transport.

I will end my remarks by calling upon all the African Member States to fully support AFCAC in delivering its mandate as the AU Specialized Agency on civil aviation and the Executing Agency of the YD.

I also note and appreciate the significant support of the SAATM Champion, His Excellency President Faure Ezzozimma Gnassingbe, in the launching of the Club of Ready and Willing African States that already have the requisite SAATM implementation enablers.

Thank you .

Dr Amani Abou-Leid

Commissioner: Infrastructure and Energy

PREFACE

Aviation plays a role all around the world as a catalyst for economic development and social enablement. In addition, for Africa, aviation plays an existential role as an accelerator of freedom with huge transformational potential for its people and industries.

One of the traditional benchmarks for a region's importance in international aviation has been its population size. Based on the 2019 passenger numbers for Africa (ICAO), African market flew over 100 million passengers in 2019 while in the same year, air passenger transport in the European Union (EU-28) amounted to over 1.1 billion passengers, Middle East amounted to 228 million, Latin America amounted to over 305 million, this is despite these regions being smaller than Africa. This shows the significantly smaller base African airlines have to build intercontinental operations in competition with other airlines.



The small scale of Africa's internal market is a function of many factors, not least infrastructure, aero political restrictions, including traditional industry models of closed domestic markets, strong national interests and restrictive Bilateral Air Service Agreements (BASAs).

The vision for African aviation under the AU Agenda 2063 is to enable a fully connected, prosperous and united Africa as aviation can play a fundamental role in the drive for long-term African economic and social prosperity. This is because air travel is an essential service and a catalyst for fostering trade and promoting tourism and regional development. Therefore, one strategic initiative that could help build a stronger foundation for the aviation sector in Africa is the Single African Air Transport market (SAATM) and a push for its full implementation.

The Yamoussoukro Decision (YD) of November 1999 aimed at liberalizing international travel between African countries by promoting free pricing, lifting capacity and frequency constraints, and by allowing fifth freedom flights. Given the overall small size of the African air transport market, allowing fifth freedom flights

is a significant step to developing and growing the market, since it allows the capacity of an aircraft to be spread amongst multiple international destinations on one marketed flight. The success in the implementation can be measured in the number of international airport connections served by multi-stop flights in Africa.

Full liberalization of air transport in Africa will address the transport and logistical challenges that our continent is facing, especially with regard to intra-African transport connectivity. It will also raise productivity, encourage aviation investments, innovation, and improve intra-African trade and tourism, strengthening the capacity and efficiency of both national carriers and other African airlines. Obviously, the full implementation of SAATM is one of the key enablers of the African Continental Free Trade Area (AfCFTA) leading to sustainability of Africa's air transport industry.

The African Civil Aviation Commission under a renewed impetus recently launched the SAATM Pilot Implementation Project (PIP) with the view to accelerating the full liberalization of the African air transport market. The vision is to transform Africa's aviation in a sustainable manner that will ensure full realization of the benefits of socio-economic development promised by air transport to meet the AU Agenda 2063 objectives of an integrated, peaceful and prosperous Africa, where air transport is expected to play a pivotal role in generating economic growth, alleviating poverty, enabling access to healthcare, food, and education, while enhancing mobility and connecting different cultures.

I am quite optimistic that the future of air transport in Africa is very bright despite the challenges

that are currently inherent and associated with the sector. Since the operationalization of the Executing Agency, a lot of work has been done and progress is being made albeit slowly, to position the sector for transformational growth.

This current edition has the recently adopted Annex 4 to the YD – Regulations on the Dispute Settlement Mechanism; the External Policy Guidelines for Negotiation of Air Service Agreement with other Regions or Countries. It also includes the AFCAC YD Compliant Air Service Agreement Template, which can be used as a Plurilateral agreement between more than two States in support of the SAATM-PIP and lastly, the Revised African Civil Aviation Policy (AFCAP).


Finally, let me seize this opportunity to call on our partners and stakeholders to sustain our cooperation and collaboration to harness the promising opportunities in the aviation arena and build on our many common aviation interests.

Ms. Adefunke Adeyemi

Secretary General,

African Civil Aviation Commission (AFCAC),

The Executing Agency Of The Yamoussoukro Decision (YD)

A handwritten signature in black ink, appearing to read 'Adefunke Adeyemi', written in a cursive style.

REPRINT **ECA/RCID/CM.CIVAV/99/RPTANNEX I**

DECISION RELATING TO THE IMPLEMENTATION OF THE
YAMOUSSOUKRO DECLARATION CONCERNING THE LIBERALISATION
OF ACCESS TO AIR TRANSPORT MARKETS IN AFRICA
[AHG/OUA/AEC/Dec.1(IV)]
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PART A

**DECISION RELATING TO THE IMPLEMENTATION OF THE
YAMOUSSOUKRO DECLARATION CONCERNING
THE LIBERALISATION OF ACCESS TO AIR TRANSPORT
MARKETS IN AFRICA -
[AHG/OUA/AEC/Dec.1(IV)]**

DECISION RELATING TO THE IMPLEMENTATION OF THE YAMOUSSOUKRO DECLARATION CONCERNING THE LIBERALISATION OF ACCESS TO AIR TRANSPORT MARKETS IN AFRICA

We, African Ministers in charge of civil aviation meeting in Yamoussoukro, Côte d'Ivoire on 13 and 14 November 1999

Considering the Treaty Establishing the African Economic Community, (hereinafter referred to as the Abuja Treaty), in particular Article 61 relating to the integration of air transport and Article 10 relating to the authority of the Assembly of Heads of State and Government to adopt decisions;

Considering also the general policy statement on civil aviation made by the Conference of Heads of State and Government of the Organization of African Unity under Resolution CM/Res.804 (XXXV) of June 1980;

Recognizing the relevance of the objective of the Yamoussoukro Declaration on a new African civil aviation policy adopted on 7 October 1988 whose primary purpose was to create a conducive environment for the development of intra- African and international air services;

Recalling the decisions of African Ministers Responsible for Civil Aviation adopted in Mauritius in September 1994 with a view to accelerating the implementation of the Yamoussoukro Declaration, especially those relating to the granting of traffic rights, regional cooperation in air transport and the role of Governments;

Considering the need to harmonize air transport policies in order to eliminate non-physical barriers that hamper the sustainable development of air transport services in Africa;

Having regard to the recommendation of the 11th Conference of African Ministers responsible for Transport and Communications held in Cairo from 25 to 27 November 1997 calling for the organization of a regional meeting of African Ministers Responsible for Civil Aviation to review and find ways and means of implementing the Yamoussoukro Declaration;

Mindful of the guiding principles set by the International Civil Aviation Organization (ICAO) for the development of safe, regular and orderly air transport services on the basis of equality;

Further mindful of the globalization of the world economy and the need to create a conducive environment for the development and provision of safe, reliable and affordable air transport services necessary for the free movement of persons, goods and services in Africa;

Recognizing the necessity to adopt measures with the aim of progressively establishing a liberalized intra-African aviation market concerning, among other things, traffic rights, capacity, frequency and pricing;

Considering the importance of enhancing cooperation among African airlines in order to stimulate the development of inter-African air transport and the need to improve the quality of service to the consumers; and

Convinced that, given the different levels of air transport development in Africa it is necessary to

adopt for special and transitional provisions in order to achieve full liberalization of air transport in Africa; and

Recognizing the efforts undertaken in the various sub-regions to merge, privatize and liberalize air transport services;

HEREBY ADOPT THIS DECISION:

Article 1 Definitions

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

“Abuja Treaty” : the Treaty Establishing the African Economic Community adopted at Abuja, Nigeria on the 3rd 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 this Decision relates.

“Air Services” and **“Airlines”** : have the meaning respectively assigned to them in Article 96 of the Chicago Convention on International Civil Aviation dated 7th December 1944 Article 96 of the Chicago Convention: For the purpose of this Convention the expression-

(a) Air Services means any scheduled air service performed by aircraft for the public transportation of passengers, mail or cargo.

(b) International air service means and air service which passes through the air space over the territory of more than one State.

(c) An international Airline means any air transport enterprise offering or operating an international air service.

“Eligible Airline” : any African air transport company fulfilling the requirements set forth in Article 6, subparagraph 6.9 below.

“Jointly-owned and jointly operated airline” : any airline created by virtue of Article 77 of the Chicago Convention on International Civil Aviation;

“Effective control” : a relationship constituted by rights, contracts or any other means which, either separately or jointly confer the possibility of a State Party or Group of State Parties or their nationals to directly or indirectly exercise a decisive influence on the running of the business of the airline or the right to use all or a substantive part of the assets of the air carriers.

“Designated airline” : Eligible Airline designated by a State Party to exercise its traffic rights under this Decision.

“Capacity” : as defined by ICAO

“Capacity share” : the share of an Eligible Airline of a State Party expressed as a percentage of the total capacity in a bilateral relationship with another State Party.

“Country of Origin” : the territory of a State Party where air transport starts. **“Decision”** : text of this Decision including the Appendices and amendments. **“Depositary”** : the Organization of African Unity.

“State Party” : 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 this

Decision.

“Tariffs” : the prices to be paid for the carriage of passengers, baggage or cargo (excluding mail) on scheduled air services and the conditions, under which these prices apply, including remuneration and conditions offered to travel agencies and other auxiliary services.

“Third freedom traffic right” : the right of an Eligible Airline of one State Party to put down, in the territory of another State Party, passengers, freight and mail taken up in the State Party in which it is licensed.

“Fourth freedom traffic right” : the right of an Eligible Airline of one State Party to take on, in the territory of another State Party, passengers, freight and mail for off-loading in the State Party in which it is licensed.

“Fifth freedom traffic right” : the right of an Eligible Airline of one State Party to carry passengers, freight and mail between two State Parties other than the State Party in which it is licensed.

“Scheduled and Unscheduled air services” : as defined in Chicago Convention and ICAO Council resolutions.

Article 2 Scope of Application

This Decision establishes the arrangement among State Parties for the gradual liberalization of scheduled and non-scheduled intra-Africa air transport services. This Decision has precedence over any multilateral or bilateral agreements on air services between State Parties which are incompatible with this Decision. The provisions which are included in these agreements and which are not incompatible with this Decision remain valid and are supplementary to the Decision.

Article 3 Granting of Rights

3.1 State Parties grant to each other the free exercise of the rights of the first, second, third, fourth and fifth freedoms of the air on scheduled and non-scheduled passenger, cargo and/or mail flights performed by an Eligible Airline to/from their respective territories.

3.2 Notwithstanding the provisions of paragraph 3.1 of this Article, a State Party may in accordance with the provision of paragraph 10.1 of Article 10 below, limit its commitment in respect to fifth freedom rights for a period no longer than two (2) years to the following:

(a) grant and receive unrestricted fifth freedom on sectors where, for economic reasons, there are no third and fourth freedom operators; and

(b) grant and receive a minimum of 20 percent of the capacity offered on the route concerned during any given period of time in respect to any sector where third and fourth freedom operators exist.

Article 4 Tariffs

3.3 In case of tariff increase, there shall be no approval required by the aeronautical authorities of State Parties concerned for tariff to be charged by the designated airlines of State Parties for the carriage of passenger, cargo and mail. The airlines shall in this case file such tariffs before competent authorities 30 working days before they enter into effect.

3.4 This provision is not applicable in the case of lowering tariff which takes immediate effect according to the will of the airline.

Article 5 Capacity and Frequency

5.1 Subject to the provisions of Article 3, there shall be no limit on the number of frequencies and capacity offered on air services linking any city pair combination between State Parties concerned. Each Designated Airline will be allowed to mount and operate such capacity and frequency as such airline deems appropriate. Consistent with this right, no State Party shall unilaterally limit the volume of traffic, the type of aircraft to be operated or the number of flights per week, except for environmental, safety, technical or other special consideration.

5.2 Without prejudice to the provisions of paragraph 5.1 above, a State Party concerned may refuse to authorise an increase in capacity if such additional capacity is not in compliance with the provisions of Article 7 relating to the rules of fair competition.

Article 6 Designation and Authorization

6.1 Each State Party shall have the right to designate in writing at least one airline to operate the intra-Africa air transport services in accordance with this Decision. Such designation shall be notified to the other State Party in writing through diplomatic channels.

6.2 A State Party may also designate an Eligible Airline from another State Party to operate air services on its behalf.

6.3 A State Party shall have the right to designate an eligible African multinational airline in which it is a stakeholder and this airline shall be accepted by the other State Parties.

6.4 On receipt of the notification of such designation, the other State Party shall, in accordance with its national laws, speed up the process of authorization and licensing of the airline designated by the other State Party to operate the services. While such authorization should be granted within 30 days, the proposed schedule of flights should be submitted to the appropriate authorities for approval.

6.5 Should a State Party be convinced that a designated airline does not meet the criteria in sub-paragraph 6.9 below, it may refuse the authorization. The State that has designated the airline may request consultations in accordance with Article 11 paragraph 4 of this Decision relating to Miscellaneous Provisions.

6.6 Each State Party has the right to withdraw the designation of an Eligible Airline and to designate another eligible airline or airlines in writing through diplomatic channels within 30 days except when prevented from doing so for security reasons.

6.7 Authorizations for the performance of non-scheduled air transport services by Eligible Airlines of the State Parties shall be granted by the respective competent authorities, provided that an application has been submitted for approval to the appropriate authority,

accompanied by the operating certificates of the airline's country of nationality and the corresponding insurance policies.

6.8 In order to ensure continued scheduled air services on a particular route sector where scheduled airlines have an obligation to operate during low and high traffic seasons, the scheduled airlines will be given preference over the non- scheduled airlines on the same sector.

6.9 Eligibility criteria

To be eligible, an airline should:

- (a) be legally established in accordance with the regulations applicable in a State Party to this Decision ;
- (b) have its headquarters, central administration and principal place of business physically located in the State concerned ;
- (c) be duly licensed by a State Party as defined in Annex 6 of the Chicago Convention ;
- (d) fully own or have a long-term lease exceeding six months on an aircraft and have its technical supervision ;
- (e) be adequately insured with regard to passengers, cargo, mail, baggage and third parties in an amount at least equal to the provisions of the International Conventions in force ;
- (f) be capable of demonstrating its ability to maintain standards at least equal to those set by ICAO and to respond to any query from any State to which it provides air services ;
- (g) be effectively controlled by a State Party.

6.10 Revocation of authorization

A State Party may revoke, suspend or limit the operating authorization of a designated airline of the other State Party when the airline fails to meet the criteria of eligibility.

In case of revocation the State Party shall inform the airline at least thirty (30) days before the measure enters into force.

6.11 Documents

Each State Party shall recognize as valid the Air Operating Certificate, Certificate of Airworthiness, Certificate of Competency and the licenses issued or validated by the other State Party and still in force provided that the requirements for such certificate of license are at least equal to the minimum standards set by ICAO.

6.12 Safety and security

- (h) The State Parties re-affirm their obligations to each other to protect the security of civil aviation against acts of unlawful interference. The State Parties will conform to the provisions of the various conventions on air safety in accordance with ICAO provisions and especially with Annex 17 of the Chicago Convention on International Civil Aviation ;
- (i) Each State Party shall give consideration to any request from the other State Party for special security measures to meet a particular threat ;
- (j) The State Parties reaffirm their obligation to comply with the civil aviation safety stand-

ards and practices recommended by ICAO.

Article 7 Competition Rules

State Parties shall ensure fair opportunity on non-discriminatory basis for the designated African airline, to effectively compete in providing air transport services within their respective territory.

Article 8 Settlement of Disputes

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 3 hereof.

Article 9 Monitoring Body

9.1 Pursuant to paragraph 4 of Article 25 of the Abuja Treaty, a Sub-Committee on Air Transport of the Committee on Transport, Communications and Tourism is hereby established which shall be responsible, inter alia, for the overall supervision, follow-up and implementation of this Decision.

9.2 A Monitoring Body composed of representatives of the ECA, AU, AFCAC and AFRAA which shall be assisted, as the case may be, by representatives of sub-regional organizations, is hereby established to assist the Sub-Committee on Air Transport composed of African Ministers Responsible for Civil Aviation in the follow-up of the implementation of this Decision

9.3 The duties and responsibilities of the Monitoring Body are set forth in Annex 2 hereof. Secretariat services required by the Monitoring Body shall be provided by the ECA.

9.4 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 liberalized air transport industry.

9.5 The Executing Agency shall have sufficient powers to formulate and enforce appropriate rules and regulations that give fair and equal opportunities to all players and promote healthy competition.

9.6 The Executing Agency will also ensure that consumer rights are protected.

Article 10 Transitional Measures

10.1 By a formal declaration made in writing to the Depository or the secretariat of the Monitoring Body, as the case may be, through diplomatic channel at the time of adoption of the Decision by the Assembly of Heads of State and Government or any time thereafter, a State Party shall have the option not to grant and receive the rights and obligations provided for in Articles 3 and 4 for a transitional period not exceeding two (2) years.

10.2 Each State Party may, on six (6) months prior notice given to the Depository or the Secretariat of the Decision Monitoring Body, assume or resume such rights and obligations.

10.3 The exemption of a State Party from the application of this Decision terminates on the date provided for in the Declaration made under paragraph 10.1 above. During the transitional period, no State Party shall be obliged to grant any rights hereunder to any State Party not bound thereby to the same extent.

10.4 With regard to any measures covered by the Decision, the State Parties shall not discriminate between designated airlines of State Parties that have assumed similar commitments.

10.5 State Parties undertake not to enter into any obligations that would be more restrictive than this Decision. However, State Parties shall not be precluded from maintaining or developing on a bilateral basis or amongst themselves, arrangements more flexible than those contained herein.

10.6 This Decision shall not be deemed to impose obligations on a State Party to grant cabotage privileges.

Article 11 Miscellaneous Provisions

11.1 Commercial Opportunities

11.1.1 The designated airline of each State Party shall have the right to establish offices in the territory of the other State Party for the promotion and sale of air transport services.

11.1.2 Upon request and in accordance with applicable foreign exchange regulations, each designated airline will be granted the right to convert and remit to the country of its choice, all local revenues from the sale of air transport services and associated activities¹ directly linked to air transport in excess of sums locally disbursed, with conversion and remittance permitted promptly without restriction, discrimination taxation¹ in respect thereof in accordance with the applicable foreign exchange regulations.

11.1.3 The designated airline may be permitted to pay for its local expenses such as handling and purchases of fuel in local currency, as provided for in the exchange control regulations.

11.1.4 The designated airline of each State Party shall be entitled, in accordance with the laws and regulations of the other State Party relating to entry, residence and employment, to bring into the territories employees who perform managerial, commercial, technical, operational and other specialist duties which are required for the provision of air transport services.

11.1.5 The aforementioned measures are designed to facilitate the establishment and operation of airlines and the transfer of their excess earnings shall be taken by State Parties on the basis of reciprocity.

11.2 Operational Flexibility

In operating scheduled and unscheduled services, each designated airline may, on any or all flights and at its option :

(a) operate flights in either or both directions ;

(b) be permitted by the State Parties concerned to combine air services and use the same flight number ;

(c) serve intermediate, and beyond points and points in the territories of the State Parties in

¹ The term "without taxation" refers to taxation on the conversion and remittance, not to national income tax which is better dealt with on the basis of a double taxation treaty, or some other arrangement in which the income from the sale of air transportation by foreign airlines is exempted from national income tax on a reciprocal basis. However, the absence of a double taxation treaty or other arrangement. States could use this clause to exempt reciprocally air carriers from foreign income taxes but should make their intention clear in this regard

Africa on the routes in any combination and in any order ; and

(d) omit stops at any point or points, provided that the service commences at a point in the territory of the State Party designating the airline.

11.3 Cooperative Arrangements

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

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 the earliest possible date but not later than 30 days from the date the other Party receives the request.

11.5 Review

The Air Transport Sub-committee shall review this Decision every two years or earlier if requested by two-thirds of the State Parties. In such reviews, the Monitoring Body shall propose measures to eliminate existing restrictions gradually.

11.6 Registration

This Decision shall be registered by the Depository and/or Monitoring Body with the International Civil Aviation Organization (ICAO).

Article 12 Final Provisions

12.1 Entry into Force

12.1.1 In accordance with Article 10 of the Abuja Treaty, this Decision shall automatically enter into force thirty (30) days after the date of its signature by the Chairman of the Assembly of Heads of State and Government at which this Decision was adopted.

12.1.2 In respect of African States that are not parties to the Abuja Treaty, this Decision shall enter into force 30 days after the date on which such State has communicated its declaration of intention to be bound by this Decision in the form of Appendix 1(a), 1(b) and 1(c) to the Monitoring Body which shall in turn transmit the declaration to the Depository.

12.1.3 The Depository shall inform all State Parties of :

- (a) each Declaration made in accordance with the Decision ;
- (b) date of the deposit and the date of effectiveness of this Decision in respect to that State ;
- (c) the withdrawal of any Declaration ;
- (d) the withdrawal from this Decision and the date on which it takes effect ; and
- (e) the accession by and admission of new States.

12.1.4 Role of subregional and regional organizations Subregional and regional organizations are encouraged to pursue and to intensify their efforts in the implementation of this Decision.

12.2 Withdrawal

12.2.1 A State Party may withdraw from this Decision by a formal notification in writing addressed

to the Depository of its intention to do so or in the circumstances contemplated under Article 104 of the Abuja Treaty. The Depository shall within 30 days of receipt of the notification of withdrawal notify the other State Parties.

12.2.2 Notwithstanding the notice of withdrawal, this Decision shall apply to the State concerned for one year after the date of receipt of the notification by the Depository.

12.3 Annexes

Relevant annexes adopted by the competent organs of the African Economic Community shall form an integral part of this Decision.

Done in Yamoussoukro this 14th day of November 1999

ANNEXES TO THE YAMOOUSSOUKRO DECISION

Annex 1: Form of Declaration of Commitment on the Decision relating to the implementation of the Yamoussoukro Declaration concerning the liberalization of access to air transport markets in Africa (a), (b) and (c)

Annex 2: Duties and Responsibilities of the Monitoring Body of the Yamoussoukro Decision

Annex 3: Dispute Settlement Mechanism

Annex 4 : Regulations On The Powers, Functions and Operations of the Executing Agency

Annex 5: Regulations on Competition in Air Transport Services within Africa

Annex 6: Regulations on the protection of Consumer of Air Transport Services

ANNEX 1(a)

Form of Declaration of Commitment² on the Decision relating to the implementation of the Yamoussoukro Declaration concerning the liberalization of access to air transport markets in Africa

I, [name of the Minister in charge of civil aviation] representing the Government of [insert name of country] and in reference to the Decision relating to the implementation of the Yamoussoukro Declaration concerning the liberalization of access to air transport market which was endorsed by the 36th ordinary Session of the Assembly of Heads of State and Government of the OAU as published in *the Official Journal No6 of the African Economic Community covering Decision of the fourth ordinary session of the Assembly of heads of State and government.*

By this Declaration of commitment, I declare that my country is bound by the Decision to liberalize the access to air transport market in Africa in its entirety and will fully implement the said Decision as party thereto.

I hereby inform that my government has taken all the necessary administrative measures to give full effect to this Declaration.

Our rights and obligations under the said Decision shall be effective 30 days after the receipt by you of this Declaration.

Done at on

For the Government of
[.....insert name]

By:
[..... signature]

Its:
[.....insert title of signatory]

This form is to be used by State Parties that are not parties to the Abuja Treaty and wish to be parties to the Decision.

ANNEX 1(b)

Form of Declaration of Commitment² on the Decision relating to the implementation of the Yamoussoukro Declaration concerning the liberalization of access to air transport markets in Africa

I, [name of the Minister in charge of civil aviation] representing the Government of [insert name of country] and in reference to the Decision relating to the implementation of the Yamoussoukro Declaration concerning the liberalization of access to air transport market which was endorsed by the 36th ordinary Session of the Assembly of Heads of State and Government of the OAU as published in *the Official Journal No6 of the African Economic Community covering Decision of the fourth ordinary session of the Assembly of heads of State and government.*

By this Declaration of commitment, I declare that my country is bound by the Decision to liberalize the access to air transport market in Africa in its entirety and undertake to fully implement the said Decision as party thereto, except to the extent provided below for a maximum transitional period of **[insert period but not to exceed two years from date of declaration]** :

1. Grant of traffic Rights

1.1 In accordance with the provisions of paragraph 3.2 of Article 3 of the said Decision, I commit my country to grant during the transitional period fifth freedom traffic to the designated airlines of States Party on the following basis :

(a) grant and receive unrestricted fifth freedom on sectors where, for economic reasons, there are no third and fourth freedom operators ; and

(b) grant and receive a minimum of 20 percent **[or such other higher percentage]** of the capacity offered on the route concerned during any given period of time in respect to any sector where third and fourth freedom operators exist.

2. Other Provisions

All other provisions of the Decision shall remain valid and be binding on us.

3. This Declaration shall terminate at the latest on [insert date] and thereafter we shall be bound to the fullest extent by the terms of the Decision.

4. With respect to matters covered by the foregoing paragraphs, my country confirms the understanding that during the transitional period the obligations of other States Party to grant any rights to us will be strictly equivalent to our commitment hereunder.

Done at on

For the Government of [.....insert name.....]

By: [..... signature]

Its:

[.....insert title of signatory]

ANNEX 1(c)

Form of Declaration of Commitment³ on the Decision relating to the implementation of the Yamoussoukro Declaration concerning the liberalization of access to air transport markets in Africa

By this Declaration of commitment, I [insert name of the minister] representing the Government of the Republic of [insert name] declare that my country is bound by the Decision to liberalize the access to air transport market in Africa in its entirety and will fully implement the said Decision as party thereto, except to the extent provided below for a maximum transitional period of [**insert period but not to exceed two years from date of declaration**] :

1. Grant of traffic Rights

1.1 In accordance with the provisions of paragraph 3.2 of Article 3 of the said Decision, we commit ourselves to grant during the transitional period fifth freedom traffic to the designated airline of State Parties on the following basis :

- (a) grant and receive unrestricted fifth freedom on sectors where, for economic reasons, there are no third and fourth freedom operators ; and
- (b) grant and receive a minimum of 20 percent [or such other higher percentage] of the capacity offered on the route concerned during any given period of time in respect to any sector where third and fourth freedom operators exist.

2. Other Provisions

All other provisions of the Decision shall remain valid and be binding on us.

- 3.** This Declaration shall terminate at the latest on [insert date] and thereafter my Government shall be bound to the fullest extent by the terms of this Decision.
- 4.** With respect to matters covered by the foregoing paragraphs, my country [insert the name] confirm the understanding that during the transitional period the obligations of other States Party to grant any rights to us will be strictly equivalent to our commitment hereunder.
- 5.** I hereby inform that my Government has taken all the necessary administrative measures to give full effect to this Declaration.
- 6.** Our rights and obligations under the said Decision shall be effective 30 days after the receipt by you of this Declaration.

Done at on

For the Government of [.....insert name.....]

By: [..... signature]

Its: [.....insert title of signatory]

ANNEX 2

REVISED DUTIES AND RESPONSIBILITIES OF THE MONITORING BODY OF THE YAMOUSOUKRO DECISION AS AMENDED BY THE AFRICAN UNION SPECIALIZED TECHNICAL COMMITTEE ON TRANSPORT, INTER-CONTINENTAL AND INTERREGIONAL INFRASTRUCTURE, ENERGY AND TOURISM, LOME, TOGO MARCH 2017

DUTIES AND RESPONSIBILITIES OF THE MONITORING BODY (MB)

1. Terms of Reference :

The Monitoring Body, as established under Article 9 of this Decision, shall have the following duties and responsibilities. The mission of the Monitoring Body is to assist the Ministers Responsible for air Transport ensure the full implementation of the Yamoussoukro Decision and realisation of the Single African Air Transport Market in Africa. In this capacity, the Monitoring Body shall have oversight and advisory responsibilities over the functioning of the SAATM and the role of facilitating the smooth operation of the market at a strategic level, in support of the Executing Agency.

It shall therefore carry out the following duties :

1. Prepare, for adoption by the Ministers Responsible for air transport, the relevant annexes to the Decision ;
2. Assist the AU to organize the meeting of the sub -committee on Air Transport of the Committee on Transport, Communications and Tourism ;
3. Bring to the attention of the Ministers Responsible for air transport, any provisions of the Decision that hinders the development of air transport in Africa and/or impose difficulties in the application of the decision, with recommendation for mitigation ;
4. Analyse and plan for the periodic review of the Decision (article 11.5) ;
5. Ensure appropriate regulations are in place for the smooth functioning of the Single African Air Transport Market ;
6. Receive declarations made in accordance with the Decision, notification of withdrawals of any declaration of complaints and requests and shall inform the Depository accordingly ;
7. Ensure the implementation of Resolution, Declaration, Directives and Decision of the Ministers responsible for air transport, the AU Executive Council and Assembly as concerns air transport matters in Africa ;
8. Issue such Directives as necessary to the Executing Agency of YD, in accordance with the Powers and functions of the Executing Agency and AU procedures ;
9. Ensure the fair and equal application of the Yamoussoukro regulatory text on competition and consumer protection ;
10. Define and advise the sub-committee on Air Transport of the Committee on Transport, Communications and Tourism on the qualification of membership of the African Civil Aviation Tribunal ;
11. Provide its opinion, when requested, on any disputes resulting from the application and/or interpretation of the Decision and recommend solution to the dispute to the Africa Civil aviation arbitration

tribunal ;

12. Support the Executing Agency of YD in Formulating proposals on studies, seminars, workshops and other measures aimed at enhancing and updating air transport services in Africa ;
13. Request competent national and international bodies for the support required to carry out studies, seminars, work programs and other measures aimed at enhancing and updating air transport services in Africa ;
14. Ensure a seamless implementation of the Yamoussoukro Decision between and within sub-regions and the realisation of the Single Market cross the continent ;
15. Advocate and facilitate fund mobilisation for sustainable operation of the single African air transport market and financial sustainability of the Executing Agency of YD ;
16. Ensure the application of a monitoring and evaluation mechanism on the implementation of YD ;
17. Assist the sub-Committee on Air Transport of the STC to review any reports and/or recommendation submitted to the Ministers for consideration on all activities concerning the functions of the Executing Agency and other matters requiring political Decisions in accordance with the African Union procedures ;
18. Participate in the process of approving the work programme, business plan, budget, rules and regulations of the Executing Agency of YD ;
19. Ensure that the Executing Agency adopts and implements appropriate rules and regulations for the smooth management of the air transport market in Africa ;
20. Perform any other duties as may be required by the sub-Committee on Air Transport of the STC.

Seat of the Committee

21. The seat of the Monitoring Body will be within ECA, which is designated to serve its secretariat ;
22. The Secretariat of Monitoring Body shall ;
 - (a) Convene regular meetings of the MB and maintain records of the proceedings ;
 - (b) Keep records of membership of the SAATM ;
 - (c) Undertake specific studies on the performance of the single market ;
 - (d) Prepare for the Monitoring Body draft reports on the activities of the Monitoring Body to be submitted to the Minister responsible for air transport; and
 - (e) Host and ensure a functional database and knowledge portal for African Air Transport is operational a report on the activities of the Monitoring Body to the Minister responsible for air transport.

Meeting

23. The Monitoring Body will meet, on a rotational basis, at least twice a year. The monitoring Body shall also participate in the Plenary meeting (ordinary sessions) of the Executing Agency of YD.

Funding

24. Participation in meetings of the Monitoring Body will be funded by each participating organization ;
25. Other activities of the Monitoring Body could be financed from external sources.

ANNEX 3

REGULATIONS ON DISPUTE SETTLEMENT UNDER THE YAMOUSSOUKRO DECISION

Annexure 3 To The Yamoussoukro Decision

WE, the Ministers responsible for Transport, Infrastructure and Energy;

CONSIDERING the Constitutive Act of the African Union adopted in Lomé on 11th 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 3rd June 1991, namely its Articles 8, 10, 11, 13, 25 to 27;

HAVING REGARD to the Decision Relating to the Implementation of the Yamoussoukro Declaration Concerning the Liberalisation of Access to Air transport Markets [AHG/OUA/AEC/Dec.1 (IV)], Article 8 of which provides that if any dispute arises between States Parties relating to the interpretation or application of the Decision, the States Parties concerned shall in the first place endeavour to settle the dispute by negotiation and if these State Parties fail to reach a settlement of the dispute, either party may submit the dispute for arbitration ;

NOTING that the absence of an appropriate dispute settlement as legislated in the Yamoussoukro Decision has been of concern to State Parties, Air Transport undertakings and other stakeholders of African aviation;

HAVING REGARD to the aspirations of Agenda 2063 for a continental market with the free movement of persons, capital, goods and services, which are crucial for deepening economic integration, and promoting agricultural development, food security, industrialisation and structural economic transformation;

RECOGNISING the Declaration on the Establishment of a Single African Air Transport Market (hereinafter, SAATM) of the Assembly of Heads of State and Government at the 24th Ordinary Session held in January 2015 in Addis Ababa, Ethiopia adopted [Assembly/AU/Commitment(XXIV)] and designated the SAATM as a flagship project of the African Union Agenda 2063 [Assembly/AU/Dec 565 (XXIV)] thus placing the implementation of the 1999 Yamoussoukro Decision on the Liberalisation of Air Transport Market in Africa within the context of African Union Agenda 2063;

REITERATING in the Solemn Commitment By African Union Member States To The Implementation Of The Yamoussoukro Decision Towards The Establishment Of A Single African Air Transport Market By 2017 [Assembly/AU/Commitment (XXIV)] the need to develop regulatory frameworks to expedite the implementation of the single air transport market and engage all specialized institutions in the Aviation Sector to support Member States in this process;

CONSIDERING the launching of the Single African Air Transport Market on 28 January 2018, during the 30th Ordinary Session of the Assembly of the Union held in Addis Ababa, by the Assembly Decision establishing the Single African Air Transport Market [Assembly/AU/Dec.665 (XXX)] and providing for the single market to be operationalized through full implementation of the 1999 Yamoussoukro Decision;

CONSIDERING the need for international cooperation for economic development, and the role of private international trade therein;

BEARING IN MIND the possibility that from time to time disputes may arise in connection with such legal instruments that we have concluded amongst ourselves, our nationals and other Parties;

RECOGNIZING that while such disputes would usually be subject to national legal processes, international methods of settlement may be appropriate in certain cases;

ATTACHING importance to the availability of facilities for arbitration to which States Parties and their nationals or organisations may submit such disputes if they so desire;

DESIRING to utilise such facilities under the auspices of the African Union;

RECOGNIZING that mutual consent by the parties to submit disputes under agreed Articles of procedure irrespective of the forum, constitutes a binding agreement which requires in particular that any arbitral award be complied with;

INTERESTED to develop a corpus of law using a well-established system of adjudication in Africa and in the effort to secure a consistent interpretation of the Yamoussoukro Decision, its Annexures and relevant legal instruments on the Single African Air Transport Market;

ACKNOWLEDGING that no State Party shall by the mere fact of the existence of this Regulation be deemed to be under any obligation to submit any particular dispute to arbitration

HAVE AGREED AS FOLLOWS:

PART I – INTRODUCTORY PROVISIONS

Article 1 – Administrative Council and Secretariat

1.1. The Administrative Council is the independent body responsible for administering these Regulations.

1.2. The composition, functioning and powers of the Administrative Council are set forth in Part IV of these Regulations.

1.3. The Chairperson of the Administrative Council shall serve as appointing authority for arbitrators, conciliators and mediators.

1.4. The Administrative Council is assisted in its functions by the Secretariat.

Article 2 – Definitions

In this Regulation, unless the context otherwise requires:

“ADR Panel” means an Alternative Dispute Resolution list of arbitrators, conciliators or mediators;

“Executing Agency” means the Executing Agency provided for in Article 9(4) of the Yamoussoukro Decision;

“African air transport legal instruments” means the Yamoussoukro Decision, Annexures to the said Decision, decisions of the African Union, the Regional Economic Communities and the Executing Agency of the Yamoussoukro Decision relating to the application of the Yamoussoukro Decision and its Annexures;

“Air transport undertaking” includes an airline and other air transport service provider;

“Air Transport Service Provider” include an airport, air navigation service provider, airport ground passenger and cargo handling company, travel agent, supplier of computer reservations systems or global distribution systems, and all other categories of services provided to airlines directly at the airports;

“Assembly” means the Assembly of Heads of State and Government of the Union;

“Claimant” means a Disputing Party wishing to have recourse to dispute resolution under these Regulations;

“Consumer” in relation to passengers means a person who takes or agrees to purchase an airline ticket or take a tour package (i.e., a combination of air transportation and ground or cruise accommodations) or tour component (e.g., a hotel stay) (‘hereinafter, the principal contractor’), or any person on whose behalf the principal contractor agrees to purchase the ticket, package or component (‘the other beneficiaries’) or any person to whom the principal contractor or any of the other beneficiaries transfers the ticket, package or component (‘the transferee’);

“Monitoring Body” means the body established under Article 9 of the Yamoussoukro Decision;

“Disputing Party”: means any State Party, State-controlled entity, Regional Economic Community, African intergovernmental organization charged with the enforcement or management of the Yamoussoukro Decision, legal or private person including an air transport undertaking, association of air transport undertakings, consumer and consumer association, whether acting in the capacity as claimant or defendant in any dispute relating to the interpretation or application of the relevant African air transport legal instruments;

“Executive Council” means the Executive Council of Ministers of the Union;

“Party” means a party to the dispute;

“Respondent” means a Disputing Party against whom a recourse is sought under these Regulations;

“State Party” means a member State of the African Union which is a State Party to the Yamoussoukro Decision.

Article 3 - Scope of Application of the Regulations

3.1. These Regulations shall apply to disputes resulting from the application or interpretation of the African air transport legal instruments between two (2) or more Disputing Parties that have given their written consent to submit the dispute for resolution under these Regulations, this consent resulting either from an agreement between the parties (in the form of a compromise or a mediation, conciliation and/or arbitration clause).

3.2. Under the conditions provided for in paragraph 1, these Regulations shall apply to disputes:

(a) between two (2) or more State Parties;

(b) between, on the one hand, a State Party or an entity controlled by a State Party or a Regional Economic Community and, on the other hand, one or more air transport undertakings and/or association of air transport undertakings directly or indirectly affected by an administrative decision of a State or of an entity controlled by a State or of a Regional Economic Community considered as discriminatory within the meaning of the Regulations on competition in air transport services within Africa (Annexure 5 to the Yamoussoukro Decision);

(c) between airlines resulting from contracts or agreements they have concluded;

(d) between, on the one hand, one or more air transport undertakings and, on the other hand, one or more consumers of air transport services and/or consumer protection associations resulting from the application of the Regulations on the protection of consumers of air transport services (Annexure 6 to the Yamoussoukro Decision).

3.3. The disputes referred to in paragraph 2 shall be settled in accordance with these Regulations subject to such modification as the Disputing Parties may agree, provided, however, that the Administrative Council may decide not to administer the Proceedings if, in its discretion, it considers that any such modification is not in the spirit of the Regulations.

3.4. Agreement by a State, State-controlled entity, or Regional Economic Community to arbitrate under these Regulations with a party that is not a State, State-controlled entity, or Regional Economic Community constitutes a waiver of any right of immunity from jurisdiction in respect of the proceedings relating to the dispute in question to which such Disputing Party might otherwise be entitled.

3.5. These Regulations do not apply to internal decisions of a State Party solely affecting nationals of that State Party concerned.

3.6. A dispute settlement proceeding shall be considered to have been initiated in accordance with these Regulations when a Disputing Party requests negotiations, conciliation or mediation pursuant to these Regulations or submits a request for arbitration pursuant to Article 8 hereof.

Article 4 - General Principles on Alternative Dispute Resolution

4.1. Any dispute arising between two (2) or more State Parties on the application or interpretation of the African air transport legal instruments shall in the first instance be settled through negotiations.

4.2. Without prejudice to Article 23(2) of the African Civil Aviation Commission Constitution, for any dispute arising between two (2) or more Disputing Parties on the interpretation or application of the African air transport legal instruments, Disputing Parties may have recourse to conciliation or mediation under these Regulations. Where the dispute is not settled through conciliation or mediation, any Disputing Party may, after notifying the other Disputing Party or Parties, refer the matter to arbitration under these Regulations.

4.3. Except for disputes between State Parties, where the Disputing Parties consider it expedient to have recourse to arbitration as the first dispute settlement avenue, these Disputing Parties may proceed with arbitration as provided for under this Regulation.

PART II – NEGOTIATIONS, CONCILIATION AND MEDIATION

Article 5 – Negotiations between State Parties

- 4.1.** For the application of Article 4(1), a Disputing Party requesting negotiations shall inform the Secretariat in writing of the holding and the outcome of such negotiations.
- 4.2.** Without prejudice to Article 23(2)(3)(5) of the African Civil Aviation Commission Constitution, if a dispute between two (2) or more State Parties on the application or interpretation of the African air transport legal instruments remains unresolved through negotiations within twenty one (21) days or such other period agreed to by the Disputing Parties, either Disputing Party may submit such dispute to arbitration under these Regulations.

Article 6 - Conciliation and Mediation

- 6.1.** This Article shall apply to disputes referred to in Article 4(2), subject, for disputes between State Parties, that these States have previously complied with the procedure provided for in article 4(1).
- 6.2.** For the settlement of their disputes with air transport undertakings, consumers may only resort to mediation under these Regulations.
- 6.3.** The request for conciliation or mediation is filed with the Secretariat.
- 6.4.** It shall be the duty of the conciliator or the conciliators to clarify the issues in dispute between the Disputing Parties and to endeavour to bring about agreement between them upon mutually acceptable terms. To that end, the conciliator or the conciliators may at any stage of the proceedings and from time to time recommend terms of settlement to the Disputing Parties.
- 6.5.** It shall be the duty of the Mediator to help the Disputing Parties to reach an agreement on their own in the dispute between them. This agreement does not reflect a conciliator's point of view or interpretation but results from the sole will of the Disputing Parties.
- 6.6.** Remote conciliation and mediation proceedings may be implemented when appropriate.
- 6.7.** Proceedings that involve conciliation or mediation shall be confidential.
- 6.8.** Conciliation or mediation may be suspended or terminated at any time by any of the Disputing Parties.
- 6.9.** Proceedings that involve conciliation or mediation shall terminate upon written confirmation of termination to the Disputing Parties by the Secretariat, notably:
- a)** after the signing of a settlement agreement by the Disputing Parties;
 - b)** when the conciliator(s) or the mediator, at any stage of the proceedings, consider that there is no possibility of agreement between the Disputing Parties.
- 6.10.** Once conciliation or mediation proceedings are terminated without settlement of the dispute, a Claimant may then proceed with a request for arbitration under these Regulations.
- 6.11.** Notwithstanding the ongoing conciliation or mediation proceedings, the Disputing Parties may agree to commence with arbitration proceedings in respect of the dispute in accordance with these Regulations.
- 6.12.** Where the Disputing Parties have considered it expedient to have recourse to arbitration as the first dispute settlement avenue in accordance with Article 4(3), these Disputing Parties may

agree to also submit the dispute to the conciliation or mediation proceedings notwithstanding the ongoing arbitration.

PART III – ARBITRATION

Article 7 – Arbitration between State Parties in relation to the regulatory annexes to the Yamoussoukro Decision

7.1. This Article shall apply to any dispute arising between two (2) or more State Parties on the application or interpretation of the regulatory annexes to the Yamoussoukro Decision that any State Party wish to submit to arbitration under these Regulations.

7.2. Three (3) arbitrators shall be appointed in accordance with Article 11(5) to form the Arbitral Tribunal.

7.3. The Arbitral Tribunal shall adopt its own Rules of Procedure and make an award within six (6) Months.

7.4. The decision of the Arbitral Tribunal shall be final and binding on the Disputing Parties.

I) COMMENCING THE ARBITRATION

Article 8 – Request for Arbitration

8.1. A claimant shall submit a request for arbitration to the Secretariat and send a copy of the request to the respondent.

8.2. A request for arbitration shall include the following:

- (a) a demand that the dispute be referred to arbitration;
- (b) the names and contact details of the Disputing Parties and of any person representing each claimant in the arbitration;
- (c) identification and copy of the arbitration agreement that is invoked or, as the case may be, the indication of any legal instrument upon which the request is based;
- (d) a statement of the facts supporting the claim;
- (e) the points at issue;
- (f) a brief description of the claim and an indication of the amount involved, if any;
- (g) the legal grounds or arguments supporting the claim; and
- (h) a proposal as to the number of arbitrators, language and rules of law applicable to the substance of the dispute, if the Disputing Parties have not previously agreed thereon.

8.3. The request for arbitration should, as far as possible, be accompanied by all documents and other evidence relied upon by the claimant, or contain references to them.

8.4. The request for arbitration may also include the following:

- (a) a proposal for the appointment of a sole arbitrator referred to in Article 11(3); and
- (b) notification of the appointment of an arbitrator referred to in Article 11(5)(6)(7).

1. The Secretariat shall register the request for arbitration and notify the Disputing Parties accordingly.
2. If the Secretariat finds, on the basis of the information contained in the request, that the dispute is manifestly outside the scope of these Regulations, the Secretariat shall immediately notify the Disputing Parties of that fact.

Article 9 - Response to the request for arbitration

6.1. Within 30 days of the receipt of the request for arbitration, or such other period as may be set by the Secretariat, the respondent shall submit a response to the Secretariat and send a copy to the claimant.

1. The response to the request dispute for arbitration shall contain the following:
 - (a) the name and contact details of the respondent and of any person representing the respondent in the arbitration;
 - (b) a response to the information set forth in the dispute referred for arbitration;
 - (c) copies or reference to all documents and other evidence relied upon by the respondent.

10.2. The response to the request for arbitration may also include:

- (a) an objection that the dispute is not within the scope of the Regulations or, for other reasons, is not within the competence of the Arbitral Tribunal;
- (b) a proposal for the appointment of a sole arbitrator referred to in Article 11(3);
- (c) notification of the appointment of an arbitrator referred to in Article 11(5)(6)(7);
- (d) a description of any counterclaim, if any, including where relevant, an indication of the amounts involved, and the relief or remedy sought;
- (e) a request for arbitration in accordance with article 8 in case the respondent formulates a claim against another Dispute Party other than the claimant.

9.3. The Secretariat shall communicate the response to the request for arbitration and the documents annexed thereto to every other Disputing Party.

9.4. Where the respondent has filed a counterclaim, the claimant may file a reply to the counterclaim by way of an additional submission within 30 days from the date of receipt of the counterclaim.

II- THE ARBITRAL TRIBUNAL

Article 10 – Number of arbitrators

10.1. The Disputing Parties are free to agree on any uneven number of arbitrators to form the Arbitral Tribunal.

10.2. If the Disputing Parties have not previously agreed on the number of arbitrators, and if within 30 days after the receipt by the respondent of the request for arbitration the parties have not agreed on the number of arbitrators, three arbitrators shall be appointed, unless the Administrative Council considers that the dispute is such as to justify the appointment of a sole arbitrator.

Article 11 – Appointment of arbitrators

11.1. Arbitrators are appointed from the Panel of Arbitrators referred to in Article 60. Nevertheless, the parties are free to appoint arbitrators from outside the Panel, provided that these arbitrators comply with the requirements provided for in Article 60(4)(5).

11.2. Arbitrators shall be of a nationality other than those of the Disputing Parties.

11.3. Where the Disputing Parties have agreed that a sole arbitrator is to be appointed:

(a) they may, by agreement, appoint the sole arbitrator ;

(b) if within 30 days of receipt by all other Disputing Parties of a proposal of an individual who would serve as a sole arbitrator the Disputing Parties have not reached agreement thereon, a sole arbitrator shall, at the request of a Disputing Party, be appointed by the Chairperson of the Administrative Council according to the procedure provided for in Article 60(7).

11.4. Where a sole arbitrator is appointed pursuant to Article 10(2), the Disputing Parties shall, by agreement, appoint such arbitrator within a period of fifteen (15) days. If the Disputing Parties fail to agree on such appointment, a Disputing Party may request the Chairperson of the Administrative Council to appoint the sole arbitrator.

11.5. Where three arbitrators are to be appointed:

(a) each Disputing Party shall appoint one arbitrator and the two arbitrators thus appointed shall choose the third arbitrator who shall be the Chairperson of the Arbitral Tribunal ;

(b) if within 30 days after the receipt of a Disputing Party's notification of the appointment of an arbitrator the other Disputing Party has not notified the first Disputing Party of the arbitrator it has appointed, the first Disputing Party may request the Chairperson of the Administrative Council to appoint the second arbitrator;

(c) if within 30 days after the appointment of the second arbitrator, or such other period as may be set by the Secretariat, the two arbitrators have not agreed on the choice of the presiding arbitrator, the presiding arbitrator shall be appointed by the Chairperson of the Administrative Council according to the procedure provided for in Article 60(7).

11.6. Where three arbitrators are to be appointed and there are multiple Disputing Parties as claimant or as respondent, unless the Disputing Parties have agreed to another method of appointment of arbitrators, the multiple claimants, jointly, and the multiple respondents, jointly, shall appoint an arbitrator. The two arbitrators thus appointed shall choose the third arbitrator who shall be the Chairperson of the Arbitral Tribunal.

11.7. If the Disputing Parties have agreed that the Arbitral Tribunal is to be composed of a number of arbitrators other than one or three, the arbitrators shall be appointed according to the method agreed upon by the Disputing Parties.

11.8. The Disputing Parties may agree on what will happen in the event of a failure of the procedure for the appointment of the Arbitral Tribunal. Where the Disputing Parties have failed to agree, any Disputing Party may, by giving notice to the others, request the Chair of the Administrative Council to appoint the tribunal.

Article 12 - Grounds for challenging an arbitrator

12.1. When a person is approached in connection with his or her possible appointment as an arbitrator, he or she shall disclose in writing any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence.

12.2. An arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to his or her impartiality or independence.

12.3. A Disputing Party may challenge an arbitrator appointed by it only for reasons of which it becomes aware after the appointment has been made.

12.4. If an arbitrator on a tribunal of three or more persons fails to participate in the arbitration, the other arbitrators shall, unless the Disputing Parties agree otherwise, have the power to continue the arbitration and to make any decision, ruling or award. If the other arbitrators determine not to continue the arbitration without the non-participating arbitrator, the Arbitral Tribunal shall declare the office vacant, and a substitute arbitrator shall be appointed according with to the provisions of Articles 11 and 12(1), unless the Disputing Parties agree on a different method of appointment.

Article 13 - Procedure for challenging an arbitrator

13.1. A Disputing Party that intends to challenge an arbitrator shall send notice of its challenge to all other Disputing Parties, to the arbitrator who is challenged, to the other arbitrators, and to the Secretariat. The notice of challenge shall state the reasons for the challenge.

13.2. To be admissible, the notice must be sent by a Disputing Party either within 20 days from receipt by that party of the notification of the appointment of the challenged arbitrator, or within 20 days from the date the circumstances mentioned in Article 12 became known to that Disputing Party.

13.3. Unless the arbitrator who is being challenged withdraws from his or her office or all Disputing Parties agree to the challenge within 15 days from the date of the notice of challenge, the matter shall be decided by the Chair of the Administrative Council within 30 days from the date of the notice of challenge.

Article 14 - Replacement of an arbitrator

14.1. An arbitrator shall be replaced upon death, upon resignation, upon acceptance of a challenge, or upon acceptance of a request of all the Disputing Parties.

14.2. An arbitrator shall also be replaced at the request of all Disputing Parties or on the Chair of the Administrative Council's initiative when the arbitrator is prevented de jure or de facto from fulfilling the arbitrator's functions, or the arbitrator is not fulfilling those functions in accordance with these Regulations.

14.3. Where an arbitrator has to be replaced, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in Articles 11 and 12(1) that was applicable to the appointment or choice of the arbitrator being replaced.

Article 15 - Consequence of the replacement of an arbitrator on the proceedings

If an arbitrator is replaced, the Arbitral Tribunal, upon being reconstituted, shall determine whether and if so to what extent the previous proceedings should stand.

Article 16 - Exclusion of liability

The arbitrators, any person appointed by the Arbitral Tribunal, the emergency arbitrator referred to in Article 34, the Administrative Council and its members, the Secretariat and its employees shall not be liable to any person for any act or omission in connection with the arbitration, except to the extent such limitation of liability is prohibited by applicable law.

III - ARBITRAL PROCEEDINGS

Article 17 - General rules

17.1. The Arbitral Tribunal shall act fairly and impartially and ensure that each party has a reasonable opportunity to present its case.

17.2. The Arbitral Tribunal, after consulting the parties, may adopt such procedural measures as it considers appropriate, provided that they are not contrary to any agreement of the parties.

17.3. Arbitral proceedings shall be confidential.

17.4. The Arbitral Tribunal may, at the request of any Disputing Party, allow one or more additional Disputing Parties to be joined in the arbitration provided such additional Party has given its written consent to the concerned arbitration within the meaning of Article 3(1). The Arbitral Tribunal may not allow the joinder if it finds, after giving the Disputing Parties and the additional Disputing Party or Parties to be joined, the opportunity to be heard, that it could cause prejudice to any of those Disputing Parties.

17.5. The Administrative Council may, at the request of a Disputing Party, consolidate two or more arbitrations pending under this Part into a single arbitration, where:

- (a) the Disputing Parties have agreed to consolidation; or
- (b) all of the claims in the arbitrations are made under the same arbitration agreement; or
- (c) the claims in the arbitrations are made under the same written consent given by a State Party, State-controlled entity, Regional Economic Community, African intergovernmental organization charged with the enforcement or management of the Yamoussoukro Decision and its Annexes, air transport undertaking within the meaning of Article 3(1) and the disputes in the arbitrations arise in connection with the same decision or legal relationship.

Article 18 - Transmission of the File to the Arbitral Tribunal

The Secretariat shall transmit the file to the Arbitral Tribunal as soon as it has been constituted.

Article 19 – Interim and Conservatory measures

19.6. Unless the Disputing Parties have otherwise agreed, as soon as the file has been transmitted to it, the Arbitral Tribunal may, at the request of a Disputing Party, order any interim or conservatory measure it deems appropriate.

19.7. Any such measure shall take the form of an order, giving reasons, or of an award, as the Arbitral Tribunal considers appropriate.

19.8. The Arbitral Tribunal may require a Disputing Party requesting an interim or conservatory measure to provide appropriate security in connection with the measure.

19.9. The Arbitral Tribunal may modify, suspend or terminate an interim or conservatory measure it has granted, upon application of any Disputing Party or, in exceptional circumstances and upon prior notice to the Disputing Parties, on the Arbitral Tribunal's own initiative.

19.10. A request for interim or conservatory measures addressed by any Disputing Party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

Article 20 – Scoping meeting

20.1. After it has received the file, the Arbitral Tribunal shall summon the Disputing Parties or their duly appointed representatives, to a scoping meeting which shall be held as soon as possible and not later than forty five (45) days from the date of receipt of the file. With the consent of the Disputing Parties, the Arbitral Tribunal may hold this meeting in the form of a telephone conference or video conference.

20.2. The purpose of the scoping meeting shall be to establish or confirm:

- (a) a summary of the Disputing Parties' respective claims and of the reasons for these claims and the grounds raised in support thereof, together with the amounts of any quantified claims;
- (b) unless the Arbitral Tribunal considers it inappropriate, a list of issues to be determined;
- (c) the place of arbitration proceedings;
- (d) the agreement of the Disputing Parties regarding the language of the arbitral proceedings or to enable the Arbitral Tribunal to decide this issue during the meeting, pursuant to Article 23;
- (e) the law applicable to the merits of the dispute;
- (f) confirmation of the existence of an arbitration agreement or any other instrument that refers to arbitration pursuant to these Regulations;
- (g) measures for the conduct of the arbitral proceedings which the Arbitral Tribunal intends to apply;
- (h) the procedural timetable that the Arbitral Tribunal intends to follow for the conduct of the arbitration.

20.3. The Arbitral Tribunal shall compile minutes of the scoping meeting. These minutes shall be signed by the Arbitration Tribunal and all Disputing Parties or their representatives upon approval. Where one of the Disputing Parties refuses to sign these minutes or expresses reservations about these minutes, it shall be submitted to the Administrative Council for a decision.

20.4. The procedural timetable for the arbitration referred to in the minutes of the scoping meeting shall be amended by the Arbitral Tribunal, if necessary, on its own initiative after comments from the Disputing Parties or at their request.

Article 21 - New claims

After the minutes of the scoping meeting have been signed or approved by the Administrative Council in accordance with Article 20(3), no Disputing Party shall make new claims which fall outside the scope of these minutes unless authorised to do so by the Arbitral Tribunal which shall consider the nature of these new claims, the state of progress of the proceedings and any other relevant circumstances.

Article 22 - Place of Arbitration

22.1. The arbitration proceedings shall be held at the seat of the African Court on Human and Peoples' Rights.

22.2. Notwithstanding the provisions of paragraph (1), the arbitration proceedings may be held at any other appropriate institution agreed upon by the Disputing Parties, whether private or public. The Secretariat shall make necessary arrangements for that purpose.

Article 23 – Language

23.1. The Disputing Parties are free to agree, among the official languages of the African Union, on the language or languages to which arbitral proceedings will be conducted.

23.2. If the Disputing Parties fail to agree under paragraph (1), the Arbitral Tribunal shall determine, among the official languages of the African Union, the language or languages to be used in the arbitral proceedings.

23.3. An agreement or determination under Article (1) or (2) shall, unless specified, apply to any written statement by a Disputing Party, any hearing and any arbitral award, decision or other communication by the Arbitral Tribunal.

23.4. The Arbitral Tribunal may order that any documentary evidence delivered in their original language be accompanied by a translation into the language or languages agreed upon by the Disputing Parties or determined by the Arbitral Tribunal.

Article 24 - Rules governing the proceedings

The proceedings before the Arbitral Tribunal shall be governed by the provisions of this Part and in accordance with the Arbitration Rules issued by the Administrative Council pursuant to Article 49(1)(b). If any question of procedure arises which is not covered by this Part or the Arbitration Rules or any rules agreed by the Disputing Parties, the Arbitral Tribunal shall make appropriate determination.

Article 25 - Powers and Functions of the Arbitral Tribunal

25.1. The Arbitral Tribunal shall have the power to rule on its own competence.

25.2. Any objection by a Disputing Party that the dispute is not within the scope of these Regulations or, for other reasons, is not within the competence of the Arbitral Tribunal shall be raised in the response to the request of arbitration or, with respect to a counterclaim, not later than during the scoping meeting referred to in Article 20. An objection that the Arbitral Tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

25.3. An objection referred to in paragraph (2) shall be considered by the Arbitral Tribunal which shall determine whether to deal with it as a preliminary question or to join it to the merits of the dispute.

Article 26 - Evidence

26.1. The Arbitral Tribunal may, if it deems it necessary at any stage of the proceedings:

- (a) call upon the Disputing Parties to produce documents or other evidence within such a period of time as the Arbitral Tribunal shall determine;
- (b) collect testimonies from witnesses, including expert witnesses, who are presented by any Disputing Party to testify on any issue of fact or expertise ; and
- (c) visit the scene connected with the dispute and conduct such inquiries there as it may deem appropriate.

2. The Arbitral Tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

Article 27 - Hearing and written submissions

28.1. The Arbitral Tribunal shall decide whether to hold oral hearing for the presentation of evidence or have oral argument or written submissions.

28.2. In the event of an oral hearing, the Arbitral Tribunal shall give the Disputing Parties adequate advance notice of the date, time and place thereof.

28.3. Witnesses, including expert witnesses, may be heard under the conditions and examined in the manner set by the Arbitral Tribunal. The Arbitral Tribunal may direct that witnesses, including expert witnesses, be examined through means of telecommunication that do not require their physical presence at the hearing.

28.4. All statements, documents or other information furnished to, or applications made, to the Arbitral Tribunal by one Disputing Party shall be communicated to any other Disputing Party, and any expert report or evidential document on which the Arbitral Tribunal may rely on in making its decisions shall be communicated to the Disputing Parties.

Article 28 - Experts

28.1. After consultation with the Disputing Parties, the Arbitral Tribunal may:

- (a) appoint one or more independent experts to report to it, in writing, on specific issues to be determined by the Arbitral Tribunal; and
- (b) require a Disputing Party to give the expert any relevant information or to produce or provide access to any relevant documents, goods or other property for his or her inspection.

28.2. The Arbitral Tribunal shall communicate a copy of the expert's report to the Disputing Parties for written opinion.

28.3. The expert shall, upon the request of a Disputing Party, make available to that Disputing Party, for examination, all documents, goods or other property in the expert's possession which was provided to him or her in order to prepare his or her report.

28.4. If a Disputing Party so requests or if the Arbitral Tribunal considers it necessary, the expert shall, after delivery of his or her report, participate in a hearing where the Disputing Parties shall have the opportunity to put questions to him or her and to present expert witnesses in order to

testify on the points at issue.

Article 29 – Failure of a Disputing Party to appear at a hearing or to present its case

29.1. Failure of a Disputing Party to appear at a hearing or to present its case as provided for in Articles 26 and 27 shall not be deemed an admission of the other Disputing Party's assertions.

29.2. If a Disputing Party fails to appear at a hearing, without showing sufficient cause, the Arbitral Tribunal may proceed with the arbitration.

29.3. If a Disputing Party fails to produce documents or other evidence requested by the Arbitral Tribunal within the established period of time, without showing sufficient cause, the Arbitral Tribunal may make the award on the evidence before it.

Article 30 - Default of the respondent

Where, without showing sufficient cause, a Disputing Party fails to respond to the request for arbitration in accordance with Article 9, the Arbitral Tribunal shall continue the proceedings without treating such failure as an admission of the claimant's allegations.

Article 31 - Closure of proceedings

31.1. When it is satisfied that the Disputing Parties have had a reasonable opportunity to present their cases, the Arbitral Tribunal shall declare the proceedings closed.

31.2. In the event of exceptional circumstances, the Arbitral Tribunal may decide, on its own initiative or upon application of a Disputing Party, to reopen the proceedings at any time before the award is made.

Article 32 – Grounds for termination

32.1. If, after the file has been transmitted to the Arbitral Tribunal and before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason other than a settlement reached by the Disputing Parties on the dispute, the Arbitral Tribunal shall inform the Disputing Parties of its intention to issue an order for the termination of the proceedings.

32.2. The Arbitral Tribunal shall have the power to issue such an order unless there are remaining matters that may need to be decided and the Arbitral Tribunal considers it appropriate to do so.

32.3. Copies of the order for termination of the arbitral proceedings, signed by the arbitrators, shall be communicated by the Arbitral Tribunal to the Disputing Parties.

Article 33 – Waiver of right to object

A failure by any Disputing Party to object promptly to any non-compliance with any provision of this Part, any direction given by the Arbitral Tribunal, or any requirement agreed upon by the Disputing Parties relating to the constitution of the Arbitral Tribunal or the conduct of the

proceedings, shall be deemed to have waived its right to object, unless such Disputing Party can show that, under the circumstances, its failure to object was justified

IV – SPECIAL PROCEDURES

Article 34 – Emergency measures

34.1. The Chairman of the Administrative Council shall have the power to decide, at the Chairman's discretion, all matters relating to the administration of the emergency arbitration proceedings not expressly provided for in this Article and in the rules issued by the Administrative Council.

34.2. A Disputing Party that needs urgent interim or conservatory measures that cannot await the constitution of an Arbitral Tribunal shall submit an application for such measures to the Secretariat prior to the transmission of the file to the Arbitral Tribunal pursuant to Article 18.

34.3. The application shall contain the following information:

- (a) the names and contact details of the Disputing Parties and of any person(s) representing the applicant ;
- (b) any rule, decision, agreement, contract, convention, treaty, law, constituent instrument of an organization or agency, or relationship out of, or in relation to which, the dispute arises;
- (c) a statement of the facts giving rise to the application and of the underlying dispute referred or to be referred to arbitration;
- (d) the emergency measures sought ;
- (e) the reasons why the applicant needs urgent interim or conservatory measures that cannot await the constitution of an Arbitral Tribunal ;
- (f) any agreement as to the applicable rules of law or the language of the arbitration;
- (g) proof of payment of the amount fixed by the Secretariat;
- (h) any request for arbitration and any other submissions related to the underlying dispute, which have been filed with the Secretariat by any of the Disputing Parties under this Article prior to the making of the application; and
- (i) any other document or information as the applicant considers appropriate.

34.4. If the Secretariat finds, on the basis of the information contained in the application, that the Disputing Parties have agreed to exclude recourse to the provisions of this Article or have agreed to another pre-arbitral procedure that provides for the granting of conservatory, interim or similar measures, it shall inform the Disputing Parties that the proceedings under this Article shall not take place. If the Secretariat finds otherwise, it shall transmit a copy of the application to the respondent.

34.5. The Chairman of the Administrative Council shall terminate the emergency arbitration proceedings if a request for arbitration has not been received by the Secretariat from the applicant within 10 days of the Secretariat's receipt of the application.

34.6. The Chairman of the Administrative Council shall appoint an emergency arbitrator within two days from the Secretariat's receipt of the application. No emergency arbitrator shall be ap-

pointed after the file has been transmitted to the Arbitral Tribunal pursuant to Article 18.

34.7. Once the emergency arbitrator has been appointed, the Secretariat shall so notify the Disputing Parties and shall transmit the file to the emergency arbitrator.

34.8. An emergency arbitrator shall not act as an arbitrator in any arbitration relating to the dispute that gave rise to the application.

34.9. A challenge against the emergency arbitrator:

(a) must be made within three (3) days from receipt by the Disputing Party making the challenge of the notification of the appointment or from the date when that Disputing Party was informed of the facts and circumstances on which the challenge is based if such date is subsequent to the receipt of such notification;

(b) shall be decided by the Chair of the Administrative Council after the Secretariat has afforded an opportunity for the emergency arbitrator and any other Disputing Party to provide comments in writing within a suitable period of time.

10. Regarding the proceedings:

(a) the emergency arbitrator shall establish a procedural timetable for the emergency arbitration proceedings within two days from the transmission of the file to him or her ;

(b) the emergency arbitrator shall conduct the proceedings in the manner which he or her considers to be appropriate.

34.11. The emergency arbitrator's decision shall take the form of an order:

(a) to which the parties undertake to comply;

(b) in which the emergency arbitrator shall determine whether the application is admissible pursuant to paragraph 2 and whether he or she has competence to order emergency measures;

(c) which shall be made in writing and shall state the reasons upon which it is based;

(d) which shall be made no later than 15 days from the date on which the file was transmitted to the emergency arbitrator and shall be sent by the emergency arbitrator to the Disputing Parties, with a copy to the Secretariat;

(e) which may be modified, terminated or annulled by the emergency arbitrator upon a reasoned request by a Disputing Party made prior to the transmission of the file to the Arbitral Tribunal pursuant to Article 18;

(f) which shall not bind the Arbitral Tribunal with respect to any question, issue or dispute determined in the order.

34.12. The Arbitral Tribunal shall decide upon any Disputing Party's request or claim related to the emergency arbitration proceedings, including any claim arising out of or in connection with the compliance or non-compliance with the order.

34.13. Without prejudice to paragraph 5 of this Article, the order shall cease to be binding on the Disputing Parties upon:

(a) the acceptance by the Chairman of the Administrative Council of a challenge against the emergency arbitrator pursuant to paragraph 9 of this Article;

(b) the Arbitral Tribunal's final award, unless the Arbitral Tribunal expressly decides otherwise;

(c) the withdrawal of all claims or the termination of the arbitration before the rendering of a final award.

Article 35 - Expedited procedure

35.1. Insofar as provisions of this Article do not provide otherwise, these Regulations shall apply to an arbitration under the expedited procedure.

35.2. The expedited procedure rules set forth in this Article:

(a) shall apply if the Disputing Parties so agree;

(b) shall not apply if the Administrative Council, upon the request of a Disputing Party before the constitution of the Arbitral Tribunal or on its own motion, determines that it is inappropriate in the circumstances to apply it.

35.3. Without prejudice to paragraph 2(b), upon receipt of the response to the request for arbitration pursuant to Article 9 of these Regulations, or upon expiry of the time limit for the response, the Secretariat will inform the Disputing Parties that the expedited procedure rules shall apply in the case.

35.4. The Administrative Council may, at any time during the arbitral proceedings, on its own motion or upon the request of a Disputing Party, and after consultation with the Arbitral Tribunal and the Disputing Parties, decide that the expedited procedure Rules shall no longer apply to the case.

35.5. Regarding the constitution of the Arbitral Tribunal:

(a) the Chairperson of the Administrative Council may, notwithstanding any contrary agreement of the Disputing Parties, appoint a sole arbitrator;

(b) the Disputing Parties may nominate the sole arbitrator within a time limit to be fixed by the Secretariat. In the absence of such nomination, the sole arbitrator shall be appointed by the Chairperson of the Administrative Council.

35.6. Article 20 of these Regulations shall apply to an arbitration under the expedited procedure rules as follows:

(a) the Article shall not apply, except points (e) and (f) of paragraph 2 ;

(b) the scoping meeting shall take place no later than 15 days after the date on which the file was transmitted to the Arbitral Tribunal. The Administrative Council may extend this time limit pursuant to a reasoned request from the Arbitral Tribunal.

35.7. After the Arbitral Tribunal has been constituted, no Disputing Party shall make a new claim, unless it has been authorized to do so by the Arbitral Tribunal.

35.8. The Arbitral Tribunal shall have discretion to adopt such procedural measures as it considers appropriate. In particular, it may, after consultation with the Disputing Parties:

(a) decide not to allow requests for document production or to limit the number, length and scope of written submissions and written witness evidence;

(b) decide the dispute solely on the basis of the documents submitted by the Disputing Parties, with no hearing and no examination of witnesses or experts.

1. The fees of the Arbitral Tribunal shall be fixed according to the scales of administrative expenses and arbitrator's fees for the expedited procedure.

V- THE AWARD

Article 36 - Applicable rules of law

36.1. The Disputing Parties shall be free to agree upon the rules of law to be applied by the Arbitral Tribunal to the merits of the dispute.

36.2. In the absence of any such agreement, the Arbitral Tribunal:

(a) for contractual disputes, shall take into account the terms of the contract and international trade practices;

(b) for any other dispute, shall apply or may take into account, inter alia, the nature of the Disputing Parties, the provisions of the African air transport legal instruments applicable to the agreement or relationship between the Disputing Parties, the international law, international custom or relevant arbitral awards.

Article 37 – Decision

When the Arbitral Tribunal is composed of more than one arbitrator, an award or other decision is made by a majority decision. If there is no majority, the chairperson of the Arbitral Tribunal shall decide alone.

Article 38 – Form of the Award

38.1. All awards shall be made in writing.

38.2. The award shall state the reasons upon which it is based, unless the Disputing Parties have agreed that no reasons are to be given.

38.3. An award shall be signed by the arbitrators and it shall contain the date on which the award was made and indicate the place of arbitration. Where there is more than one arbitrator and any of them fails to sign, the award shall state the reason for the absence of the signature.

Article 39 – Award by consent

39.1. If, after the file has been transmitted to the Arbitral Tribunal and before the award is made, the Disputing Parties reach a settlement on the dispute, the Arbitral Tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by the Disputing Parties, record the settlement in the form of an arbitral award on agreed terms.

39.2. Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated by the Arbitral Tribunal to the Disputing Parties.

39.3. Where an arbitral award on agreed terms is made, the provisions of Articles 38(2)(4), 40(3) and 41(1) shall apply.

Article 40 - Notification of award

40.1. Once an award has been made, copies of the award signed by the arbitrators shall be communicated to the Disputing Parties by the Secretariat, provided that the costs of the arbitration have been fully paid.

40.2. Additional copies certified true by the Secretary shall be made available on request and at any time to the Disputing Parties.

40.3. The award shall not be published without the consent of the Disputing Parties.

40.4. A copy of the award shall be deposited with the Executing Agency of the Yamoussoukro Decision, charged with reporting on the application of these Regulations.

Article 41 - Enforceability of the Award

41. Every award shall be final and binding on the Disputing Parties.

42. By submitting the dispute to arbitration under these Regulations, the Disputing Parties undertake to carry out any award without delay and shall be deemed to have waived their right to any form of recourse insofar as such waiver can validly be made.

Article 42 - Correction of award

42.1. On its own initiative or at the request of a Disputing Party, the Arbitral Tribunal may correct in the award any error in computation, any clerical or typographical error, or any error or omission of a similar nature.

42.2. Any request of a Disputing Party for the correction of an error of the kind referred to in paragraph (1) must be made to the Arbitral Tribunal, with notice to any other Disputing Party and the Secretariat, within 30 days of the receipt of the award by such Disputing Party. If the Arbitral Tribunal considers that the request is justified, it shall make the correction within 30 days of receipt of the request.

42.3. The Arbitral Tribunal may make such corrections on its own initiative within 30 days after the communication of the award.

42.4. Such corrections of an award shall be in writing and shall form part of the award. The provisions of Articles 38(2)(3)(4), 40(1)(3) and 41(1), shall apply.

Article 43 - Interpretation of the Award

43.1. Within 30 days after the receipt of the award, a Disputing Party, with notice to any other Disputing Party and the Secretariat, may request the Arbitral Tribunal to give an interpretation of the award.

43.2. The interpretation shall be given in writing within 45 days after the receipt of the request.

43.3. The interpretation shall form part of the award and the provisions of Articles 38(2)(3)(4), 40(1)(3) and 41(1), shall apply.

Article 44 - Additional award

44.1. On its own initiative or at the request of a Disputing Party, the Arbitral Tribunal may make an additional award in respect of any claim presented in the arbitral proceedings but not decided by the Arbitral Tribunal.

44.2. Any request of a Disputing Party for an additional award must be made to the Arbitral Tribunal, with notice to any other Disputing Party and the Secretariat, within 30 days after the receipt by the Disputing Party of the termination order or the award. If the Arbitral Tribunal considers the request to be justified, it shall render its additional award within 50 days after the receipt of the request or such longer period that it considers necessary.

44.3. The Arbitral Tribunal may make an additional award on its own initiative within 50 days of the date of the original award or such longer period that it considers necessary.

44.4. When such an additional award is made, the provisions of Articles 38(2)(3)(4), 40(1)(3) and 41(1), shall apply.

VI - COSTS OF ARBITRATION

Article 45 – Advance on costs for arbitration

45.1. Upon receipt of the request for arbitration or the response pursuant to the provisions of Articles 8 and 9, or upon expiry of the time limit within which to file them, the Secretariat may request the Disputing Parties to deposit an equal amount as an advance to cover the costs referred to in article 46, paragraph 1 (a), (b), (c), and (f).

45.2. The amount of the advance fixed by the Secretariat shall normally not exceed the amount obtained by adding together the administrative expenses of the Administrative Council and the Secretariat and the minimum of the fees as set out in the scales referred to in Article 46(2).

45.3. If the requested deposits are not paid in full to the Secretariat before the file is sent to the Arbitral Tribunal, the Secretariat shall so inform the Disputing Parties in order that one or more of them may make the required payment. If such payment is not made, the Arbitral Tribunal may order the suspension or termination of the arbitral proceedings.

45.4. The amount of any advance on costs fixed pursuant to this Article may be subject to readjustment at any time during the arbitration.

45.5. After a termination order or final award has been made, the Secretariat shall render an accounting to the Disputing Parties of the deposits received and return any unexpended balance to the Disputing Parties commensurate with their contributions.

Article 46 - Definition of costs of the arbitration

46.1. The arbitration costs shall include:

- (a) the fees of each arbitrator;
- (b) the expenses, including travel expenses, incurred by the arbitrators;
- (c) the fees and expenses of any experts appointed by the Arbitral Tribunal;
- (d) the expenses, including travel expenses, of witnesses to the extent such expenses are approved by the Arbitral Tribunal;

(e) the legal and other costs incurred by the Disputing Parties in relation to the arbitration to the extent that the Arbitral Tribunal determines that the amount of such costs is reasonable;

(f) the expenses of the Administrative Council, including the compensation of its Chairman, in particular as the appointing authority, and of the Secretariat.

46.2. The arbitrators' fees and the Administrative Council and Secretariat expenses shall be fixed pursuant to a scale defined by the Administrative Council.

46.3. In relation to interpretation, correction or completion of any award under Articles 42, 43 and 44, the Arbitral Tribunal may charge the costs referred to in paragraph 1 (b) to (f), but no additional fees.

Article 47 - Decision as to the costs of arbitration

47.1. At any time during the arbitral proceedings, the Arbitral Tribunal may make decisions on costs.

47.2. In the final award, the Arbitral Tribunal shall fix the costs of the arbitration and decide which of the Disputing Parties shall bear them or in what proportion they shall be borne by the Disputing Parties.

47.3. When deciding on the costs, the Arbitral Tribunal shall take into account any relevant circumstances, including the extent to which each Disputing Party has conducted the arbitration in an expeditious and cost-effective manner.

47.4. The Administrative Council may fix the fees of the arbitrators at a figure higher or lower than that which would result from the application of the relevant scale should this be deemed necessary due to the exceptional circumstances of the case.

47.5. If a claim is withdrawn, or if the arbitration is terminated before a final award has been rendered, the Administrative Council shall fix the fees and expenses of the arbitrators and the expenses of the Administrative Council and the Secretariat. If the Disputing Parties have not agreed upon the allocation of the costs of the arbitration or other relevant issues with respect to costs, the Administrative Council shall decide these issues.

PART IV – MANAGEMENT OF THE REGULATION

Article 48 – The Administrative Council

48.1. These Regulations shall be managed by an Administrative Council composed of one representative of each of the five regions of the African Union.

48.2. The five (5) members of the Administrative Council shall be International legal experts, particularly in the field of air transport, nominated by the Monitoring Body of the Yamoussoukro Decision and approved by the Ministers in Charge of Transport.

48.3. The Administrative Council shall be an independent body and shall be assisted by a Secretariat. The Administrative Council and the Secretariat are hosted at the headquarters of the African Civil Aviation Commission.

48.4. A member may have an alternate on the Administrative Council to act as a representative

in the absence of the principal from a meeting or inability to act. The alternate shall be from the same region.

48.5. The Chairperson of the Administrative Council shall be elected by the members of the Council amongst themselves.

48.6. The Administrative Council shall establish such Articles of procedure as it deems necessary for the fulfilment of its responsibilities.

Article 49 - Functions of the Administrative Council

49.1. The Administrative Council shall perform the following functions:

- (a) adopt the Rules of procedure as it shall determine to be necessary for the implementation of the provisions of these Regulations;
- (b) adopt the Rules of procedure for arbitration proceedings (hereinafter called the Arbitration Rules) as it shall determine to be necessary for the implementation of the rules of these Regulations;
- (c) adopt Rules of procedure for other forms of Alternative Dispute Resolution, namely mediation and conciliation;
- (d) perform the tasks assigned to it by these Regulations;
- (e) adopt the indicative list of individuals who are willing and able to serve as members of the ADR Panels on proposal of the Secretariat;
- (f) adopt scales for the arbitrators', conciliators' and mediators' fees and the expenses of the Administrative Council and the Secretariat on proposal of the Secretariat;
- (g) adopt the annual budget of revenues and expenditures and submit it to the Monitoring Body for Ministerial approval.

49.2. Without prejudice to Article 51, the Chairperson of the Administrative Council:

- (a) shall serve as appointing authority of arbitrators, conciliators and mediators. For that purpose, the Chairperson may require from any Disputing Party and the arbitrators, conciliators and mediators the information it deems necessary and it shall give the Disputing Parties and, where appropriate, the arbitrators, conciliators and mediators, an opportunity to present their views in any manner it considers appropriate;
- (b) shall have the power to take any urgent decision on behalf of the Council, provided that any such decision is reported to the Council at its next session.

Article 50 - Decision of the Administrative Council

Any decision of the Administrative Council shall be made by consensus or where consensus cannot be reached, by a majority of its members.

Article 51 - Committees of the Administrative Council

The Administrative Council may appoint such committees as it considers necessary to discharge its functions.

Article 52 – Other powers of the Administrative Council

The Administrative Council shall also exercise such other powers as it shall determine to be necessary for the implementation of the provisions of these Regulations.

Article 53 - Meetings of the Administrative Council

53.1. The Administrative Council shall hold an annual meeting and such other meetings as may be determined by the Council, or convened by the Chairperson, or convened by the Secretary at the request of not less than four members of the Administrative Council.

53.2. Each member of the Administrative Council shall have one vote and, except as otherwise herein provided, all matters before the Administrative Council shall be decided by a majority of the votes cast.

53.3. A quorum for any meeting of the Administrative Council shall be a **two third majority** of its members.

Article 54 - Term of Office of the Council

The term of office of all members of the Administrative Council is for (4) years renewable once.

Article 55 - Remuneration of members of the Council

55.1. Members of the Administrative Council and the Chairman shall serve without remuneration but shall earn such allowances for their accommodation and travel expenses as approved from time to time by the Monitoring Body.

55.2. Notwithstanding paragraph (1), the Chairperson of the Administrative Council shall be compensated for the exercise of his or her function of appointing authority and such other functions provided for in these Regulations. The Administrative Council shall determine the terms of compensation.

Article 56 - Supervision by the Ministers of Transport and the YD Monitoring Body

1. In relation with the management of these Regulations, the Ministers of Transport shall be charged with the following functions:

(a) approve the members of the Administrative Council;

(b) approve the scales for the arbitrators', conciliators' and mediators' fees and the expenses of the Administrative Council and the Secretariat adopted by the Administrative Council;

(c) approve the reports of the Administrative Council.

2. In relation with the management of the Regulations, the Monitoring Body shall be charged with the following functions:

(a) nominate members of the Administrative Council and ensure that the principle of regional distribution is strictly adhered to;

(b) secure funding for the first triennium of the Administrative Council;

(c) present the annual reports of the Administrative Council to the Ministers Responsible for

Air Transport;

(d) determine the conditions of service of the Secretary and the senior officer of the Secretariat;

(e) approve appointments of the staff of the Secretariat;

(f) approve accommodation and travel expenses of the Administrative Council.

Article 57 - The Secretariat

57.1. The Secretariat is headed by a Secretary assisted by a senior officer.

57.2. The Secretary and the senior officer shall be appointed by the Administrative Council by a majority of its members.

57.3. The Secretary and the senior officer shall serve for a term of service not exceeding six years and non-renewable.

57.4. The offices of Secretary and the senior officer shall be incompatible with the exercise of any political function. Neither the Secretary nor the senior official may hold any other employment or engage in any other occupation except with the approval of the Monitoring Body.

57.5. During the Secretary absence or inability to act or vacancy of the office of Secretary, the senior officer shall be empowered to act as Secretary.

57.6. The Secretary shall perform the function of registrar and shall have the power to authenticate arbitral awards rendered pursuant to these Regulations, and to certify copies thereof.

Article 58 - Functions of the Secretariat

58.1. The function of the Secretariat is to ensure the application of appropriate Rules of procedures and facilitate the process of Alternative Dispute Resolution under these Regulations, and it has all the necessary powers for that purpose.

58.2. Without prejudice to paragraph (1), the Secretariat shall have the following functions:

(a) to enforce appropriate Rules and administrative procedure for effective performance of the dispute settlement mechanism;

(b) to establish ADR Panels of arbitrators, conciliators and mediators in accordance with the *minimum* qualification criteria defined in Article 60(4) and any additional qualification criteria defined by the Secretariat and approved by the Administrative Council;

(c) to establish and enforce a code of ethics for arbitrators, conciliators and experts; the code shall be submitted to the Administrative Council for adoption;

(d) to provide administrative services and other technical services in support of dispute settlement procedures;

(e) to facilitate certification, registration and authentication of arbitration awards and conciliation and mediation agreements;

(f) to establish for adoption by the Administrative Council and administer scales for the arbitrators', conciliators' and mediators' fees and the expenses of the Administrative Council and the Secretariat;

- (g) promote the use of alternative dispute resolution methods for stakeholders;
- (h) to establish reports of its proceedings and to submit an annual report to the Administrative Council; and
- (i) to do all other acts as are required, necessary or conducive to the proper implementation of the objectives of these Regulations.

Article 59 - Staff of the Secretariat

59.1. The Secretariat shall have such other staff as are necessary for the smooth application of the Regulations.

59.2. The staff shall be appointed by the Secretary with the approval of the Administrative Council.

PART V - PANELS OF ARBITRATORS, CONCILIATORS AND MEDIATORS

Article 60 – Establishment of Panels and appointment

60.1. The Secretariat shall establish and maintain ADR Panels of arbitrators, conciliators and mediators.

60.2. Each State Party may nominate three (3) individuals to the Secretariat for inclusion in the ADR Panels, indicating their area(s) of expertise.

60.3. The indicative list of individuals shall be submitted by the Secretariat for consideration and approval by the Administrative Council.

60.4. The following *minimum* qualification criteria shall be met in order to be considered for acceptance to the ADR Panels:

- (a) have ten (10) years senior-level expertise or professional experience or legal practice directly related to international air transport and particularly in matters of competition, air services, air transport agreements, commercial agreements, air passenger rights, air law, international law;
- (b) training in dispute resolution and experience in arbitration and/or conciliation and/or mediation;
- (c) educational degree(s) and/or professional license(s) appropriate to the area(s) of expertise.

60.5. Members of the ADR Panels shall be selected for appointment with a view to ensuring their independence and integrity and shall have a sufficiently diverse background and a wide spectrum of experience in the subject matter of the dispute.

60.6. When proposing a list of names to the parties for appointment or when appointing arbitrators, conciliators or mediators from the Panels, the Chairperson of the Administrative Council shall:

- (a) ensure that each prospective arbitrator, conciliator or mediator is not affiliated to or take instructions from any Disputing Party;
- (b) consider, in particular, the residence of the Disputing Parties, the residence of their coun-

sel, the residence of the arbitrators, conciliators or mediators, the seat of the arbitration, conciliation or mediation, the language of the Disputing Parties and the nature of the issues in dispute;

(c) as far as possible, pay due regard to the importance of assuring representation of the legal systems of the Disputing Parties and of the speedy addressing of aviation disputes.

60.7. For the application of Article 11 (3)(b) and (5)(c), the appointing authority shall use the following procedure for the appointment of the arbitrator, unless the Disputing Parties agree that the procedure should not be used or unless the appointing authority determines in its discretion that the use of the procedure is not appropriate for the case:

(a) the appointing authority shall communicate to each of the Disputing Parties an identical list containing at least three names from the Panel;

(b) within 15 days after the receipt of this list, or such other period as may be set by the Secretariat, each Disputing Party may return the list to the appointing authority after having deleted the name or names to which it objects and numbered the remaining names on the list in the order of its preference;

(c) after the expiration of the above period of time the appointing authority shall appoint the arbitrator from among the names approved on the lists returned to it and in accordance with the order of preference indicated by the Disputing Parties;

(d) if for any reason the appointment cannot be made according to this procedure, the appointing authority may exercise its discretion in appointing the arbitrator.

Article 61 - Term of office

61.1. Members of the ADR Panels shall serve for a non-renewable period of six years.

61.2. In case of death or resignation of a member of a Panel, the State Party which designated the member shall have the right to designate another person to serve for the remainder of that member's term.

61.3. Panel members shall continue in office until their successors have been designated.

61.4. A person may serve on one or more Panels.

PART VI - FINAL PROVISIONS

Article 62 - Finance

62.1. The funds for managing these Regulations shall come from payments for the use of dispute settlement facilities by the Disputing Parties.

62.2. Where the expenditure of the Administrative Council cannot be met out of charges for the use of its facilities, the excess shall be borne through sponsorships, grants, donations gifts, etc.,

Article 63 – Reporting and Review

Within 3 years of entry into force of these Regulations, the Executing Agency shall report to the concerned Specialized Technical Committee of the African Union on the operation and the results of these Regulations. The report shall be accompanied where necessary by proposals to modify these Regulations.

Article 64 - Amendments

64.1. Each State Party may propose amendments to these Regulations.

64.2. Any proposal for amendment to these Regulations shall be submitted to the YD Monitoring Body in writing, which shall within thirty (30) days of its receipt communicate it to the State Parties.

64.3. Amendments to these Regulations shall enter into force after the approval by the Heads of State and Government of the African Union.

Article 65 - Entry into Force

These Regulations shall enter into immediate force following endorsement by the Assembly of Heads of State and Government of the African Union.

Adopted by the 41st Ordinary Session of the AU Executive Council (**EX.CL/Dec.1168-1188(XLI)**) held from 14th to 15th July 2022 in Lusaka, Zambia

ANNEX 4

TO THE YAMOUSSOUKRO DECISION {ASSEMBLY/AU/DEC 676(XXX) - DECISION ON LEGAL INSTRUMENTS}

REGULATIONS ON THE POWERS, FUNCTIONS AND OPERATIONS OF THE 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 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 th 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 rd 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 th 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 th July 2002 ;

CONSIDERING 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 ;

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:

Chapter 1

Definition, Scope of application and Object and Basic Principles

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 3rd 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 ;

“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 or 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 by the Yamoussoukro Decision.

Article 2 Scope of Application

The scope of this Regulation is to provide detailed rules for African Civil Aviation Commission as the Executing Agency to supervise, manage, formulate and enforce measures for the successful implementation of the Yamoussoukro Decision.

Article 3

Object and Basic Principles

3.1. On the objective of this Regulation is to Executing Agency enable the effective operation, supervision and management of liberalisation of air transport in Africa.

3.2. To achieve this objective the Executing Agency, the State Parties, Organs of the African Union and of the Decision, the regional economic communities, airlines and other air transport service providers 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) Air transport activities shall be aimed at maximum utilisation of airport slots and airports infrastructure and services and thereby encourage economic activities at and around all African airports ;

(e) Continental and regional institutions and State Parties shall encourage active cooperation between eligible airlines and work towards multiple establishment of airlines and other air transport service providers in different regional economic communities ;

(f) The consideration of liberalised routes as a public good held for the use of and in the interest of the African continent.

Executing Agency

Chapter 2 Powers and Functions

Article 4

Functions of the Executing Agency

4.1. In addition to the functions provided for under Article 9 (4) of the Yamoussoukro Decision the Executing Agency shall inter alia:

(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 on the further liberalization of air transport in Africa ;

(e) Enforce competition and consumer protection Regulations ;

(f) Ensure the efficient functioning of the dispute resolution mechanisms ;

(g) Ensure State Party application of the International Civil Aviation Organization (ICAO) safety, security and environmental protection standards and recommended practices ; and

(h) On its own initiative, or at the request of the Monitoring Body or any Organ of the African Union, undertake action aimed at assisting and advising the Monitoring Body in relation to its function provided for under Annex 2 to the Yamoussoukro Decision.

Article 5

Powers of the Executing Agency

5.1. The Executing Agency shall have the power to :

(a) ensure that the Yamoussoukro Decision is applied consistently throughout the African continent ;

(b) formulate and enforce appropriate rules and regulations that give fair and equal opportunities to all players and promote healthy competition in the air transport market ;

(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 aeronautical authorities or any such senior personnel in State Parties, regional economic communities, organs of the African Union and other relevant institutions 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, collection and submission of data and reports to the Executing Agency ;

(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 and other air transport service providers including fines and any other penalty payments ;

(i) enforce the penalties including sanctions, interim measures and commitments of compliance from states and eligible airlines set out in the Regulations on Dispute Settlement Mechanisms relating to the implementation of the Yamoussoukro Decision ;

(j) report annually or as often as is determined from time to time on the status of implementation of the Yamoussoukro Decision ;

(k) carry out any other decisions, declarations and functions from the relevant Organs of the African Union and of the Yamoussoukro Decision ;

(l) 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 ; and

(m) 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.

5.2. In exercising the above functions the Executing Agency shall have full regard of the sovereign rights of State Parties and the commercial interests of air transport service providers, save that no aeronautical authority shall of its own have the power to dictate the terms and conditions of operations of the Executing Agency.

Chapter 3

Operations of the Executing Agency

Article 6

Implementing Measures at National and Regional Levels

1. The Executing 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 7

Training of Senior Management

7.1. Having regard to its training and information generation and collection function the Executing Agency shall encourage, conduct or facilitate training of senior management personnel directly involved in the implementation of the Yamoussoukro Decision and are likely to be involved in any investigations and inspections arising in the course of its supervision mandate.

7.2. 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.

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

Article 8

Monitoring, Evaluation and Reporting

8.1. Having regard to the object of this Regulation, the Executing Agency shall, in close cooperation with the regional economic communities, monitor the application of the Yamoussoukro Decision by aeronautical authorities, airlines and other air transport service providers.

8.2. The Executing Agency shall submit annual reports to the Monitoring Body and the organ of the African Union responsible for air transport as appropriate

3. The Executing Agency, in fulfilment of its reporting function outlined in this article shall:conduct regular investigations ;

(a) carry out evaluations ;

(b) 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.

8.4. The Executing Agency shall publish a Yamoussoukro Decision state report on each State Party every five (5) years on the level and effectiveness of application of the Yamoussoukro Decision and any relevant implementing rules and regulations.

8.5. The Executing Agency shall submit the following additional annual reports to the relevant organs of the African Union :

(a) activities including a summary of activities of each regional economic community and in particular the state of operations by eligible airlines of regional routes ;

(b) implementation of competition regulations ;

(c) implementation consumer protection regulations ;

(d) sanctions imposed or recommended ; and

(e) complaints filed and dispute resolution.

8.6. The Executing Agency shall in complying with its responsibilities under this Article request reports from regional economic communities, State Parties, airlines and other air transport service providers.

Article 9 Research and Development

9.1. The Executing Agency shall encourage research in areas of its competence.

9.2. 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

9.3. The Executing 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 related to air transport.

9.4. The Executing Agency may develop, finance and coordinate 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 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 Executing Agency that are not classified as confidential shall be published in the manner the Executing Agency deems fit. Where published as a commercial publication, at least the executive summary of such reports shall be made available on the Executing Agency's website and shall be made freely available to interested parties.

Article 10 Work plan

10.1. The Executing Agency shall, within six (6) months of the entry into force of this Regulation, submit a tri-annual work plan to the relevant organs of the African Union for approval.

10.2. The Executing Agency shall, within six (6) months of entry into force of this Regulation, submit a tri-annual list of proposed regulatory activities to be undertaken in pursuance of Article 17 of this Regulation to the relevant organs of the African Union for approval.

10.3. The tri-annual work plan and the list of proposed regulatory activities shall be submitted on the anniversary of the date of first submission in accordance with paragraphs (1) and (2) above.

Article 11

Database, Website, Privacy and Publication

11.1. The Executing Agency, aeronautical authorities, regional Yamoussoukro Decision authorities, airlines and other air transport service providers, 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 Executing Agency shall:

(a) encourage the use of information communication technologies to transact its business ;

(b) ensure that national authorities and members of the regional Yamoussoukro Decision authorities 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 African airlines and other air transport service providers to utilise the website of the Executing Agency to communicate with the Executing Agency, State Parties, regional economic communities and other institutions ;

(d) the Executing Agency shall create an internet platform and establish conditions for consumer reporting.

11.2. The Executing Agency shall compile a central database of air transport on all aspects of its competence.

11.3. In giving effect to this Regulation the Executing Agency shall be guided by openness, transparency and a willingness to publish relevant documentation to all interested parties, including the general public.

11.4. 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.

11.5. Aeronautical authorities and regional economic communities, organs of the African Union, airlines and other air transport service providers shall take necessary measures to ensure appropriate confidentiality and respect for data protection, of the information transmitted and received by them in the application of this Regulation.

11.6. The Executing Agency shall have an official publication.

Article 12 Investigation

12.1. In supervising and managing the liberalisation of air transport in Africa, the Executing Agency shall, working closely with the regional economic communities, monitor the application of the Yamoussoukro Decision by conducting investigations of aeronautical authorities. Investigations shall be carried out in compliance with the laws of State Parties in which they are undertaken.

12.2. The Executing 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.

12.3. Officials of the Executing Agency, regional economic communities, or of State Parties may be authorised to undertake such tasks for and on behalf of the Executing Agency and are thus empowered in compliance with the laws 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, data, procedures and other relevant material ;

(c) request for oral interviews and explanation ;

(d) enter any relevant premises.

12.4. The officials of the Executing Agency, regional economic communities and State Parties au-

thorised 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 Executing Agency shall inform the State Party concerned of the investigation of the identity of the authorised officials.

12.5. The State Party concerned shall assist the Executing Agency in conducting its investigations.

12.6. Investigation reports shall be made available in the official language of the State Party concerned.

Article 13 Inspections of service providers

13.1. The Executing Agency may itself conduct or delegate to the regional economic community, aeronautical authorities, or qualified entities all necessary investigation of eligible airlines and other air transport service providers. Inspections shall be carried out in compliance with the laws 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.

13.2. The persons authorised for the purpose of these investigations shall exercise their powers upon production of appropriate identification and written authorisation specifying the subject matter and the purpose of the investigation.

13.3. In good time before the commencement of an investigation, the Executing 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 Executing Agency or the regional economic community, assist the authorised persons in carrying out their duties.

Article 14 Imposition of Sanctions

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

14.2. The Executing 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 for approval.

14.3. The regulation shall clearly stipulate :

- (a) detailed conditions under which the Regulation on sanctions 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 to remedy 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 15

Procedures for development of Decisions, Regulations and Guidelines

When the Executing Agency develops regulations, procedures, 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.

The Executing Agency shall adopt rules through the procedure of Notification of Proposed Rule-making on the Yamoussoukro Decision (Hereinafter, YDNPR).

The Executing Agency shall adopt detailed procedures for taking decisions and making regulations, and issuing guidelines.

Those procedures shall :

- (a)** draw on expertise available in standing and ad-hoc AFCAC Committees, aeronautical authorities, the regional economic communities, airlines and other air transport service providers ;
- (b)** involve appropriate experts from relevant interested parties, including but not limited to African Universities and Research institutions related to air transport ;
- (c)** ensure that the Executing Agency publishes documents widely with interested parties according to a timetable and a procedure which includes an obligation on the Executing Agency to submit written responses to the consultation process.

Article 16

Procedures for taking enforcement decisions

16.1. The Executing Agency shall establish transparent procedures for taking decisions affecting State Parties, eligible airlines and other air transport service providers.

16.2. 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 the decision of the relevant policy organ of the African Union ;
- (b)** if they are intended to affect eligible airlines or other service providers, ensure a hearing of the airlines and service providers to be addressed in the decision and of any other party with a direct and individual interest ;
- (c)** provide for service upon an airline or service provider of a decision and its publication ;
- (d)** provide information of the legal remedies available to an airline or service provider under this Regulation ;
- (e)** ensure that the decision contains adequate reasons.

Chapter 4 Institutional Arrangements

Article 17

Oversight role of the AFCAC Plenary

17.1. In accordance with Section II of the AFCAC Constitution of 2009, the Plenary of AFCAC, acting as the supreme organ of the Executing Agency shall :

- (a) adopt its reports in accordance with Article 6 (l) and cause further action to be taken ;
- (b) adopt its tri-annual work plan in accordance with Article 10;
- (c) establish procedures for decision-making by the Secretary General ;
- (d) approve the provisional budget submitted by the Secretary General ;
- (e) recommend candidates to serve on as Expert Mediators or Arbitrators ;
- (f) make recommendations for the imposition of sanctions against a State Party ;
- (g) approve the Notification of Proposed Rulemaking on the Yamoussoukro Decision.

2. The Plenary may advise the Secretary General on any matter related to strategic development of air transport liberalisation, on.

Article 18

The Secretary General

18.1. The Executing 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.

18.2. Relevant organs of the African Union may at any time invite the Secretary General of the Executing Agency to report on matters relating to the implementation of the Yamoussoukro Decision.

18.3. The Secretary General, shall in addition to the function and powers provided for in Article 14 of the AFCAC Constitution of 2009, shall exercise powers and perform the functions hereto :

- (a) execute the powers and functions of the Executing Agency as defined in Article 5 of this Regulation, its implementing rules and any applicable law;
- (b) cooperate and collaborate with the regional economic communities and liaise with the organs of the African Union to ensure the implementation of the Yamoussoukro Decision ;
- (c) undertake investigations and inspections as provided for in Articles 12 and 13 ;
- (d) prepare reports pursuant to Article 8 of this Regulation and submit it to the AFCAC Plenary and relevant organs of the African Union ;
- (e) prepare a provisional budget for the Executing Agency.

Chapter 5 Financial Arrangements

Article 19 Budget

19.1. The revenues of the Executing Agency shall consist of :

- (a)** contributions from 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 Executing Agency ;
- (d)** any other sources as may be approved from time to time.

19.1. The expenditure of the Executing Agency shall include the staff, administrative, infrastructure and operational expenses.

19.2. The Executing Agency shall in accordance with this Regulation submit the approved provisional budget and proposed work plan to the organs of the African Union.

Article 20 Implementation and control of the budget

20.1. The Secretary General shall implement the budget of the Executing Agency.

20.2. The Secretary General shall submit audited accounts to the AFCAC Plenary and the organs of the African Union for their consideration and appropriate action.

Article 21 Fees

21.1. The Executing Agency shall within six (6) months of entry into force of this Regulation submit a draft regulation on fees and charges for approval by the relevant organs of the African Union.

21.2. The Regulations on fees and charges shall determine in particular the matters for which fees and charges are eligible, the amount and the way in which they are to be paid.

Final Provisions Article 22

Entry into force

This Regulation shall enter into force upon adoption by the Assembly of Heads of State and Government of the African Union.

{Adopted by the 30th Ordinary Session of the Assembly, 28-29 January 2018, Addis Ababa - Ethiopia. Assembly/AU/Dec 676(XXX) - Decision on Legal Instruments}

APPENDIX 1

TO THE REGULATION 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”).

Preamble

Whereas these Rules of Procedure are adopted pursuant to Article 15 of the Regulation on the Powers, Functions and Operations of the Executing Agency of the Yamoussoukro Decision and outline steps to be followed in developing Regulations, Decisions and Guidelines.

Rule 1 Definitions

For the purposes of this Rules of Procedure:

“**Rulemaking**” shall mean the development and issuance of rules by the Executing Agency.

“**Rules**” comprises the following proposed to be developed by the Executing Agency :

- decisions ;
- regulations ;
- guidelines ;

Rule 2

Rule-making Programme

1. The Secretary General shall establish an annual rule-making programme in consultation with the Monitoring Body and the regional economic communities.
2. The rule-making programme shall take account of :
 - i. the object and basic principles set out in Article 3 of the Regulation on the Powers, Functions and Operations of the Executing Agency ;
 - ii. the object of implementing a liberalised air transport market in Africa ;
 - iii. significant protection of the interests of the African air transport consumer ;
 - iv. the need to ensure a vibrant but safe, economically viable, efficient and healthy African air-line 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 Executing 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 Secretary General shall prioritize each task taking into account the urgency, resources at the disposal of the Executing Agency and potential continental impact of the proposal.
7. The Secretary General shall adapt the rule-making programme as appropriate in light of unforeseen and urgent rule-making demands. The Monitoring Body shall be informed of any such changes.
8. The adopted rulemaking programme shall be published in the Executing Agency's official publication.
9. The Secretary General shall conduct regular reviews of the impact of the Rules issued under this Regulation.

Rule 3 Initiation

1. Rule-making activities shall be initiated in accordance with Rule 3 (6).
2. The Secretary General shall draw up terms of reference and from time to time amend the same for each rule-making task after consulting the Monitoring Body. The terms of reference, which shall be published in the Executing 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.
3. The Secretary General shall choose between the use of a drafting group, consultants or Executing Agency resources for the fulfilment 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, other service providers and other interested parties, as well as within the Executing Agency itself.
5. The Executing Agency shall provide drafting groups with the administrative and logistical support necessary for the fulfilment 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 Executing Agency shall adopt standardised working methods for drafting groups.

Rule 4 Drafting

1. New rules or amendments thereto shall be drafted in accordance with the terms of reference referred to in Rule 4 of this Rules of Procedure.
2. Drafting of rules shall have regard to the Yamoussoukro Decision and Rules adopted by the regional economic communities
3. 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 then publish a Notice of Proposed Rulemaking (YDNPR) in the Executing Agency's official publication, including

the following information :

- (a) the proposed rule ;
- (b) an explanatory note describing the development process ;
- (c) full details of significant or contentious or interface issues identified during the drafting process ;
- (d) details of the situation with respect to the Yamoussoukro Decision in relation to the proposed rule ;
- (e) the role of the regional economic communities, the Monitoring Body and other organs of the African Union in relation to the proposed rule.

Rule 5 Consultation

1. All State Parties, eligible airlines, air transport service providers and any person or organisation with an interest in the rule under development shall be entitled to comment on the published Notice of Proposed Rulemaking.
2. The proposed rule shall be disseminated to all relevant stakeholders entitled to comment upon it.
3. The consultation period shall be four (4) months from the date of publication of the proposed rule, unless the Secretary General specifies otherwise.
4. During the consultation period, the Secretary General may, in exceptional and strictly justified circumstances, extend the consultation period specified in paragraph 3 at the request of States Parties, airlines, other service providers or interested parties. Such changes to the length of the consultation period shall be published in the official publication of the Executing Agency.

Written 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).

Rule 6 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 Executing Agency staff or drafting group tasked with the drafting of the rule in question.
2. Further consultation 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 and publish a response within three (3) months detailing the following :
 - (a) summary of the original proposed rule ;
 - (b) publication and commentary dates ;
 - (c) list of all parties commenting on the rule in question ; and

(d) summary of comments received and the Executing Agency's response thereto ;

(e) summary of revised rules.

4. If, based on the number of comments received, the Secretary General is unable to publish the Response to the proposed rule referred to in paragraph (3) above by the deadline specified, he or she shall publish an amended timetable for the rulemaking process.

5. 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 Rules of Procedure.

6. If the comments received indicate major objections to the proposed rule, the Secretary General shall consult the AFCAC 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 take a decision and include in the Response to the proposed rule the results of this consultation and the impact and consequences of his/her decision regarding the issue at stake.

Rule 7 Adoption and Publication

1. 1. The Secretary General shall issue a decision in respect of the rule in question no earlier than two (2) months following the date of publication of the Response to proposed rule.

2. Rules issued by the Executing Agency shall be published in its official publication, together with an explanatory memorandum.

ANNEX 5

TO THE YAMOUSSOUKRO DECISION {ASSEMBLY/AU/DEC 676(XXX) - DECISION ON LEGAL INSTRUMENTS}

REGULATIONS ON COMPETITION IN AIR TRANSPORT SERVICES WITHIN AFRICA

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 11th 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 3rd 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 14th 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 10th July 2002 ;

CONSIDERING EX.CL/Dec.359 (XI) wherein the Executive Council endorsed 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 ;

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 1

Definitions, objectives and the scope of application

Article 1 Definitions

In these Regulations :

“Abuja Treaty” : means the Treaty Establishing the African Economic Community adopted at Abuja, Nigeria on the 3rd day of June, 1991 and which entered into force on 12 May 1994 ;

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

“Air transport undertakings” : includes airlines and other air transport service providers ;

“Air Transport Services” : means 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 ;

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

“Capacity” : means 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 a body established in a State Party and charged with regulating competition in the air transport sector, or in absence of such an institution ;

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

“Executing Agency” : means the African Air Transport Executing Agency provided for under Article 9 (4) of the Yamoussoukro Decision ;

“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 Yamoussoukro Decision 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 regionaleconomic community concerned ;

“State Party” : means a Member State that has ratified or 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 by the Yamoussoukro Decision ;

“Scheduled and non-scheduled air services” : shall 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” : means an association of airlines with the aim of promotingco-operation activities of its members.

Article 2 Objectives

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

Article 3 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.

Chapter 2

Prohibited Practices, Agreements And Decisions

Article 4 Prohibited Practices, Agreements and Decisions

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

4.2. Subject to paragraph 3(a) of this Article and Article 8 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 ; or

(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 ;

1.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.

1.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 causes 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 5 Abuse of Dominant Position

5.1. 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:

- 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 ; or

iv. payment for services ;

(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 6 Non-discrimination in national and regional legislation and administrative measures

6.1. 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 other State Parties.

6.2. 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 7 Subsidies

7.1. These Regulations prohibit the granting of any subsidy by any State Party or regional economic community which distorts or threatens to distort competition.

7.2. The Executing Agency shall propose rules on the conditions under which subsidies may be granted.

Article 8 Exemptions and Safeguard Measures

8.1. The Executing Agency may, by these Regulations, exempt any particular practices, agreements or decisions which may be deemed illegal or prohibited under Article 4 hereof.

8.2. The Executing Agency may, on application by an eligible airline, approve measures designed to remedy any adverse effects a State Party may experience by reason of the implementation of the provisions of Chapters 1 and 2 of these Regulations.

8.3. Copies of all applications for exemption under paragraph 1 hereof shall be sent to the relevant Regional Competition Authority and the Executing agency.

8.4. Notwithstanding paragraph 1 of this Article, in the event of negative economic 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 Executing Agency.

8.5. These safeguard measures shall remain in force for a maximum period of one (1) year and shall not distort or threaten to distort competition.

8.6. 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 8(5) hereof distorts, threatens to distort or has the effect of distorting competition.

8.7. The regional competition authority and/or the Executing Agency shall recommend to a State Party the withdrawal, determination or suspension of such a safeguard measure in the event of a negative determination in terms of the impact thereof.

8.8. 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 the Regulations on the Powers, Functions and

Operations of the Executing Agency of the Yamoussoukro Decision.

8.9. 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 8(8) hereof.

8.10. Such interim measures shall apply for a period not exceeding ninety (90) days.

8.11. 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 3

Enforcement, investigation, negotiation, arbitration and judicial review

Article 9 The Executing Agency

9.1. 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 Chapter Two ;

(d) granting, refusing or revoking exemptions in terms of Article 8 ;

(e) reviewing legislation or administrative measures of State Parties in terms of Article 6 ;

(f) reporting to the organ of the African Union responsible for the air transport sector on any matter relating to the application of these Regulations ; and

(g) performing any other function assigned to it under these Regulations.

9.2. The Executing Agency may delegate its functions or powers of investigation to the Regional Competition Authority or a State Party

Article 10 Complaints

10.1. Any State Party, air transport undertaking, or any interested party may lodge a complaint in writing with the Regional Competition Authority or Executing Agency against an air transport undertaking concerning an alleged breach of these Regulations by that air transport undertaking.

10.2. The relevant Regional Competition Authority or Executing Agency shall within thirty (30) days of receipt of a complaint made under paragraph 1, forward a copy of such complaint to the competent authority of the State Parties.

10.3. Such competent authorities shall have the right of audience before the Executing Agency.

10.4. The Executing Agency may, on its own motion, initiate an investigation into a suspected breach of these Regulations by an air transport undertaking.

Article 11 Investigation and Procedural Fairness

11.1. In the execution of the duties under these Regulations, the Executing Agency may undertake all necessary investigations into air transport undertakings and associations of air transport undertakings.

11.2. Where a Regional Competition Authority or the competent authority of a State Party undertakes investigation into an air transport undertaking or association of air transport undertakings either of its own motion or on the delegated authority of the Executing Agency, the Authority shall submit its investigation report to the Executing Agency within a reasonable period.

11.3. Without prejudice to paragraphs (1) and (2) above, the investigating body shall submit its preliminary findings within thirty (30) days and complete its investigation and final report within sixty (60) days of receipt of a complaint.

11.4. The Executing Agency or relevant Regional Competition Authority shall within a reasonable time, prior to the envisaged investigation inform the competent authority of the State Parties of the proposed investigation and the identity of the authorised officials. The competent authority of the State Parties shall assist the officials of the Executing Agency or Regional Competition Authority if so requested.

11.5. In the execution of its duties, the Executing Agency or Regional Competition Authority shall act with due regard to the rules of natural justice.

Article 12 Hearing of the Parties Concerned

12.1. Before taking any decision under these Regulations affecting air transport undertakings or associations of air transport undertakings, the Regional Competition Authority and/or Executing Agency shall give the air transport undertakings or associations of air transport undertakings concerned the opportunity of being heard. There shall be a written record of the hearing.

12.2. The hearing shall be conducted in accordance with appropriate Rules of Procedure and there shall be a written record of the hearing

Article 13 Outcome of Complaint

13.1. Where the Executing Agency finds that there has been an infringement of any provision of Chapter Two of these Regulations, it shall direct the air transport undertaking or association of air transport undertakings concerned to bring such an infringement to an end, failing which it may impose such provisional measures or penalties as appropriate.

13.2. 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.

13.3. The Executing Agency shall simultaneously send a copy of its decision to the competent authority of the State Party in whose territory the head office of the air transport undertaking or association of air transport undertakings is situated.

Article 14 Provisional Measures

14.1. 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 air transport 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.

14.2. Such provisional measures shall apply for a period not exceeding ninety (90) days.

14.3. The Executing Agency may extend the provisional measures for a period not exceeding thirty (30) days.

Article 15 Cooperation with Member State Authorities and Access to Information

15.1.1. The Executing Agency shall exercise its powers and apply its procedures in collaboration with the Regional Competition Authorities and competent authorities of the State Parties.

15.2. 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 State Parties and from an air transport undertaking or association of air transport undertakings.

15.3. A copy of the request for information to an air transport undertaking or association of air transport undertakings shall also be sent to the competent authority of the State Party in whose territory the head office of the air transport undertaking or association of air transport undertakings is situated.

15.4. 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 for the failure to supply information within the time limit indicated by the Executing Agency.

Article 16 Penalties

16.1. The Executing Agency may, depending on the gravity and the duration of the infringement, decide to impose penalties on an air transport undertaking or association of air transport undertakings where they intentionally or negligently :

(a) infringe any provision of these Regulations ;

(b) supply incorrect or misleading information in connection with an application

; or

(c) supply incorrect information in response to a request made, or fail to supply information within the time limit indicated by the Executing Agency.

16.2. The Executing Agency shall from time-to-time review such penalties.

16.3. In the case of a second or subsequent infringement, the Executing Agency may impose a stiffer penalty.

Article 17 Review of the Decisions of the Executing Agency

1. Any party whose rights, interests or legitimate expectations have been affected by a decision of the Executing Agency may appeal to the relevant institutions applicable under the terms of the Regulations on Dispute Settlement Mechanisms Relating to the Implementation of the Yamoussoukro Decision.

Article 18 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 mechanisms outlined in the Regulations on Dispute Settlement Mechanisms Relating to the Implementation of the Yamoussoukro Decision.

Article 19 Confidentiality

19.1. Information acquired as a result of the application of these Regulations shall be used only for the purpose of the relevant request or investigation.

19.2. The Executing Agency, the Regional Competition Authorities 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 confidentiality and which has been acquired by them as a result of the application of these Regulations. The Executing Agency shall develop and strictly enforce appropriate rules to give effect to this provision.

Article 20 Publication of decisions

20.1. The Executing Agency shall publish the decisions which it makes under these Regulations.

20.2. 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 air transport undertakings in the protection of their business secrets.

Article 21 Implementing provisions

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

- (a) guidelines on subsidies ;
- (b) rules of procedure on exemptions ;
- (c) the standard form, content and other details pertaining to :
 - i. applications ; and
 - ii. complaints and their outcomes ;
- (d) the rules on hearings;
- (e) penalties;

Article 22 Amendments

22.1. Each State Party may propose amendments to this Regulation.

22.2. 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.

22.3. Amendments to this Regulation shall enter into force after their approval by the Assembly of Heads of State and Government of the African Union.

Article 23 Entry into Force

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

{Adopted by the 30th Ordinary Session of the Assembly, 28-29 January 2018, AddisAbaba - Ethiopia. Assembly/AU/Dec 676(XXX) - Decision on Legal Instruments}

APPENDIX 1

TO ANNEX 5 TO THE YAMOUSSOUKRO DECISION: 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 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:

GUIDELINES

Article 1

The following airline industry standards shall normally not be considered as a violation of Article 4 of the Competition Regulations and shall be presumed excepted under Article 4 (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 coordination, for the purpose of promoting the establishment of fully interline able 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 interline able 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 4 of the Regulations, save where an exemption is obtained from the relevant authority under Article 8 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 7 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 6 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 of 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 8(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 6, the relevant authority :

(a) shall render decisions on applications for exemptions under Article 8 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 5 of the Regulations.

Article 6

Where a State Party wishes to apply to the relevant authority to approve safeguard measures under Article 8(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 8,9, 10, 11, and 12 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 9 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 14 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 14 of the Competition Regulations and the right to have the decision of the Executing Agency under Article 11 and any penalties reviewed under Article 17 of the Regulations ;

(d) in addition 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 16 of the Competition Regulations, and the right to have the decision of the Executing Agency under Article 13 and any penalties reviewed under Article 17 of the Competition Regulations ;

(e) officials of the competent authority of the State Party 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 defence; 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 13 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 13(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 16 of the Regulations ;
- (d) in the event of a prohibited subsidy under Article 7 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 8 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 13(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 21(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 13(3) of the Regulations.

Article 11

Where the Executing Agency is of the opinion that provisional measures must be ordered in terms of Article 14 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 15 of the Regulations, the Executing Agency finds it necessary to communicate with State Parties 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 16 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 4 and/or 5 of the Regulations, or do not comply with a cease and desist order under Article 13 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 – 1003/17/A

Application for an exemption By the Executing Agency Under Article 8(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 19 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 8(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 Executing Agency may ask applicant(s) for any additional information (which will enjoy professional secrecy under Article 19 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 Executing Agency, 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 Executing Agency tends towards a rejection of the application, it shall so inform the applicant(s) who remain(s) entitled to a hearing under Article 12 of the Regulations ;

(g) where the Executing Agency 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 Form – 1003/17/B

Complaint

To the Executing Agency

Under Article 10 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 13 (cease and desists orders) and/or Article 16 (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 19 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 authority of a State Party according to Article 10(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 19 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 16 of the Regulations ;

(e) the undertaking (or association of undertakings) against whom a complaint has been made be entitled to a hearing under Article 12 of the Regulations ;

(f) the Executing Agency shall endeavour to render a decision on the complaint under Article 13 of

the Regulations (cease and desist orders) and/or Article 16 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 YAMOUSSOUKRO DECISION {ASSEMBLY/AU/DEC 676 (XXX) - DECISION ON LEGAL INSTRUMENTS}

AFRICAN UNION REGULATIONS ON THE 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 18 th and 19 th 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 th 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 rd 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 th November 1999, approved by the Conference of Heads of State and Government of OAU and signed by the current Chairman in Lomé on 12 th 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 th 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 27th 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 Definitions

In these Regulations, unless the context otherwise requires :

“Abuja Treaty” : means the Treaty Establishing the African Economic Community adopted at Abuja, Nigeria on the 3rd day of June, 1991 and which entered into force on 12 May 1994 ;

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

“Air transport undertakings” : include airlines and other air transport service providers ;

“Air transport services” : means any scheduled or unscheduled air service performed by aircraft for the public transport of passengers, mail or cargo ;

“Air transport service providers” : 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 ;

“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 ;

“Airline” : means an air transport enterprise holding a valid Air Operators Certificate and operating air transport services within the territory of a State Party ;

“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 ;

“Cargo” : means any property carried on an aircraft other than mail, stores and accompanied or mishandled baggage ;

“Consumer” : in relation to passengers means the person who takes or agrees to purchase an airline ticket or take a tour package (i.e., a combination of air transportation and ground or cruise accommodations) or tour component (e.g., a hotel stay) ('hereinafter, the principal contractor'), or any person on whose behalf the principal contractor agrees to purchase the ticket, package or component ('the other beneficiaries') or any person to whom the principal contractor or any of the other beneficiaries transfers the ticket, package or component ('the transferee') ;

“Eligible airline” : means any airline duly licensed by a State Party and authorised to lift and put

down passengers, cargo and mail in the territory of one or more State Parties and actually operating the flights in question and Certificated as an eligible airline to operate under the terms of the Yamoussoukro Decision ;

“Ground handling” : means the services provided to airlines at airports and comprise the following passenger handling, baggage handling, freight handling, mail handling, ramp handling, oil and fuel handling, aircraft maintenance, flight operations and crew administration, and surface transport ;

“Licence” : means a valid licence granted by the Civil Aviation Authority or its equivalent under valid Regulations of States Parties to an air transport undertaking;

“Non-eligible airline” : means any airline duly licensed by a State Party and authorised to operate intra-African routes but has not been certificated as an eligible airline to operate under the terms of the Yamoussoukro Decision ;

“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 ;

“State Party” : a Member State that has ratified or 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 by the Yamoussoukro Decision.

Article 2 Scope of application of the Regulations

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

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

2.3. 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.

Article 3 Objectives

3.1. The objective of these Regulations is to protect the consumer of air transport services against unfair treatment in the provision of services.

3.2. 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.

Article 4 Prohibitions: Unfair and Deceptive Practices

3.1. Under these Regulations, the following are inherently unfair practices:

(a) Misleading advertising:

i. shall be considered , an unfair marketing and deceptive practice for any seller of scheduled air transportation within, to or from any State Party, or of a tour, or tour component 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 commissions, brokerage fees, administrative charges, or any other fees) to passengers not expressly advertised, displayed in the marketing material or expressly communicated to the consumer at the initial inquiry displayed.

(b) Failure to disclose Ticket Conditions Where an airline, or an air ticket agent fails to disclose, verbally or in written communication, prior to the purchase of a ticket the following :

i. the name of the air carrier providing the air transportation ; and

ii. 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) Persistent boarding denials.

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.

(d) Persistent abuse of free-seating policy.

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.

(e) Discriminatory application of compensation under Warsaw/Montreal Convention:

Where it is observed that any practices, 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 under the Warsaw Convention/Montreal 1999, 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.

(f) Chronically delayed flights.

A series of delayed flights shall be considered as unfair and defective practice. An airline shall be considered as operating chronically delayed flights if flights by an airline is operated at least 30 times in a calendar quarter arrives more than 15 minutes late, or is cancelled more than 50 percent of the time during that quarter.

4.2. The Executing Agency, a Regional Yamoussoukro Decision Authority or a State Party may on its own initiative or upon the receipt of a complaint, and if it considers it to be in the public interest, investigate and decide whether an airline or ticket agent has or is engaged in an unfair or deceptive practice in air transportation.

4.3. The Executing Agency, a Regional Yamoussoukro Decision Authority or a State Party, before investigating, shall serve sufficient notice to the airline or ticket agent and afford it a fair opportunity

to be heard.

4.4. If the Executing Agency, a Regional Yamoussoukro Decision Authority or a State Party establishes that an airline or ticket agent is engaged in an unfair or deceptive practice, it shall order that airline or ticket agent to stop the practice or method.

4.5. In enforcing Article 4 against an airline, the Executing Agency, a Regional Yamoussoukro Decision Authority or a State Party may opt to apply Article 4 (1) of the Regulations on Competition in Air Transport Services within Africa.

Article 5 Non-Discrimination

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, and physical stature, shall be prohibited in accordance with the African Charter of Human and Peoples Rights

Article 6 Maintaining adequate third party insurance cover

a. Each air transport 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 consumers.

b. Where demanded by authorized officials inspecting the airline under Article 19 of the Regulations on the Powers, Functions and Operations of the Executing Agency, the air transport 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.

Article 7 Means of Communication

7.1. Airlines, tour operators, consolidators and agents shall be obliged at all material times to obtain and hold a telephone number and/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 case of emergencies.

7.2. Subject to the data protection rules applicable in the territories of State Parties, the contact details obtained shall only be used to contact the person whose on record 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.

7.3. 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 the opening hours of the local office. Where such information is available on the website of the airline, it shall suffice that a reference to the website is clearly made at the customer service point. In applying this provision the airline shall be made available in the at least one official language of the African Union.

7.4. The airline and/or the air transport service provider shall ensure that they utilise the preferred mode of contact of each passenger in cases involving anticipated cancellations, overbooking, or delays. Where the notice is made less than 12 hours of the departure of the flight, unless the passenger has confirmed that he/she is able to retrieve his/her emails on a mobile device, such notice shall be communicated by phone or SMS.

7.5. The burden of proof rests with the air transport service provider in question as to whether the preferred details of a passenger was obtained when it was used to contact the passenger or whether alternative means of communication has been furnished and under what circumstances.

Article 8 Information to the consumer

8.1. At the time of purchase of the ticket or at the check-in counter the airline and the ground handling agent shall be obliged to inform the passenger in one official language of the African Union understood by the passenger the following :

- (a) the obligation to supply a means of communication for emergencies ;
- (b) any planned cancellations or long term delays anticipated at least 12 hours before the scheduled flight ;
- (c) the airline's obligations to provide alternative solutions and compensation in case of denied boarding, free seating, flight cancellation, delayed flight ;
- (d) right to request for documents, policies procedures on insurance, compensation, assistance, complaints procedures in line with these Regulations;
- (e) appropriate alternative means of communication as an illiterate, visually impaired, and/or physically challenged persons ;
- (f) any other information the Executing Agency may demand to be displayed to the passenger under the terms of this provision.

8.2. Air transport service providers shall visibly display information on their premises, on their websites and relevant marketing materials stating the rights of the consumer in relation to specific services provided.

8.3. 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 9 Complaints Procedures

Each Air transport service provider shall, either establish a consumer relations desk or contact person at every airport it operates for the purpose of receiving, resolving and channelling complaints to their head offices, as well as liaising with the aeronautical authorities, where necessary.

Article 10 Overbooking

10.1. 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 to limit negative effect on passengers including, but not limited to, offering passengers online boarding facilities.

10.2. 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 which shall not be lower than the compensation scheme applied in Article 19 to these Regulations. Airlines shall, in this regard, pay particular attention to passengers travelling furthest from the departing airport as a measure of preventing unnecessary hardship on consumers and may for this reason compile information on which part of the territory passengers are likely to travel from.

10.3. 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 to compensation as applicable under these Regulations.

10.4. 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 19 hereof.

Article 11 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 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. provide refreshments including water, soft drinks, confectioneries or snacks ;
- iii. provide two international telephone calls, SMS or e-mails ; and
- iv. cause an announcement to 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. provide refreshments including water, soft drinks, confectioneries or snacks ;
- iii. provide a meal ;
- iv. provide hotel accommodation ;
- v. provide two international telephone calls, SMS or e-mails ;
- vi. supply transport between the airport and place of accommodation (hotel or other accommodation) ; and
- vii. cause an announcement to 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 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-route the consumer, under comparable transport conditions, to their final destination at the earliest opportunity ; or
- iii. re-route the consumer, 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 sub- paragraphs a (i) or b (i) of this provision, the airline shall assure 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 12 Cancellation of Flight

12.1. 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 at the airport, or where the passenger on a connecting flight may have begun the earlier part of his/her flight 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 :

ii. right to cancel their booking in accordance ;

iii. right to be re-routed or offered an alternative means of transport, where convenient to the passenger in question ; and

iv. right to compensation ;

v. offer refreshments including water, soft drinks, confectioneries or snacks;

vi. right to 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.

12.2. 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.

12.3. Passengers shall have the right to compensation by the airline for a cancelled flight unless:

(a) 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

(b) 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.

12.4. An airline shall not be obliged to pay compensation in accordance with Article 21, 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.

12.5. 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 13 Downgrading

13.1. 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.

13.2. 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 14 Travel Agents and Package Tour Operators

Subject to the provisions of this 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 its 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 contact the agent or the airline, as the case may be ;

iv. in the case of journeys or stays abroad by minors, information enabling direct contact to be established with the child or guardian 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 15 Airport Operators

An airport operator shall provide the following for passengers and all other persons within the airport premises :

(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.

Article 16 Right to reimbursement

16.1. When reference is made in these Regulations to the right of the passenger to reimbursement, reimbursement shall be made within thirty (30) days for the full cost of the ticket at the price at which it was bought for :

(a) the part or parts of the journey not made ; and

(b) 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.

16.2. The reimbursement shall be paid in the form in which the ticket or tour package was purchased.

Article 17 Re-routing

17.1. Where an airline decides to re-route a passenger, the passenger shall be entitled to :

(a) reimbursement within thirty (30) 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 ;

(b) a return flight to the first point of departure, at the earliest opportunity and accommodation.

17.2. Either re-routing, under comparable transport conditions, to their final destination at the earliest opportunity and accommodated; or at a later date at the passenger's convenience, subject to availability of seats. where a town, city or region is served by several airports, and 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 18 Right to compensation

18.1. Where reference is made to this Regulation to the passenger's right to compensation, other than compensation pursuant to the Warsaw Convention or Montreal 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 with 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.

18.2. 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.

18.3. When passengers are offered re-routing to their final destination on an alternative flight pursuant to Article 22, the airline may reduce the compensation provided for in paragraph 1 by 50% if the arrival time 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 by four hours, in respect of all flights in excess of 6 hours.

18.4. The compensation shall be paid in the form in which the ticket or tour package was purchased.

Article 19 Administrative Procedures

19.1. Each Aeronautical Authority shall appoint a customer relations officer at each airport to whom complaints may equally be addressed.

19.2. The Executing Agency and the Regional Yamoussoukro Decision Authority shall establish consumer protection units and publish their details, including but not limited to their contact details and their procedures on their websites.

19.3. A complaint may be made to the Aeronautical Authority against a service provider, or failing a satisfactory resolution to the Regional Yamoussoukro Decision Authority 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.

19.4. A complaint may be made in writing as in the prescribed form and transmitted to the Aeronautical Authority.

19.5. 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 or any evidence of the complaint ;

(c) any response or responses or correspondence thereto ;

(d) any other relevant document(s).

19.6. 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.

Complainants can present a class action before the Aeronautical Authority.

Article 20 Investigation

20.1. The Executing Agency, the Regional Yamoussoukro Decision Authority or the Aeronautical Authority shall carry out an investigation on the substance of the complaint and the response of the service provider within a reasonable period of time after the receipt thereof.

20.2. In carrying out any assessment under these Regulations, a designated officer shall have all the powers of investigation under national law or under the provisions of the Regulations on Dispute Resolution under the Yamoussoukro Decision, and in addition may request for submissions to be made by any interested person(s) in relation to a complaint.

20.3. It shall be unlawful for any service provider, their employees or agent to obstruct or prevent the designated officers from carrying out investigations or withhold any information requested and relating to any violation of these Regulations.

20.4. The designated officer 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 procedures taken to resolve the matter.

Article 21 Determination of Complaints

21.1. After each investigation an assessment report shall be produced with its recommendations therein.

21.2. Upon 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 Executing Agency, the Regional Yamoussoukro Decision Authority or the Aeronautical Authority shall make a determination in one of the following respects :

(a) the complaint lacks merit pursuant to which the complaint shall be deemed dismissed ;

(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 administrative hearing procedure in accordance with applicable regulations of the relevant body conducting the investigations.

21.3. The Executing Agency, the Regional Yamoussoukro Decision Authority or the Aeronautical Authority shall give notice of its determination to the interested parties with fourteen (14) days.

Article 22 Penalty

22.1. Any service provider that violates any provision of these Regulations shall be liable to penalties imposed by the Executing Agency, the Regional Yamoussoukro Decision Authority or the Aeronautical Authority in accordance with applicable law.

22.2. The penalties imposed 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 taken into consideration.

22.3. The Executing Agency shall draft a schedule of penalties to be imposed for breach of provisions of this Regulation and submit for adoption by the appropriate Organs of the African Union.

Article 23 Review by the Executing Agency

Within 2 years of entry into force of this Regulation, the Executing Agency shall report to the concerned Specialized Technical Committee of the African Union on the operation and the results of this Regulation. The report shall be accompanied where necessary by proposals to modify this regulations.

Article 24 Amendments

24.1. Each State Party may propose amendments to this Regulation.

24.2. 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.

24.3. Amendments to this Decision shall enter into force after the approval by the Heads of State and Government of the African Union.

Article 25 Entry into Force

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

[Adopted by the 30th Ordinary Session of the Assembly, 28-29 January 2018, AddisAbaba - Ethiopia - Assembly/AU/Dec 676(XXX) - Decision on Legal Instruments].

PART B

GUIDELINES FOR THE NEGOTIATION OF AIR SERVICES AGREEMENTS BETWEEN MEMBER STATES OF THE AFRICAN UNION AND NON-AFRICAN STATES AND REGIONS

GUIDELINES FOR THE NEGOTIATION OF AIR SERVICES AGREEMENTS BETWEEN MEMBER STATES OF THE AFRICAN UNION AND NON-AFRICAN STATES AND REGIONS

We, the African Ministers responsible for Transport, Transcontinental and Interregional Infrastructure, Energy and Tourism (STC-TTIIET);

Having regard to the Constitutive Act of the African Union, adopted in Lomé on 11th of July 2000;

Having regard to the Treaty Establishing the African Economic Community, (hereinafter referred to as the Abuja Treaty), signed in Abuja on 3rd June 1991, namely its chapter X and in particular its Articles 61.2(c)(ii) and 61.2(e), on harmonisation of air transport policy;

Having regard to the Decision relating to the Implementation of the Yamoussoukro Declaration concerning the Liberalisation of Access to Air Transport Markets in Africa (YD) signed on the 14th of November 1999;

Considering the Convention on International Civil Aviation, done in Chicago on 7th of December 1944;

Considering the regulatory texts for the Yamoussoukro Decision, in particular the Regulations on Competition in Air Transport Services within Africa and Regulation on the Powers, Functions and Operations of the Executing Agency, adopted by the 30th Ordinary Summit of the African Union Assembly held on 28th – 29th January 2018;

Noting that the Assembly of Heads of States and Governments adopted the Declaration on the establishment of Single African Air Transport Market (SAATM) in January 2015, whose main objectives, among others, are to ensure the establishment of the SAATM, facilitation of air transport connectivity by implementing the regulatory texts of the YD and support the initiative of Championing States to open their respective air transport markets to each other immediately and without conditions;

Noting that the Heads of States and Governments of the African Union established and launched SAATM during the 30th Ordinary Summit of the African Union Assembly held on 28th – 29th January 2018; with member States to SAATM committing to the immediate implementation of the Yamoussoukro Decision;

Mindful of the fact that international aviation relations between Member States and third-party countries are traditionally governed by Bilateral Air Services Agreements, their annexes and other related bilateral or multilateral Air Services Agreements;

Recalling the efforts undertaken in the various sub-regions to consolidate, privatise (i.e., the attraction of private sector financing in air transport) and liberalise air transport services;

Considering the establishment of SAATM and the need to adopt a common African position on the negotiation of air services agreements with third party countries and blocks of countries;

Considering the regional or plurilateral template air services agreement contained in ICAO Doc 9587, Fourth Edition, 2017;

Having regard to the African Civil Aviation Policy, adopted by the Second Session of the African Union Conference of Ministers responsible for Transport held during the period 21-25 November 2011 in Luanda, Angola, in particular its article 2.6.1.5 on Reciprocity in international relations and Article 5.2 on Air Services Agreements;

Taking into account, the Guidelines for the negotiation of air services agreements between African Union States and the European Commission/European Union States adopted by the African Ministers responsible for Transport in April 2008;

Recognising the need to ensure the maintenance of the existing bilateral balance and to put

in place adequate safeguards to sustain effective participation of African States and carriers in international air transport;

Acting in accordance with the provisions of the Abuja Treaty;

HEREBY ADOPT THE FOLLOWING GUIDELINES.

Article 1: Definitions

For the purpose of these Guidelines the following expressions shall mean:

“Abuja Treaty”- The Treaty Establishing the African Economic Community adopted at Abuja, Nigeria on the 3rd day of June 1991;

“AFCAC”- African Civil Aviation Commission;

“AFRAA”- African Airlines Association;

“Air Operator Certificate or AOC” – A certificate authorising an operator to carry out specified commercial air transport operations;

“Air Services” and “Airlines” have the meaning respectively assigned to them in Article 96 of the Convention on International Civil Aviation done at Chicago on the 7th of December 1944;

“African air transport legal instruments” - the Yamoussoukro Decision, Annexures to the said Decision, decisions of the African Union, the Regional Economic Communities and the Executing Agency of the Yamoussoukro Decision relating to the application of the YD and its Annexes, and the Single African Air Transport Market;

“Authorisation” A privilege granted by the Aeronautical Authority of a State Party to an air carrier in accordance with Regulation on authorisation of air carriers in Africa and access of air carriers to intra-African routes under SAATM, permitting it to provide specified air services;

“AU”- African Union;

“AU Clause”- African Union Clauses for inclusion in Air Services Agreements with third party countries or Regions;

“Champion States”: African Union Member States that declared their solemn commitment to the implementation of the Yamoussoukro Decision towards establishment of SAATM by 2017 at the Twenty-Fourth Ordinary Session of the Assembly of Heads of State and Government of the AU, in Addis Ababa, Ethiopia on 31 January 2015, as listed in Assembly/AU/Commitment (XXIV). They are: Benin, Cape Verde, Congo Republic, Cote d'Ivoire, Egypt, Ethiopia, Kenya, Nigeria, Rwanda, South Africa and Zimbabwe;

“Chicago Convention or Convention”- Convention on International Civil Aviation done at Chicago on the seventh day of December, 1944 and includes any Annex thereto.

“Common African Position” – The Guidelines, AU Clauses and the recommendations adopted by the Meeting of Ministers of Air Transport held at Sun City, South Africa, on 18th-19th May 2005;

“Constitutive Act”- the Instrument establishing the African Union done at Lomé on the 11th of July 2000;

“Decision” - the Decision Relating to the Implementation of the Yamoussoukro Declaration concerning the Liberalisation of Access to Air Transport Markets in Africa done at Yamoussoukro on the 14th day of November 1999 and adopted by the Assembly of Heads of States of the African Union/African Economic Community at Lomé on the 11th of July 2000;

“Effective Control” -A relationship constituted by rights, contracts or any other means which,

either separately or jointly confer the right to a State Party or Group of State Parties or their nationals to exercise a decisive influence on the running of the business of the airline or the right to use all or a substantive part of the assets of the air carrier.

“Effective regulatory control of an air carrier”: that: (i) the air carrier holds a valid Operating Licence issued by the competent authorities; (ii) the licensing State has and maintains aviation safety and security oversight programmes in compliance with ICAO standards at least; and (iii) the air carrier meets the criteria for the operation of international air services established by the competent authorities.

“Eligible Airline”-any African air transport company fulfilling the requirement set forth in Article 6, sub-paragraph 6.9 of the Decision;

“External” – outside of the Africa Union and/or outside Member States of the African Union

“Group”- includes the Regional Economic Communities, Sub-Regional Group and/or a number of Member States;

“Guidelines” - These Guidelines for the negotiation of air services agreements between Member States of the African Union and Non-African States and Regions and the Annexures therein;

“IATA” - International Air Transport Association ;

“ICAO”- International Civil Aviation Organization;

“Member States”- State Parties to the Abuja Treaty, as well as any other African Countries which, although not a party to Abuja Treaty or not bound by the Yamoussoukro Decision, have declared in writing their intention to apply these Guidelines;

“Parties”: Member State(s) jointly with a third-party country or region involved in the negotiation of Air Services Agreements.

“SAATM”: The Single African Air Transport Market established for African Airlines within the framework of the African Union (AU) Agenda 2063 on the 29th Day of January 2018 between the states that have declared their Solemn Commitment as of to-date and for those that join later as provided for in Decision - Assembly/AU/Dec.665(XXX). adopted during the 30th Ordinary Session of the Assembly on the 29th January 2018 in Addis Ababa, Ethiopia;

“Solemn Commitment”: the declaration made by the Champion States and formal commitment made later by other African Member States on joining the Single African Air Transport Market, immediately and without any reservations whatsoever, to be party to the Declaration: Assembly/AU/Decl. 1 (XXIV), Decision: Assembly/AU/Dec.565(XXIV) and Solemn Commitment: Assembly AU Commitment(XXIV) reached at the Twenty-Fourth Ordinary Session of the Assembly of the Union held in Addis Ababa, Ethiopia, in January 2015, concerning the Full Implementation of the Yamoussoukro Decision on Liberalisation of Air Transport Markets in Africa, and the Establishment of a Single African Air Transport Market and Decision - Assembly/AU/Dec.665(XXX) establishing the Single African Air Transport Market;

“STC-TTIIET” - African Union Specialised Technical Committee of Ministers responsible for Transport, Transcontinental and Interregional Infrastructure, Energy and Tourism;

“REC” -A Regional Economic Community of Africa, collectively called the Regional Economic Communities;

“Tariff or Price”: Any fare, rate or charge for the carriage of passengers, baggage and/or cargo (excluding mail) in air transportation (including any other mode of transportation in connection therewith) charged by airlines, including their agents; and includes the conditions set by a carrier for availability of such fare, rate or charge;

“Third party country/Block of countries”-Non-African States and Regions or any State other than a State party;

Virtual airline: An airline designated with the intention to circumvent traffic rights restrictions imposed by bilateral or multilateral Air Services Agreements clauses; and

“YD Text” – The Yamoussoukro Decision Regulation on Competition, Consumer Protection, Approval of Air Carriers Market access, and Dispute Settlement.

Article 2: Scope of Application

2.2 These guidelines establish the modalities for negotiating bilateral and multilateral Air Services Agreements between Member States and third-party countries in respect of provisions relating to among others, airlines designation, authorisation, suspension and revocation of such designation or authorisation.

2.2 These Guidelines superseded the interim guidelines adopted by the First Conference of African Ministers of Transport (CAMT) held in Algiers, Algeria, from 21st to 25th April 2008, and endorsed by the 11th Assembly of Heads of State and Government held in Sharm El-Sheikh, Egypt, June/ July 2008 - (Ex.CL 432(XIII)), limited to the negotiation of air service agreements between Member States of the African Union and European Commission and/or the EU Member States.

2.3 Without prejudice to the provisions of paragraph 2.1 above, these Guidelines shall be subject to the provisions of the Convention insofar as those provisions are applicable to international air transport and are binding between the parties negotiating air services agreement.

Article 3: Objectives

3.1 To promote and defend African common position on Aviation issues of interest to the Continent and designated African Airlines as well as to protect the developing African Aviation industry from third party anti-competitive practices.

3.2 Member States should ensure that while conducting their negotiations with third party countries, the defence and promotion of the common interest of African countries (Member States) and designated African Airlines should be the basis for such negotiations and other external relations.

3.3 Member States should ensure that all existing bilateral or multilateral Air Services Agreements with third-party countries that do not conform to the common African position and contrary to the provisions of the Yamoussoukro Decision, should be amended or replaced by new agreements that are wholly compatible with the African position.

Article 4: Notification

4.1. Where a Member State or block of Member States intends to enter into a bilateral or multilateral Air Services Agreement with a third-party country or block of countries, it should notify AFCAC of its intentions in writing and provide the necessary documents to AFCAC. This notification should include a copy of the existing agreement, if available, other relevant documentation and an indication of the provisions to be addressed in the negotiations, the objectives of the negotiations and any other relevant information.

Article 5: Negotiations

5.1. A Member State should not enter into negotiations with a third-party country in respect of a new Air Services Agreement or the renegotiation of an existing Air Services Agreement, unless:

- a)** the conditions and requirements contained in these Guidelines are complied with in such negotiations; and
- b)** the notification procedure contained in Article 4 herein is complied with.

5.1. A Member State may invite AFCAC, if required, to participate as an observer in such negotiations.

5.1. If a Group of Member States wish to negotiate an Air Services Agreement with a third-party country or a block of countries, they should in their negotiations implement these Guidelines.

Article 6: Conclusion of Agreements

6.2 Upon conclusion of negotiations of an Air Services Agreement, the Member State concerned should notify AFCAC of the outcome of the negotiations together with any relevant documentation.

6.2 Member States should submit signed Agreements to AFCAC for registration.

6.3 Where the negotiations have resulted in an Air Services agreement, which does not incorporate the AU clauses adopted in these Guidelines, the Member State concerned should take the appropriate steps to eliminate such incompatibility.

6.4 In the event of incompatibility between the agreements and these Guidelines, concluded between a Member State or Group of Member States and third-party countries prior to the entry into force of these Guidelines, the Member States concerned should take appropriate steps to eliminate such incompatibility.

6.5 The Executing Agency should monitor the implementation of these Guidelines. In case of incompatibility, the Executing Agency should draw the attention of any Member State concerned, and call for consultations in accordance with the procedures prescribed in article

Article 7: Confidentiality

In notifying AFCAC of negotiations and their outcomes as envisaged in Articles 5 and 6, AFCAC should treat all information therein with confidentiality and Member States should clearly inform AFCAC whether it can be shared with other Member States.

Article 8: Multi-Modal Transport

8.1 The designated airlines of the Parties should be permitted to employ, in connection with international air transport, any intermodal transport to or from any points in the territories of the Parties. Airlines may elect to perform their own intermodal transport or to provide it through arrangements, including code share, with other modes of carriage. Such multi-modal services may be offered as a through service and at a single price for the air and intermodal transport combined, provided that passengers and shippers are informed as to the providers of the transport involved.

8.2 Any arrangement involving multi-modal transport and surface transportation providers should be subject to national laws, rules and regulations.

8.3 Member States should take into consideration, the policy guidelines on intermodal transport systems provided in the revised African Civil Aviation Policy chapter 13.

Article 9: Environmental Protection and Public Health

9.1 Member States should agree with the principle that before adopting environmental measures, they should evaluate possible adverse effects on the international air transportation, and, if such measures are adopted, they should take appropriate steps to mitigate any such adverse effects.

9.2 Member States should agree that when environmental measures are established, the aviation environmental policy guidelines provided in the African Civil Aviation Policy should be applied.

9.3 In applying provisions of Articles 9.1 and 9.2, Member States should resist unilateral measures by either Parties that have adverse economic impact on Member States.

9.4 Member States response to threat of possible pandemic affecting air transport should be timely, robust, coordinated and well harmonised in accordance with recommended policies and guidelines of AU, ICAO and World Health Organization (WHO).

1.5 Member States should ensure that aviation continues to be the safest form of travel and that the Parties agree to take all necessary measures to guarantee that air transportation does not become a meaningful vector for the transmission of pandemics, in accordance with article 14 to the Chicago Convention.

Article 10: Ground handling

1.1. The privilege granted to airlines from third party country(ies) to perform their own ground-handling in the territory of a Member State (“self-handling”) may be subject to physical or operational constraints resulting from considerations of airport safety or security and economic empowerment. Where such constraints preclude self-handling and/or where there is no effective competition between suppliers that provide ground-handling services, all such services should be available on an equal basis to all airlines .

1.2. Where Infrastructural constraints and the volume of activity impose impediments on the ability of Member States to liberalise ground handling services, bilateral Air Services Agreements should be flexible to accommodate special measures to meet the interest and needs of Member States.

Article 11: Competition Rules and Fair Competition

11.1. Member States should support a policy which encourages fair and regulated competition that enhances co-operation. In particular, Member States should ensure that a third-party country/block of countries designated airlines operate in such a manner that does not undermine the YD Competition Regulations and, where appropriate, that third party country/block of countries agrees to take action to eliminate all forms of discrimination or unfair competitive practices³, specific to African countries and African airlines.

11.2. Member States should support the development of internationally agreed rules and principles while resisting the extra-territorial applicability to national or internal competition rules that may have adverse effects on African airlines.

11.3. Member States should ensure that designated airlines of the third-party country are not allowed, either in conjunction with any other airline or airlines or separately, to abuse market power in a way which has or is likely or intended to have the effect of severely weakening the designated African airline(s) or excluding the designated African Airline as a competitor from a route.

Article 12: Transparency

12.1. Member States should support a policy which encourages transparency in the negotiation of Air Services Agreements with Third-Party Countries and Regions.

12.2. Member States should ensure that its laws, regulations, administrative practice and procedures of general application, that pertain to or affect the negotiation of Air Services Agreements with third-party countries and regions are made publicly available.

12.3. Member States should establish or maintain enquiry points to answer reasonable enquires and provide required documentation within a reasonable period of time with respect to its laws, regulations and administrative practice and procedure relevant to Air Services Agreements with third-party countries and regions.

Article 13: Designation and Authorisation

13.1 A Member State or Member States whose designated airline meet the YD eligibility criteria specified in YD Article 6.9 should use the AU designation and authorisation clause (See Annexure 1 to these Guidelines on specific Clauses). This includes the designation of an eligible African multinational airlines.

13.2 Effective **regulatory** control should be maintained by the State responsible for issuing the operating licence.

13.3 Member States should not grant authorisations or permit commercial arrangements which have the intention of creating virtual airlines that act as vehicles for foreign non-African Airlines to access market for which they have no underlying traffic rights.

13.4 Member States, in their bilateral Air Services Agreements or multilateral Air Services Agreements with third party countries designating an airline licensed by another State, should ensure, among others, that the rights and obligations of the licensing State as well as the designating State under the bilateral Air Services Agreements are clearly defined.

13.5 In their negotiation with third-party countries or regions, Member States should apply reciprocity measures when the third-party designation is a block of airlines.

Article 14: Refusal, revocation, suspension or limitation of Authorisation⁸

14.1 Without prejudice to refusal, revocation, or limitation of authorisation resulting from non-compliance with the designation and authorisation clauses as provided for in Annex 1 of these Guidelines, a Member State may refuse, revoke, suspend or limit the authorisations or permissions of an air carrier designated by a third-party country or block of countries where:

14.1 the Member State determines that, by exercising traffic rights under the Agreement on a route that includes a point in another third-party country, the air carrier would be circumventing restrictions on traffic rights imposed by a bilateral agreement between the Member State and that other third-party country;

Or

14.2 the air carrier holds an Air Transport Licence issued by other third-party country and there is no bilateral Air Services Agreement between the Member State and that other third-party country, and traffic rights to that other third-party country have been denied to the air carrier designated by a third-party country.

14.2 Effective regulatory control is not being maintained by the Member State or the third-party country responsible for issuing the operating licence.

14.3 Authorisations should not be revoked, suspended or limited in any way without notice and consultations unless this is necessary/essential to avoid an imminent infringement of laws affecting safety or security.

14.4 When dealing with the issue of authorisation, including the circumstances where an authorisation is limited or revoked, the question of compliance with domestic or national law can also arise.

1.5 The Member States should ensure that the following are covered in the agreement:

(a) Domestic laws that qualify the exercise of treaty rights by airlines are expressly stated, including any limitation(s) or exemption(s) that may apply;

(b) Generally, unless there is good cause to do otherwise, the application of domestic law (including rules and regulations) is limited to:

(i) navigation of aircraft while within a Party's territory;

(ii) the airline's entry into or departure from its territory in respect of its passengers, crew, cargo and mail of aircraft, specifically in respect of clearance, immigration, passports, customs and quarantine; and

(iii) such other subject areas that are normally and reasonably regulated in accordance with the provisions of the Convention.

(c) Where a party proposes to amend, or introduce new, legislation they will give prior notice to, and consult with, the other party affected (for example, on issues such as consumer protection, environmental regulation etc.);

(d) Neither Party should give preference to its own or other airline over a designated airline of the other Party engaged in similar international air transport in the application of customs, immigration and quarantine laws; and

(e) Airline passengers, baggage and cargo in direct transit should only be subject to domestic laws relating to aviation security, narcotics control and immigration, prevention of illegal entry or in special circumstances.

Article 15: Traffic Rights, Capacity and Frequency

15.1 Member States should ensure that the traffic rights granted to the third-party countries are negotiated on a reciprocal basis, based on anticipated traffic requirement and that the designation clauses proposed by the third-party country do not directly or indirectly affect the agreed frequency and capacity indicated in the existing bilateral air services agreements

15.2 Member States should ensure that the capacity and frequencies to be operated by the designated airlines are balanced with the traffic demand in the specific market, number of designated airlines and permit reasonable load factors.

15.3 Member States and third-party countries or region should ensure that designated airlines by either party have a fair and equal opportunity to operate the agreed services on the specified routes in the air services agreements.

15.4 Member States should ensure that the rights for the carriage of cargo are in accordance with the ICAO policy in particular the recommendations of ATConf/6 on air cargo services. Member States should give due regards to the distinct features of air cargo services when exchanging market access rights in the negotiation of air services agreements and grant appropriate rights and operational flexibility so as to promote the development of air cargo services.

Article 16: Tariffs

16.1 Member States should ensure that their designated Air carriers freely set air tariff as dictated by prevailing market.

16.2 In all cases, the Member State concerned could request the filing of winter and summer tariff and schedule and also agree that such filing is processed expeditiously. The principle of reciprocity may be applied

16.3 Notwithstanding Article 16.2, Member States could agree that tariffs are not required to be filed but that the airlines should provide immediate access, on request, to information on historical, existing, and proposed tariffs to the aeronautical authorities of the Member States and third-party countries.

16.4 If compatible with the applicable tariff-setting regime, Member States should encourage their airlines to seek collaborative initiatives with other African airlines including interlining agreements by use of appropriate international tariff coordination mechanism which enhances co-operation amongst airlines.

16.5 The tariffs to be charged by the airline(s) designated by Member States or third-party country for carriage wholly within the market of the other Party should be subject to applicable law in that market.

Article 17: User Charges and Taxation

17.1 Member States should ensure that they take into consideration the ICAO policy on user charges in their Air Services Agreements with third-party countries.

17.2 By imposing charges on the designated airlines of the third-party country, Member States should consider the two following options:

17.3 Member States should agree, on a reciprocal basis, that user charges are assessed on the airlines of the third-party country on terms not less favourable than the most favourable terms available to any other airline at the time the charges are assessed;

Or

17.4 On a reciprocal basis, Member States should not impose or permit to be imposed on the

designated airlines of the third-party country user charges higher than those imposed on the airlines of non-contracting Party operating similar international services.

17.5 Member States are urged to implement the African Civil Aviation Policy, part 5.6 guidelines on taxation and where possible endeavour to eliminate any unjustifiable taxation on air transport, in their air services agreements with third party countries. Any revenue-generated from air transport specifically should be earmarked for aviation.

17.6 Member States should agree with third -party countries, on a reciprocal basis, that aircraft operated in international air transportation by designated airlines of each party, should be exempt from all import restrictions, customs duties, excise taxes, and similar fees and charges imposed by national authorities. Component parts, normal aircraft equipment and other items intended for or used solely in connection with the operation or for the repair, maintenance and servicing of such aircraft should be similarly exempt, provided such equipment and items are for use on board an aircraft and are re-exported.

17.7 Provided in each case that they are for use on board an aircraft in connection with the establishment or maintenance of international air transportation by the airline concerned, the following items should be exempt from all import restrictions, customs duties, excise taxes, and similar fees and charges imposed by national authorities, whether they are introduced by an airline of one Contracting Party into the territory of the other Contracting Party or supplied to an airline of one Contracting Party in the territory of the other Contracting Party:

17.8 aircraft stores (including but not limited to such items as food, beverages and products destined for sale to, or use by, passengers during flight);

17.9 fuel, lubricants (including hydraulic fluids) and consumable technical supplies; and spare parts including engines.

17.10 These exemptions should apply even when these items are to be used on any part of a journey performed over the territory of the other Contracting Party in which they have been taken on board.

Article 18: Safety

18.2 Member States, in their relations with third-party or region, should ensure the mutual recognition of certificates of airworthiness, certificate of operation, certificates of competency, and licenses and authorisations issued or validated by the other Party and still in force, provided that the requirements for such certificates or licenses at least equal the minimum standards that may be established pursuant to the Chicago Convention.

18.2 Member States, in their relations with third-party or region, should ensure that the agreements provide for the consultation procedure concerning the Safety standards maintained by the other Party relating to aeronautical facilities (including the provision of facilities such as air traffic control, airport and navigation aids), aircrews, aircraft, and operation of airlines of that other Party which includes notification to the other Party of findings that it does not effectively maintain and administer safety standards and requirements in these areas that at least equal the minimum standards that may be established pursuant to the Chicago Convention and the steps considered necessary to conform with these minimum standards, and the other Party shall take appropriate corrective action.

18.3 The agreement should provide for Member States and third party country(ies), to accept that any aircraft operated by or, on behalf of, a designated airline of a State, while within the territory of the other Party, be the subject of a ramp inspection by the relevant authorities of the other Party, to verify the validity of the relevant aircraft documents, and those of its crew members and the apparent condition of the aircraft and its equipment, provided that such examination does not cause an unreasonable delay in operation of the aircraft. The State carrying out the inspection may request or take appropriate measures to ensure compliance with Safety standards applicable in that State.

18.4 Member States should ensure in their relations with third party countries and/or blocks

of countries that the third-party country that is responsible for Safety is clearly identified and should obtain the necessary assurances from the designating State and the licensing State on their obligations to comply with the provisions of the Chicago Convention.

18.5 Member States should reserve the right to withhold, revoke or limit the operating authorisation or technical permission of an airline or airlines designated by the other Party in the event that the other Party does not take appropriate corrective action prescribed under Articles 18.2 and 18.3 within a reasonable time and to take immediate action, prior to consultations, as to such airline or airlines if the other Party is not maintaining and administering the standards referred to in Article 18.2 and immediate action is essential to prevent further noncompliance.

Article 19: Security

19.1. Member States should ensure that, consistent with their rights and obligations under international law, the Parties shall reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of the Agreement. Without limiting the generality of their rights and obligations under international law, the Parties shall in particular act in conformity with the provisions of any aviation security agreement that is binding on both Parties.

19.2 Member States could request the introduction into the Air Services Agreement procedure for handling differences which could be filed for Security standards.

1.3. Member States could propose to develop channels for the discussion of current and proposed Security measures.

1.4. Member States shall accept that any aircraft operated by or, on behalf of, a designated airline of a Member State, while within the territory of the other Party, may be the subject of an inspection by the relevant authorities of the other Party. The State carrying out the inspection may request or take appropriate measures to ensure compliance with Security standards applicable in that State.

19.5 Where the third-party country exercises the right to inspect an aircraft operating to their territory destination under their applicable laws, Member States should have a reciprocal right to inspect and take appropriate measures to ensure compliance with Security Standards of the concerned Member State.

1.5. Member States should ensure in their relations with the third-party countries and/or blocks of third-party countries that the third-party country that is responsible for Security is clearly identified and should obtain the necessary assurances from the designating third country and the licensing State on their obligations to comply with the provisions of the Chicago Convention and its Annexes.

Article 20: Slot Allocation

1.1. In order to ensure fair and equal opportunities for African airlines, all Air Services Agreements signed with third-party countries should include Option 2 of the ICAO guidelines, Doc 9587 Part 8.2, on Slot Allocation annexed to these Guidelines as Annexure 2: ICAO Clause on Slot allocation – option 2.

1.2. Member States' carriers could request for similar treatment to that resulting from any third-party country regulations under which a certain percentage of the newly available slots must be allocated to new entrant carriers.

Article 21: Safeguard Measures

1.1. Member States should request the introduction into an Air Services Agreement of a consultation procedure in the event that the competent authority of a Party deems that a certain operation or operations undertaken or intended to be undertaken by the designated airline/airlines of the other Party may constitute unfair competitive practices as listed in Article 21.2.

1.2. The Parties should agree that the following airline practices may be regarded as unfair

competitive practices which may merit closer examination:

- a. charging fares and rates on routes at levels which are, in the aggregate, insufficient to cover the costs of providing the services to which they relate;
 - b. the addition of excessive capacity or frequency of service;
 - c. the unfair competitive practices in question are sustained rather than temporary;
 - d. the unfair competitive practices in question have a serious negative economic effect on, or cause significant damage to, another airline;
 - e. the unfair competitive practices in question reflect an apparent intent or have the probable effect, of crippling, excluding or driving another airline from the market; and
 - f. behaviour indicating an abuse of dominant position on the route.
- 1.3. The agreement should provide for consultation at the request of the Aeronautical Authority of either Party with a view to resolving unfair competition behaviour.
- 1.4. The agreement should require any request for consultation to be accompanied by notice of the reasons for the request, and the consultation should begin within 15 days of the request.
- 1.5. The agreement should provide for dispute resolution mechanism if the Parties fail to reach a resolution of the problem through consultations.

Article 22: Commercial Arrangements

- 1.1. Member States should encourage, facilitate and allow co-operative and commercial arrangements such as blocked-space, code sharing or wet leasing between and among African carriers as well as arrangements with surface transportation providers.
- 1.2. In the framework of an Air Services Agreement with a third-party country/block of countries, such commercial arrangements should be open to designated airlines of the Parties to the agreement (the designated airline(s) with an airline(s) of the same contracting Party and with an airline(s) of the other contracting Party).
- 1.3. Such commercial arrangements shall be subject to the respective aeronautical authority's approval.
- 1.4. Such commercial arrangements shall be subject to AU competition law.
- 1.5. In order to ensure transparency of commercial arrangements, Member States may negotiate additional requirements to be introduced in an Air Services Agreement.

Article 23: Consultations

- 1.1. In accordance with African Civil Aviation Policy, the agreement should encourage consultations between the competent authorities in their territories and the airlines using the services and facilities, exchange of information between these stakeholders as may be necessary to permit an accurate review of the reasonableness of the charge, commercial arrangement, matters regarding competition and consumer protection.
- 1.2. Either Party may, at any time, request consultation on the interpretation, application, implementation or amendment of the Agreement or compliance with the Agreement and such consultation should begin at the earliest possible date.
- 1.3. A Member State or block of Member States that received notification as referred in Article 4, should ensure consultation between the Member State or block of Member States and AFCAC, are initiated in accordance with the procedure set out in article 23.4. The RECs concerned and AUC may be invited to participate in the consultations.

23.4 The Agreement should provide for the following modalities for consultation between a Member State or block of Member States and AFCAC:

- i. Requests for consultations should be notified to the Secretary General of AFCAC by the Member States or block of Member States, in writing, giving thereasons for the request, including identification of the issues related the noncompliance with the Guidelines.
- ii. The process of consultation can take the form of discussion, telephone or virtual meetings with records or by correspondence. Such consultation should begin at the earliest possible date but not later than 15 days from the datethe other Party received the request for consultation.
- iii. Where a request for consultations is made related to the application of these Guidelines, the Party to which the request is made should, unless otherwise mutually agreed, reply to the request within seven (7) days after the date of its receipt and should enter into consultations in good faith within a period not exceeding fifteen (15) days after the date of receipt of the request, with aview to reaching a mutually satisfactory solution.
- iv. In the course of consultations, the Parties should attempt to obtain satisfactory settlement of the issue(s) under consultations.
- v. Consultations should be:
 - (a) confidential; and
 - (b) without prejudice to the rights of any Party in any further proceedings.
- vi. Unless the Parties agree to continue or suspend consultations, consultations should be deemed concluded within sixty (60) days.
- vii. Where a Party that is not party to initial discussions considers that it has substantial interest in consultations, that Party may, within seven (7) days of the circulation of the request for consultations, request the Parties to the Consultation to be joined in the consultations

Article 24: Settlement of Disputes

- 1.1. Member States should ensure that a dispute settlement mechanism is adequately provided for in the Bilateral/Multilateral Air Services Agreements.
- 1.2. Where appropriate, the dispute settlement mechanism should take account of the settlement of disputes between the Member State(s) and the designating State(s) and/or the licensing State(s) .
- 1.3. The dispute settlement mechanism could provide for a mediation mechanism to be used optionally by States in addition to and in between traditional processes of consultation and arbitration. Such a mediation mechanism is relevant for commercial disputes, such as on pricing, capacity and other competitive practices. The air services agreements could incorporate a provision based on the model clause developed by ICAO in article 35 of ICAO Template Air Service Agreement Appendix of Doc 9587

24.4 Amongst the principles already mentioned in Articles 24.2 to 24.3, Member States should ensure that the dispute settlement mechanism with third-party countries or regions:

- (i) define what is considered a dispute;
- (ii) define the rights and obligations of the parties in the event of a dispute;
- (iii) outline the process the parties must follow, including how the dispute resolution process is to be triggered;
- (iv) provide clear timeframes for key stages of the process;
- (v) provide for ongoing performance of the air service agreement while Parties engage in the dispute resolution process;

(vi) address what happens if the dispute resolution processes are not followed, or are unsuccessful;

(vii) appropriately distinguish between mediation and arbitration mechanisms;

(viii) provide for a clear mechanism for selecting any third-party mediator or arbitrator and set out how fees are to be met (and a fall-back process for deciding these matters where parties are unable to agree); and

(ix) provide clarity on avenues for enforcement of any agreement or decision reached through the dispute resolution processes.

24.5. Any dispute arising between two (2) or more State Parties on the application or interpretation of these Guidelines, the State Parties should have recourse to the dispute settlement mechanism provided for in the Regulation on Dispute Settlement in the implementation or interpretation of African air transport legal instrument.

Article 25: Authority and Structure

1.1. The Regional Economic Communities should support and promote adherence to the conditions and guidelines of the common African position by their Member States. They should ensure harmonisation and consistency at the regional level.

1.2. The Executing Agency should monitor the implementation of these Guidelines and advise Member States on its compliance with any Air Services Agreement negotiated between Member States and third-party countries.

1.3. The AUC should be responsible for the continent-wide adherence and implementation of the Common African position. It shall ensure uniformity and consistency in the adherence of the Guidelines within the Regional Economic Communities and the Member States.

1.4. The Executing Agency should establish a committee consisting of experts from Member States, AFRAA, AFCAC and the Regional Economic Communities, to assist and advise it in the area of air transport relations with third party countries. The committee could hold consultations with third party countries, as a block if appropriate or as individual States and advise the Executing Agency on the outcome of such discussions and its recommendations on appropriate action. The Executing Agency shall establish the duties, responsibilities, and procedure for the working of the committee. The Committee may invite ICAO to assist in its deliberations, when necessary.

Article 26: Cooperation and Coordination

The Member States should cooperate and coordinate with the AUC, AFCAC, AFRAA and the Regional Economic Communities in order to achieve harmonised and uniform application of the Common Africa Position.

Article 27: Review of the Guidelines and AU Clauses

These Guidelines and the AU Clauses may be reviewed every two (2) years, in line with the changing trends in air transportation by a Committee of Experts established under Article 25.4 of these Guidelines.

Article 28: Transitional Measure

Member States should ensure compliance with the provisions provided for in Article 3.1, to amend or replace agreements that are wholly compatible to these Guidelines within a transitional period not exceeding five (5) years.

Approved at...this Day of **2021**

Annexure 1 – AU Clauses for inclusion in Air Service Agreements with Third Part Countries or Regions.

Definitions – See Article 1 Designation and Authorisation

1. On the receipt of a designation by one Contracting Party made in accordance with the provisions of [paragraph 1] of the present Article and on application from the designated airlines in the form and manner prescribed by the aeronautical authorities of the other contracting party should grant, with minimum delay the appropriate operating Authorisation, provided:

(a) In the case of an airline **designated by [African State]:**

(i) the airline is legally established in a territory of a State Party in accordance with the regulations applicable in that State, meets other Eligibility Criteria set forth in Article 6.9 of the Decision as well as compliance with environment policy guidelines provided in the African Civil Aviation Policy; or

(ii) in the case of an airline effectively controlled by State Parties or nationals of State Parties, the airline meets Eligibility Criteria set forth in Article 6.9 of the Decision as well as compliance with environment policy guidelines provided in the African Civil Aviation Policy and the competent authority is clearly identified in the designation; and

(iii) the State concerned is maintaining and administering the provisions set forth in Article... (Safety) and Article...(Aviation Security),...as...well as Article ... (Environment).

Revocation or Suspension of Operating Authorisation

1. Each Contracting Party should have the right to revoke an operating authorisation, suspend the exercise of the rights granted in the present Agreement to an airline designated by the other Contracting Party, or impose such conditions on the exercise of these rights as it may deem necessary where:

(a) In the case of an airline designated by [African State]:

(i) the airline is not established in the territory of a State Party; or

(ii) does not have its headquarters, central administration and principal place of business physically located in the State Party concerned; or

(iii) has failed to meet the eligibility criteria set forth in Article 6.9 of the Decision; or

(iv) the airline has failed to comply with the laws and regulations referred to in Article... (Application of Laws) of the Agreement.

or

(b) in the case of an airline effectively controlled by States Parties or nationals of States Parties,

(i) the airline is not and does not remain effectively controlled by States Parties or nationals of States Parties,

(ii) the airline has not its principal place of business in the territory of a State Party, or is not duly licensed by a State Party as defined in Annex 6 of the Chicago Convention,

(iii) is not subject to effective regulatory control of the AU State responsible for issuing the operating licence, and

(iv) has failed to meet other eligibility criteria set forth in Article 6.9 of the Decision; or

(v) the airline has failed to comply with the laws and regulations referred to in Article... (Application of Laws) of the Agreement.

Safety

Where a Member State has designated an airline, whose regulatory control is exercised and maintained by another Member State, the rights of the [name State or Region] under this Article should apply equally in respect of the adoption, exercise or maintenance of safety standards by that Member State and in respect of the operating authorisation of that airline.

Annexure 2: ICAO Clause on Slot allocation – option 2

“Each Party shall facilitate the operation of the agreed services by the designated airlines of the other party, including granting the necessary landing and take-off slots, subject to the applicable national and international rules and regulations, and in accordance with the principle of fair and equal opportunity, reciprocity, non-discrimination and transparency”.

“Both Parties shall make every effort to resolve any dispute over the issue of slots affecting the operation of the agreed services, through consultation and negotiation in accordance with the provisions of Article x (Consultation) or through the dispute resolution provisions of Article Y (dispute settlement)”.

PART C
AFRICAN CIVIL AVIATION COMMISSION (AFCAC)
YAMOISSOUKRO DECISION COMPLIANT AIR SERVICE AGREEMENT

AFRICAN CIVIL AVIATION COMMISSION (AFCAC)
YAMOOUSSOUKRO DECISION COMPLIANT AIR SERVICE AGREEMENT
(ASA)

TEMPLATE

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF ...

AND

THE GOVERNMENT OF THE REPUBLIC OF ...

(can be signed between 2 or more countries)

AIR SERVICE AGREEMENT BETWEEN THE
GOVERNMENT OF THE REPUBLIC OF ...
AND THE GOVERNMENT OF REPUBLIC OF

Preamble

The Government of the Republic of and the Government of Republic of
(hereinafter referred to as the Contracting Parties:

Desiring to co-operate and facilitate the expansion of international air transport opportunities between the two (or more) countries;

Desiring to make it possible for their Airlines to co-operate and offer the traveling public a variety of service options;

Desiring to ensure the highest degrees of safety and security in international air transport; and

Being parties to The Convention on International Civil Aviation opened for signature at Chicago on 7th Day of December, 1944;

The Yamoussoukro Declaration on a New African Air Transport Policy adopted on 7th October, 1988;

The Resolution adopted by the African Ministers responsible for Civil Aviation in Mauritius on the 9th of August, 1994;

The Ministerial Decision relating to the implementation of the Yamoussoukro Declaration concerning the Liberalization of Access to Air Transport Markets in Africa of 14th November, 1999 as endorsed by the OAU Heads of State in July, 2000;

Bearing in mind the African Union Assembly (AU) Decision Assembly/AU/Decl.1(XXIV) of the 24th Ordinary Session placing the implementation of the Yamoussoukro Decision on the liberalisation of Air Transport Markets in Africa as the foundation for the establishment of a Single African Air Transport Market (SAATM) in the context of the African Agenda 2063;and,

Desiring to conclude an Agreement, supplementary to the above, for the purpose of establishing air services between and beyond their respective territories:

ARTICLE 1: DEFINITIONS

1. For the purpose of the present Agreement and any annex attached thereto, unless the context otherwise requires, the term:-

(a) **“Aeronautical Authorities”** means in the case of the Republic of the Minister of, and, in the case of Republic of, the Minister of, or in both cases any other authority or person empowered to perform the functions now exercised by the said authorities;

(b) **“Agreed Services”** means scheduled International Air Services between and beyond the respective territories of and for the transport of passengers, baggage and cargo, separately or in any combination;

(c) **“Agreement”** means this Agreement, its Annex drawn up in application thereof, and any amendment to the Agreement or to the Annex;

(d) **“Air services”, “international air services”, “airline” and “stop for non-traffic purposes”** have the meanings respectively assigned to them in Article 96 of the Convention;

(e) **“Abuja Treaty”** means the Treaty Establishing the African Economic Community adopted at

Abuja, Nigeria on the 3rd day of June 1991 and which entered into force on 12 May 1994;

(f) **“Capacity”** is the amount(s) of services provided under this Agreement, usually measured in the number of flights (frequencies) or seats or tonnes of cargo B offered in a market (city pair, or country to country) or on a route during a specific period, such as daily, weekly, seasonally or annually;

(g) **“Cargo”** includes mail;

(h) **“Convention”** means the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December, 1994 and includes any Annexes adopted under Article 90 and 94 thereof so far as those Annexes and Amendments have been adopted by both Contracting Parties;

(i) **“Decision”** means the text of the Yamoussoukro Ministerial Decision of 14th November, 1999 as endorsed by the **AU** Heads of States including the Appendices, annexes and Amendments;

(j) **“Designated Airline”** means an airline which has been designated and authorized in accordance with Article 3 of this Agreement;

(k) **“Eligible airline”** means any African air transport company fulfilling the requirements set forth in Article 6, subparagraph 6.9 of the Yamoussoukro Decision

(l) **“Executing Agency”** has its meaning provided for in Article 9 (4) of the Yamoussoukro Decision.

(m) **“Regular equipment”, “aircraft stores” and “spare parts”** have the meanings respectively assigned to them in Annex 9 of the Convention;

(n) **“User Charges”** means charges made to airlines by the competent authorities or permitted by them to be made for the provision of airport facilities, property and/or of air navigation facilities, including related services and facilities for aircraft, their crews, passengers, baggage and cargo;

(o) **“Specified Routes”** means routes specified in the Annex of this Agreement;

(p) **“Tariff”** means the prices to be paid for the carriage of passengers, baggage, and cargo and the conditions under which those prices apply, including prices and conditions for agency and other auxiliary services but excluding remuneration and conditions for the carriage of mail; and

(q) **“Territory”** in relation to a State means the land areas and territorial waters adjacent thereto under the sovereignty or protection of that State;

(r) **“Yamoussoukro Decision”** means the “Decision Relating to the Implementation of the Yamoussoukro Declaration Concerning the Liberalization of Access to Air Transport Markets in Africa” adopted by the Assembly of Heads of States and Government in Lome, Togo, on 12 July 2000.

ARTICLE 2: RIGHTS AND PRIVILEGES OF DESIGNATED AIRLINES

1. Each Contracting Party shall grant to the other Contracting Party in respect of scheduled international air services, the following:

(a). The right to fly across its territory without landing;

- (b). The right to make stops in its territory for non-traffic purposes; and
- (c). The right to make stops in its territory for the purpose of taking on board and discharging passengers and cargo including mail.
- (d) The designated airlines(s) shall exercise unrestricted 5th Freedom traffic rights at Intra- African points in accordance with the Yamoussoukro Decision.
- (e) The Airlines of each Contracting Party, other than those designated in terms of Article 3, shall also have the rights provided for in paragraphs (a) and (b) of sub-Article (2)
- (f) If because of armed conflict, political disturbances or developments, or special and unusual circumstances, a designated airline of a Contracting Party is unable to operate a service on its normal routes, the other Contracting Party shall use its best efforts to facilitate the continued operation of such service through appropriate temporary rearrangements of such routes, including the temporary granting of alternative rights, as mutually decided by the Contracting Parties

ARTICLE 3: DESIGNATION AND AUTHORISATION OF AIRLINES

- 3.1.** Each Contracting Party shall have the right to designate in writing to the other Contracting Party, one or more airlines for the purpose of operating intra-Africa air transport services and/or the agreed services on the specified routes. A Contracting Party may also designate an “Eligible Airline” from another Contracting Party to operate air services on its behalf.
- 3.2.** A Contracting Party shall have the right to designate an Eligible African multinational airline in which it is a stakeholder and this airline shall be accepted by the other Contracting Parties
- 3.3.** On receipt of the notice of such designation, the other Contracting Party shall, subject to the provisions of paragraphs (3) and (4) of this Article, without delay but not later than thirty (30) days grant to the airline designated, the appropriate operating authorization.
- 3.4.** The Aeronautical Authorities of one Contracting Party may require an airline designated by the other Contracting Party to satisfy them that it is qualified to fulfill the conditions prescribed under the laws and regulations which are applicable to the operation of international air services by such authorities in conformity with the provisions of the Convention.
- 3.5.** Each Contracting Party shall have the right to refuse to grant the operating authorizations referred to in paragraph (3) of this Article, or to impose such conditions as it may deem necessary on the exercise by a designated airline of the rights specified in Article 2 of this Agreement, in any case where the said Contracting Party is not satisfied that the principal place of business and effective control (as specified in Article 6.9) of that airline are vested in the Contracting Party designating the airline or in its nationals.
- 3.6.** When an airline has been so designated and authorized, it may begin at any time to operate the agreed services provided that the conditions of operation of those services and the tariffs to be applied thereon have been filed under Articles 13 and 14 of this Agreement.

ARTICLE 4: VALIDITY OF CERTIFICATES

- 4.1.** Certificates of airworthiness, certificates of competency and licences issued or validated by either Contracting Party which have not expired, shall be recognized as valid by the other Contracting Party for the purpose of operating the routes specified in the Annexure I.

4.2. Each Contracting Party reserves the right to refuse to recognize as valid for the purpose of operating the said specified routes over its own territory;

i. certificates of competency and licences issued to its own nationals by the other Contracting Party; and/or

ii. if the privileges or conditions of the licenses or certificates issued or rendered valid by one Contracting Party permit a difference from the standards established under the Convention, whether or not such difference has been filed with the International Civil Aviation Organization.

ARTICLE 5: REVOCATION AND SUSPENSION OF RIGHTS

1. Each Contracting Party shall have the right to revoke an operating authorization, or to suspend the exercise of the rights specified in Article 2 of this Agreement by the airline designated by the other Contracting Party or to impose such conditions as it may deem necessary on the exercise of this rights in any of the following cases:-

(a) the Aeronautical Authorities of the first Contracting Party are not satisfied that the said airline is an "Eligible airline" as set forth in Article 6, subparagraph 6.9 of the Yamoussoukro Decision

(b) Failure by the airline to comply with the laws or regulations of the Contracting Party granting these rights; or

(c) If the airline otherwise fails to operate the agreed services in accordance with the conditions prescribed under this Agreement and the Annex attached hereto.

2. Unless immediate revocation, suspension or imposition of the conditions mentioned in paragraph (1) of this Article is essential to prevent further infringement of laws or regulations, such right shall be exercised only after consultation with the other Contracting Party.

ARTICLE 6: EXEMPTION FROM CUSTOMS DUTIES

6.1 Aircraft operated in international air transportation by the airlines of each Contracting Party shall be exempt from all import restrictions, customs duties, excise taxes, and similar fees and charges imposed by national authorities. Component parts, normal aircraft equipment and other items intended for or used solely in connection with the operation or for the repair, maintenance and servicing of such aircraft shall be similarly exempt, provided such equipment and items are for use on board an aircraft and are re-exported. Provided in each case that they are for use on board an aircraft in connection with the establishment or maintenance of international air transportation by the airline concerned, the following items shall be exempt from all import restrictions, customs duties, excise taxes, and similar fees and charges imposed by national authorities, whether they are introduced by an airline of one Contracting Party into the territory of the other Contracting Party or supplied to an airline of one Contracting Party in the territory of the other Contracting Party:

6.2 (i) aircraft stores (including but not limited to such items as food, beverages and products destined for sale to, or use by, passengers during flight);

6.3 ii) fuel, lubricants (including hydraulic fluids) and consumable technical supplies; and spare parts including engines.

6.4 These exemptions shall apply even when these items are to be used on any part of a journey performed over the territory of the other Contracting Party in which they have been taken on

board.

6.5 Each Party shall on the basis of reciprocity exempt a designated airline of the other Party to the fullest extent possible under its national law from [import restrictions,] customs duties, excise taxes, inspection fees and other national duties and charges [not based on the cost of services provided on arrival] on aircraft, fuel, lubricating oils, consumable technical supplies, spare parts including engines, regular aircraft equipment, aircraft stores and other items [such as printed ticket stock, air waybills, any printed material which bears the insignia of the company printed thereon and usual publicity material distributed free of charge by that designated airline] intended for use or used solely in connection with the operation or servicing of aircraft of the designated airline of such other Party operating the agreed services.

6.6 The exemptions granted by this article shall apply to the items referred to in paragraph 1: a) introduced into the territory of the Party by or on behalf of the designated airline of the other Party; b) retained on board aircraft of the designated airline of one Party upon arrival in or leaving the territory of the other Party; or c) taken on board aircraft of the designated airline of one Party in the territory of the other Party and intended for use in operating the agreed services; whether or not such items are used or consumed wholly within the territory of the Party granting the exemption, provided the ownership of such items is not transferred in the territory of the said Party.

6.7 Profits or income from the operation of aircraft in international traffic derived by an airline of any Party, including participation in inter-airline commercial agreements or joint business ventures, shall be exempt from any tax on profits or income imposed by the Government of each Party.

6.8 Capital and assets of an airline of any Party relating to the operation of aircraft in international traffic shall be exempt from all taxes on capital and assets imposed by the Government of each Party.

6.9 Gains from the alienation of aircraft operated in international traffic and movable property pertaining to the operation of such aircraft which are received by an airline of any Party shall be exempt from any tax on gains imposed by the Government of another Party.

6.10 Each Party shall on a reciprocal basis grant relief from value added tax or similar indirect taxes on goods and services supplied to the airline designated by another Party and used for the purposes of its operation of international air services. The tax relief may take the form of an exemption or a refund.

ARTICLE 7: TREATMENT OF REGULAR AIRBORNE EQUIPMENT RETAINED ON BOARD

The regular airborne equipment as well as the materials and supplies retained on board the aircraft operated by the designated airline of either Contracting Party may be unloaded in the territory of the other Contracting Party only with the approval of the Customs authorities of the Contracting Party. In such cases, they may be placed under the supervision of the said Customs authorities up to such time as they are re-exported or otherwise disposed of in accordance with Customs regulations.

ARTICLE 8: APPLICATION OF NATIONAL LAWS AND REGULATIONS

8.1. The laws and regulations of each Contracting Party governing the entry into, remaining in and departure from its territory of aircraft engaged in international air services and the opera-

tion and navigation of aircraft while within the limits of its territory, shall also be applicable to the aircraft of the designated airline of the other Contracting Party.

8.2. The laws and regulations of each Contracting Party governing the entry into, remaining in and departure from its territory of passengers, crew, mail and cargo transported on board the aircraft and in particular those regarding passports, customs and sanitary control shall be applied to passengers, crew, mail and cargo taken on board the aircraft of the designated airline of the other Contracting Party.

8.3. Subject to the National Laws and Regulations of the Contracting Parties, Passengers, baggage and Cargo in direct transit across the Territory of each Contracting Party and not leaving areas of the airport reserved for such purpose shall, except in respect of security measures against violence, air piracy, narcotics control be subject to no more than a simplified control. Such baggage and Cargo in direct transit shall be exempt from customs duties, excise taxes and other similar national and/or local fees and charges.

ARTICLE 9: PRINCIPLES GOVERNING THE OPERATION OF AGREED SERVICES

(1) The designated airlines of each Contracting Party shall be allowed fair and equitable treatment in order that it may enjoy equal opportunity in the operation of the agreed service. Each Contracting Party shall take all appropriate action within its jurisdiction to eliminate all forms of discrimination and unfair competitive or predatory practices adversely affecting the competitive position of the designated airlines of the other Contracting Party in the exercise of its rights and entitlements as set out in this Agreement and in accordance with the Institutional and Regulatory texts of the Yamoussoukro Decision.

(2) In operating the agreed services the designated airlines of each Contracting Party shall take into consideration the interests of the designated airlines of the other Contracting Party so as not to unduly affect the services which the latter provide on the whole or part of the same routes.

(3) There shall be no limits on the number of frequencies and capacity offered on air service linking any intra-African city per combinations between the Contracting Parties. Each designated airline(s) shall be allowed to mount and operate such capacity and frequency as such airline(s) deems appropriate.

(4) Consistent with the rights referred to in sub-Article (3), the Contracting Parties shall not unilaterally limit the volume of traffic, the type of aircraft to be operated or the number of flights per week, except for environmental, safety, technical or other special consideration: Provided that such actions are not intended as measures for the protection of the commercial or economic interests of a designated airline.

(5) Notwithstanding sub-Articles (3) and (4), the Contracting Parties may impose conditions, limit or refuse the increase of capacity or frequency of a designated airline: Provided such actions- (a) are non-discriminatory and applied under uniform conditions to all airlines and are consistent with Article 15 of the Convention, without discrimination on the ground of nationality or identity of airlines; (b) have a limited period of validity; (c) do not unduly affect the objectives of the Yamoussoukro Decision; (d) do not unduly distort competition between airlines; and (e) are not more restricted than necessary in order to relieve the problem and are not more restrictive than those applied to any other airlines(s) of a state not party to the Yamoussoukro Decision.

(6) When a Contracting Party considers that intervention in terms of sub-Article (4) is necessary,

such Contracting Party shall, at least sixty (60) days before the effective date of such action, notify the other Contracting Party thereof, providing adequate justification for the need for such measures so as to allow consultations prior to the date of entry into force of the measure. Such measure may be implemented only if within thirty (30) days of its notification, the other Contracting Party has not indicated the intention to consent to such measures.

ARTICLE 10: AVIATION SAFETY

10.1. The Contracting Parties may request consultation concerning the safety standards maintained by the other Contracting Party relating to aeronautical facilities and services, air crew, aircraft and operation of its designated airlines. If, following such consultations, the Contracting Party finds that the other Party does not effectively maintain and administer safety standards and requirements in these areas that at least equal the minimum standards that may be established pursuant to the Convention, the other Party shall be notified of such findings and the steps considered necessary to conform with these minimum standards, and the other party shall take appropriate corrective action.

10.2. Each Party reserves the right to withhold, revoke, or limit the operating authorization of the airline designated by the other Party in the event the other Party does not take such appropriate corrective action within a reasonable time.

ARTICLE 11: AVIATION SECURITY

11.1 . Consistent with their rights and obligations under international law, the Contracting Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference form an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Contracting Parties shall in particular act in conformity with the provisions of the Convention on Offences and Certain other Acts committed on Board aircraft, signed at Tokyo on 14th September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on 16th December 1970 and the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, signed at Montreal on 23rd September 1971, its Supplementary Protocol for the Suppression of Unlawful Acts of Violence at Airports serving International Civil Aviation, signed at Montreal on 24th February 1988 as well as with any other convention and protocol relating to the security of civil aviation which both Contracting Parties adhere to.

11.2 The Contracting Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of civil Aircraft and other unlawful act against the safety of such aircraft, their passengers and crew, airports and air navigation facilities, and any other threat to the security of civil aviation.

11.3 The Contracting Parties shall, also in their mutual relations, act in conformity with the aviation security provisions established by the International Civil Aviation Organization and designated as Annexes to the Convention on International Civil Aviation to the extent that such security provisions are applicable to the Parties, they shall require that operators of aircraft who have their principal place of business or permanent residence in their territory and the operators of airports in their territory act in conformity with such aviation security provisions;

11.4 Each Contracting Party agrees that such operators of aircraft may be required to observe the aviation security by the other Contracting Party while entering into, departing from, or while within the territory of that other Contracting Party. Consequently, each Contracting Party shall ensure that adequate measures are effectively applied within its territory to protect the aircraft

and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading. Each Contracting Party further agrees to give sympathetic consideration to any request from the other Contracting Party for reasonable special security measures to meet a particular threat;

11.5 In the event that an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful act against the safety of such aircraft, their passengers and crew, airports or air navigation facilities occurs, the Contracting Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof; and

11.6 When a Contracting Party has reasonable ground to believe that there is a departure from the provision of this article, the Party may request immediate consultations with the other Party. Failure to reach a satisfactory agreement within 30 days from the date of such request shall constitute grounds to withhold, revoke, limit or impose conditions on the operating authorizations and technical permissions of an airline or airlines of that Contracting Party. When required by an emergency, a Contracting Party may take interim action prior to the expiry of 30 days.

ARTICLE 12: REPRESENTATION

The designated airlines of either Contracting Party shall be allowed to establish in the territory of the other Contracting Party offices for the promotion of air transportation and sale of air tickets as well as other facilities required for the provision of air transportation. The airline shall also be allowed to bring in and maintain in the territory of the other Contracting Party, in accordance with the laws and regulations of that other Contracting Party relating on entry, residence and employment, managerial, sales, technical operational and other specialist staff required for the provision of air transportation.

ARTICLE 13: MODE OF OPERATION

13.1 There shall be fair and equal opportunity for the designated airline of each Contracting Party to operate the agreed services on the specified routes.

13.2 In operating the agreed services on the specified routes, a designated airline of one of the parties may enter into cooperative marketing arrangements such as blocked space, code sharing, franchising or leasing arrangements, with an airline or airlines of the other Party.

ARTICLE 14: APPROVAL OF CONDITIONS OF OPERATION

14.1 The time-tables of the agreed services and in general the conditions of operation, shall be submitted by the designated airline of one Contracting Party for the approval of the aeronautical authorities of the other Contracting Party at least thirty (30) days before the intended date of their introduction.

In special cases this time limit may be reduced, subject to the agreement of the said authorities.

14.2 Any modifications to such time-tables and conditions shall also be submitted to the aeronautical authorities for approval.

ARTICLE 15: TARIFF

15.1 .The Contracting Parties shall allow tariffs for air transportation to be established by each

designated airline based upon commercial considerations in the market place. Intervention by the Parties shall be limited to:

- (a). Prevention of discriminatory tariffs or practices;
- (b). Protection of consumers from tariffs that are unreasonably high or restrictive due to the abuse of a dominant position; and
- (c). Protection of airlines from tariffs that are artificially low.

15.2 Each Contracting Party may require notification to, or filing with, its aeronautical authorities of tariffs to be charged to or from its territory by airlines of the other Contracting Party. Notification or filing by the airlines of the other Contracting Party may be required no more than 30 days before the proposed date of effectiveness. Notification for filing may be permitted on shorter notice than normally required. If a Contracting Party permits an airline to file a tariff on short notice, the tariff shall become effective on the proposed date for traffic originating in the territory of that Contracting Party.

15.3 .If a Contracting Party believes that a tariff proposed to be charged by an airline of the other Contracting Party for international air transportation between the territories of the Contracting Parties is inconsistent with considerations set forth in paragraph 1 of this, Article, it shall notify the other Contracting Party of the reasons for its dissatisfaction as soon as possible and request consultations. These consultations shall be held not later than 30 days after receipt of the request, and the Contracting Parties shall co-operate in securing information necessary for reasonable resolution of the issue. If the Contracting Parties reach agreement with respect to a tariff for which a notice of dissatisfaction has been given, each Contracting Party shall use its best efforts to put that Agreement into effect. Without such mutual Agreement, the previously existing tariff shall continue in effect.

ARTICLE 16: USER CHARGES

Any charge that may be imposed or permitted to be imposed by a Contracting Party for the use of airports and air navigation facilities by the aircraft of the other Contracting Party shall be based on sound economic principles and not be higher than those that would be paid by its national air craft engaged in schedule international air services.

ARTICLE 17: STATEMENTS OF STATISTICS

17.1 The Aeronautical Authorities of either Contracting Party shall supply to the aeronautical authorities of the other Contracting Party at the latter's request: such periodic or other statements of statistics as may be reasonably required for the purpose of reviewing the capacity provided on the agreed services by the designated airline of either Contracting Party.

17.2 Such statement shall include the information required to determine the amount of traffic carried by the designated airline on the agreed services and the origins and destinations of such traffic.

ARTICLE 18: TRANSFER OF EXCESS RECEIPTS

18.1 . Each Contracting Party shall grant to the designated airline of the other Contracting Party the right to remit locally-earned funds without restrictions, to the country or countries of their choice, promptly, in freely convertible currency and at the official exchange rate.

18.2 The airlines of each Party shall have the right to convert and remit to the territory of its incorporation, on demand, local revenues in excess of sums locally disbursed. Conversion and remittance shall be permitted promptly without restrictions or taxation in respect thereof at the rate of exchange applicable to current transactions and remittance on the date the carrier makes the initial application for remittance.

18.3 . Each Party shall permit airline(s) of the other Party to convert and transmit abroad to the airline's(s') choice of State, on demand, all local revenues from the sale of air transport services and associated activities directly linked to air transport in excess of sums locally disbursed, with conversion and remittance permitted promptly without restrictions, discrimination or taxation in respect thereof at the rate of exchange applicable as of the date of the request for conversion and remittance.

18.4 Whenever the payment system between the Contracting Parties is governed by a special agreement that agreement shall apply in place of the provisions of this Article.

ARTICLE 19: ENVIRONMENT

19.1 The Parties support the need to protect the environment by promoting the sustainable development of aviation. The Parties agree with regard to operations between their respective territories to comply with the ICAO Standards and Recommended Practices (SARPs) of Annex 16 and the existing ICAO policy and guidance on environmental protection.

19.2 In addition, they shall encourage global initiatives which are inherent in the preservation and protection of biodiversity, the concern about the environmental impact, ecosystems and sustainable development of commercial aviation.]

ARTICLE 20: CONSULTATIONS

20.1. Each Contracting Party can at any time, ask for consultation between the competent authorities of the two Contracting Parties for the interpretation, application or the modification of the present Agreement and its appendices.

20.1. This consultation should begin not later than sixty (60) days from the date of receipt of the request.

20.1. The possible changes that may be made in this Agreement will come into effect after confirmation by Exchange of Notes, through diplomatic representations.

ARTICLE 21: SETTLEMENT OF DISPUTES

21.1 1.If any dispute arises between the Contracting Parties relating to the interpretation or application of this Agreement the Contracting Parties shall in the first place endeavour to settle it by negotiation.

21.2 .If the Contracting Parties fail to reach a settlement by negotiation, they may agree to refer the dispute for decision to some person or body, as they may agree on, for mediation.

21.3 If the Contracting Parties do not agree to mediation, or if a settlement is not reached by negotiation, the dispute shall, at the request of either Contracting Party, be submitted for decision to the arbitral tribunal of the Dispute Settlement Mechanism (DSM) established by Annex 3 of the YD.

ARTICLE 22: EFFECT OF MULTILATERAL AGREEMENT

This Agreement and its Annex shall be deemed amended so as to conform with any multilateral air transport agreement between African States or Regional Economic Communities which may become binding on both Contracting Parties.

ARTICLE 23: AMENDMENTS

If either of the Contracting Parties considers it desirable to modify any provision of this Agreement, including the Annex hereto, such modification, if agreed upon by the Contracting Parties and if necessary after consultation in accordance with Article 17 of this Agreement, shall come into effect when confirmed by Exchange of Notes through diplomatic channels.

ARTICLE 24: DURATION AND TERMINATION

24.1. This Agreement shall remain in force for an indefinite period of time, subject to the provisions of paragraph (2) below.

24.2. Either Contracting Parties may at any time give notice to the other Contracting Party of its decision to terminate the Agreement. Such notice shall be simultaneously communicated to the African Union (AU) and the International Civil Aviation Organization (ICAO). In such a case, the Agreement shall terminate twelve (12) months after the date of receipt of the notice by the other Contracting Party unless the notice to terminate is withdrawn by agreement before the expiry of this period. In the absence of acknowledgement of receipt by the other Contracting Party, notice shall be deemed to have been received fourteen (14) days after the receipt of the notice by African Union (AU) and the International Civil Aviation Organization (ICAO).

ARTICLE 25: REGISTRATION WITH THE INTERNATIONAL CIVIL AVIATION ORGANIZATION (ICAO)

This Agreement and any subsequent amendments hereto shall be registered with the International Civil Aviation Organization by the state where the signature of the Agreement will take place.

ARTICLE 26: ENTRY INTO FORCE

26.1. This Agreement and its Annex shall enter into force provisionally on the date of its signature and definitively on the date of Exchange of Instruments of Ratification thereof or when there has been an Exchange of Notes between the Contracting Parties through diplomatic channels, confirming that the constitutional requirements in their respective countries have been complied with.

26.2. This Agreement and its Annex shall be subject to ratification by the Contracting Parties and shall be notified through diplomatic channels.

In witness whereof the undersigned, being duly authorized by their respective Governments, have signed this Agreement on the date herein specified.

Done at this in two (2) originals in the English Language.

.....

FOR THE GOVERNMENT FOR THE GOVERNMENT
 OF THE OF THE REPUBLIC OF
 REPUBLIC OF

ANNEXURE I

**ROUTE SCHEDULE TO THE AIR SERVICE AGREEMENT BETWEEN THE REPUBLIC OF
 AND THE GOVERNMENT OF THE REPUBLIC OF**

A. ROUTES TO BE OPERATED BY THE DESIGNATED AIRLINES OF REPUBLIC OF .

Point of Departure	Intermediate Points	Point (s) in	Points Beyond
Any Point in			

Aircraft Type :

Frequencies :

Traffic Rights:

B. ROUTES TO BE OPERATED BY THE DESIGNATED AIRLINE(S) OF REPUBLIC OF

Point of Departure	Intermediate Points	Point (s) in	Points Beyond
Any point in			

PART D
AFRICAN CIVIL AVIATION POLICY
(AFCAP)
2nd Edition

**AFRICAN CIVIL AVIATION POLICY (AFCAP)
2nd Edition**



AFRICAN UNION UNION AFRICAINE

الاتحاد الأفريقي

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SECOND SESSION OF THE AFRICAN UNION CONFERENCE
OF MINISTERS RESPONSIBLE FOR TRANSPORT

21 – 25 NOVEMBER 2011

LUANDA, ANGOLA

REVISION

AU/TPT/EXP/2A2 (II)

Part One

General Provisions

CHAPTER ONE

1.0 BACKGROUND

1.1. EVOLUTION OF INTERNATIONAL CIVIL AVIATION

1.1.1. The International Civil Aviation Organization (ICAO) came into being on 4 April 1947, on the ratification of the Convention on International Civil Aviation (also known as the Chicago Convention of 1944). ICAO is a specialized agency of the United Nations.

1.1.2. The Chicago Convention laid the foundation for the standards and procedures for peaceful global air navigation following the end of World War 2. Its prime objective is the development of international civil aviation in a safe and orderly manner.

1.1.3. States undertake to collaborate in securing the highest practicable degree of uniformity in regulations, standards, procedures and organization in relation to aircraft, personnel, airways and auxiliary services in all matters in which such uniformity will facilitate and improve air navigation, through the adoption of ICAO SARPs

1.1.4. In addition to the SARPs, there are other international air law instruments, including Conventions, Treaties and Protocols adopted in the field of civil aviation that are to be ratified, domesticated and complied with by ICAO contracting States. These are listed in the Appendix 2.

1.1.5. In accordance with Article 55 of the Chicago Convention, ICAO established regional commissions namely the African Civil Aviation commission (AFCAC), the Latin American Civil Aviation Commission (LACAC), the Arab Civil Aviation Organization (ACAO) and the European Civil Aviation Conference (ECAC). AFCAC has been adopted as the specialized agency of African Union (AU) in the field of civil aviation. In 2007, AFCAC was entrusted with the responsibility of the Executing Agency of the Yamoussoukro Decision (YD)

1.1.6. Since the creation of ICAO, international civil aviation has sustained impressive growth in terms of number of airlines and their route networks, passengers and cargo transported as well as better safety records and quality of service. Governments mostly owned the airlines until the 1970s when the United States of America (USA) initiated the ideology of deregulation to remove restrictions and encourage competition in civil aviation.

1.1.7. In the 1980s, many more countries embraced the idea of liberalisation and privatisation of air services and access to air transport markets and this attracted private sector participation with injection of further capital into the industry. Liberalisation and privatisation have catalysed the emergence of mega carriers, and alliances among airlines thereby enhancing their capacity to compete favourably.

1.2 DEVELOPMENT AND CHALLENGES OF CIVIL AVIATION IN AFRICA

1.2.1. Africa is the world's second-largest and second most-populous continent, after Asia. Africa has a large land mass of about 30.37 million km² (11.7 million sq mi) including adjacent islands. It covers 6% of the Earth's total surface area and about 20.4% of the total land area, with about 1.34 billion people (as of August, 2020) which accounts for about 16.72% of the world's population.

1.2.2. Africa is endowed with vast natural resources. In terms of percentages it accounts for 90% of cobalt, 90% of platinum, 50% of gold, 98% of chromium, 70% of tantalite, 64% of manganese and 33% of uranium and large reserves of diamond and bauxite.

1.2.3. Notwithstanding the abundant resources, most African countries are still relatively poor and the continent continues to record poor development statistics. Whilst many adverse his-

torical politico- economic reasons could be advanced for its unsatisfactory performance, much higher socio-economic indicators could be achieved if African States joined their efforts to forge and implement common strategies for the harnessing of the continent's potentials.

1.2.4. Like many other sectors in Africa, civil aviation lags behind and operates well below its share of the international civil aviation market. African airlines are generally under-capitalised; operate narrow route networks and small and ageing aircraft fleet. They are weak and unable to compete with the global mega carriers. To reverse this trend and facilitate the growth of its civil aviation, Africa's leadership must continue to create enabling and conducive environment in order to attract private sector capital investment to the industry. This underscores the urgent need for African States to forge a common approach to civil aviation.

1.2.5. Although over the past decade, African air transport has increased by 6.6%, making it the most rapid growth region after the Middle East, the absolute traffic figures remain relatively very low because of the small base. For instance in 2019, Africa accounted for only 3% of the global traffic. However, with its GDP expected to grow at the rate of 3.7 %, Africa's potential is undeniable, but to realise the full potential there are many challenges to overcome.

1.2.6. Of the numerous and complex problems faced by Africa's civil aviation, safety remains the most critical in most of the states because of ineffective safety oversight mechanisms, deficiencies in airport and air navigation systems, etc which collectively lead to accident rates that are many times higher than the global average. The safety problem is compounded by disturbing incidence of flags of convenience among other malpractices which call for immediate and harmonized corrective measures.

1.2.7. Africa grapples with aviation security challenges especially due to limited systems to mitigate the new and emerging threats against civil aviation. At the same time measures have to be initiated to minimize the impact of air transport on the environment, as tighter international standards are being imposed. This new situation presents a new challenge to the aviation industry in terms of technical and human capacity as well as financial resources to manage the impacts of aviation on the environment. Furthermore there is a growing insufficiency in qualified personnel that is worsened by attrition to other markets commonly referred to as "brain drain" and high turnover of middle and senior managers particularly in government owned institutions.

1.2.8. A close analysis of the civil aviation problems in Africa indicates commonality in almost all the States leading to the conclusion that collaboration and coordination among African States would result in the optimisation of the scarce resources.

1.3 ECONOMIC CONTRIBUTION OF CIVIL AVIATION

1.3.1. Air transport is an innovative industry that drives economic and social progress. It connects people, countries and cultures; provides access to global markets and generates trade and tourism. Aviation provides the only rapid worldwide transportation network, which makes it essential for global business and tourism thus facilitating economic growth, particularly in developing countries.

1.3.2. Some 2,000 airlines around the world operate a total fleet of 25,368 aircraft. They serve some 3,750 airports through a route network of several million kilometres managed by around 160 air navigation service providers. Air carriers transport over 2.2 billion passengers annually. However the airports serve about 4 billion passengers annually which include departing, arriving and transiting passengers. The total value of goods transported by air represents 35% of all international trade. Over 40% of international tourists now travel by air.

1.3.3. Africa's potential is undeniable, but to realize the full potential there are many challenges to overcome (high taxes and charges, restrictive visa policies, air and ground infrastructure, and much more). Apart from these, one of the most strategic issues to address

is intra-Africa connectivity.

1.3.4. Since 2014, there has been a renewed drive by African leaders and policymakers to improve Africa's socio-economic prospects by improving connectivity across the continent through the development and implementation of the Single Africa Air Transport Market (SAATM). Research shows that if 12 key markets in Africa had open air services with each other, an additional \$1.3 billion would be added to the GDP of those countries, creating an additional 155,000 jobs, saving travel times and making air travel more convenient and affordable for travelers. The SAATM is critical for Africa's growth as its current share of global passenger traffic remains low at 2% (as at 2019).

1.3.5. The SAATM, coupled with the African Continental Free Trade Area in Africa (AfCFTA) and the Free Movement of Persons Protocol, are three AU Agenda 2063 flagship projects that will accelerate aviation growth across the continent and have the potential to provide better than forecast economic growth. However, this project relies on a collaborative - multi-stakeholder/industry - holistic approach in order to succeed.

1.3.6. It is undeniable that liberalization has contributed to increased air service levels and lower fares, which in turn has stimulated traffic volumes and led to economic growth and employment. There is a link between increased air traffic and growth in employment and GDP.

1.4 GLOBAL TRENDS IN CIVIL AVIATION

1.3.1. During the last three decades, there has been a growing trend towards liberalization of the international air market. In the context of globalized economy, more and more governments have acknowledged the benefits of allowing market forces to determine and improve the development of air services. Liberalisation and competition have permeated all aspects of the aviation industry and helped elevate awareness, expectations and choice at the same time protecting consumer rights. Healthy competition has promoted security, safety, efficiency quality of service and to some extent the protection of the environment.

1.4.2. Liberalization and privatisation have led to steady reduction of state control of aviation business. States are limiting themselves to setting of policies, enforcement of regulations, ensuring public and consumer protection as well as facilitate healthy competition.

1.4.3. More States are collaborating among themselves through the establishment of regional, inter-regional and other strategic partnerships based on common economic interests. This encourages harmonisation of regulations, integration and management of assets, pooling of resources, etc. which enhances the growth of civil aviation, thus benefiting the agencies involved as well as consumers.

1.4.4. States are encouraged to include aviation in their national development plans and to position aviation as a strategic priority for the government of their countries. Aviation stimulates employment, trade, tourism and other areas of economic development at the national, regional and international level. Globally, there is an increasing focus on the impacts of civil aviation on the environment. Issues relating to noise, local air quality and carbon dioxide emissions as a result of civil aviation has gained importance over the years and there are calls for the aviation sector to sustainably develop while protecting the environment.

1.5 STRUCTURE OF CIVIL AVIATION IN AFRICA

1.5.1 AFRICAN UNION/GOVERNMENTS

The African Union (AU) is an organisation of African States formed to:

- i) accelerate the political and socio-economic integration of the continent;
- ii) promote and defend African common positions on issues of interest to the continent and its peoples;
- iii) achieve peace and security in Africa; and

iv) promote democratic institutions, good governance and human rights.

1.5.1.5. The AU is responsible for formulating policies for the aviation industry in Africa. The AU Assembly, made up of all the Heads of State or Government of Member States, is the highest decision-making organ of the AU.

1.5.1.6. The Council of Ministers is made up of the Ministers responsible for Civil Aviation and recommends major policy decisions to the AU Summit.

1.5.1.7. The African Civil Aviation Commission (AFCAC) is the specialised agency of the AU responsible for coordinating aviation activities in Africa and is also the Executing Agency of the Yamoussoukro Decision (YD).

1.5.1.8. Regional Economic Communities (RECs) bring together countries in sub- regions for economic integration. Currently, there are eight RECs recognized by the AU, each established under a separate regional treaty. They are:

- i) Arab Maghreb Union (UMA)
- ii) Common Market for Eastern and Southern Africa (COMESA)
- iii) Community of Sahel-Saharan States (CEN-SAD)
- iv) East African Community (EAC)
- v) Economic Community of Central African States (ECCAS)
- vi) Economic Community of West African States (ECOWAS)
- vii) Intergovernmental Authority on Development (IGAD)
- viii) Southern Africa Development Community (SADC)

1.5.1.9. The membership of many of the RECs overlaps and creates coordination and harmonisation challenges. However the RECs have played a key role in the implementation of major civil aviation decisions including the YD.

1.5.2 REGULATORS

1.5.2.1. Civil Aviation Authorities (CAAs) are vested with the regulatory and oversight responsibility of the aviation industry in their respective States. The CAAs ensure compliance by the industry with national legislations and policies as well as ICAO SARPs.

1.5.2.2. Some States have pooled their resources together to form Regional Safety Oversight Organisations (RSOOs) in order to increase their regulatory and oversight capabilities. Some of the RSOOs are the Civil Aviation Safety and Security Oversight Agency (CASSOA) of the EAC and the Banjul Accord Group Aviation Safety Oversight Organisation (BAGASOO).

1.5.3 AIRLINES

1.5.3.1 Airlines in Africa are major stakeholders in the aviation industry and are in the business of providing scheduled and non-scheduled air services within and outside the continent.

1.5.3.2 Many African airlines are members of the African Airlines Association (AFRAA) and/or Airlines association of Southern Africa (AASA). These associations are responsible for protecting the general interests of member airlines. AFRAA/AASA work in close collaboration with the International Air Transport Association (IATA), an association of international airlines whose mission is to represent, lead and serve the global airline industry.

1.5.4 AIRPORTS

1.5.4.1 Airports authorities and airport companies in Africa are responsible for the development and management of airports. Most of them are members of Airports Council Inter-

national - Africa (ACI Africa), the regional office of Airports Council International - World (ACI). ACI- Africa is a non- profit organization, whose prime objective is to represent and advance the collective interests of Airports, while promoting professional excellence in airport operations and management through the provision of effective and quality programs and services to achieve safe, secure and sustainable development of the air industry in Africa

1.5.5 AIR NAVIGATION SERVICES PROVIDERS

1.5.5.1 Airspace agencies are responsible for the provision of air navigation services (ANS) and facilities (en-route and airport), air traffic services, Aeronautical Information Services (AIS) and in some cases, the coordination of aeronautical search and rescue. These services in some countries are provided by departments within the CAAs .

1.5.5.2 Other States have grouped themselves together on a platform under regional cooperation and collaboration agreements in order to provide seamless air traffic management in line with various ANS related declaration on seamless sky e.g. the Agency for Aerial Navigation Safety in Africa and Madagascar (ASECNA) which is based in Dakar, Senegal with a membership of 17 countries and Roberts Flight Information Region (RobertFIR), based in Liberia and providing services for Guinea, Liberia and Sierra Leone, NAMA, RVA, ENNA, ONDA etc.

1.5.5.3 Airspace agencies are members of Civil Air Navigation Services Organisation (CANSO), a global association which represents the interests of ANS Providers worldwide.

1.5.6 OTHER STAKEHOLDERS

1.5.6.1 Other stakeholders include Aviation Training Organisations (ATOs), Aircraft Maintenance Organisations (AMOs), ground handling companies, catering companies, leasing companies, etc.

1.5.6.2 Numerous professional associations also play major roles in the development of the aviation industry in Africa. They include the International Federation of Airline Pilots' Association (IFALPA), the International Federation of Air Traffic Controllers' Association (IFATCA), and the International Federation of Air Traffic Services Engineers' Association (IFATSEA), etc.

1.5.7 PRIVATE SECTOR PARTICIPATION

1.5.7.1 With the advent of liberalisation and increasing demands on governments' resources from other more sensitive sectors of national economies and social services coupled with enormous requirement of funds for aviation infrastructure, the involvement of the private sector in aviation businesses became inevitable. In addition to capital investment, the private sector brings expertise to the industry provided it's combined with strong economic regulation.

1.5.7.2 Private sector involvement may take the form of Public Private Partnership (PPP), full commercialisation, corporatisation, concession, privatisation, etc.

1.6 AFRICAN INTEGRATION

1.6.1 The AU Agenda 2063 is a call for action and a strategic framework and roadmap to achieve continental development goals. It represents a collective effort and an opportunity for Africa to regain its power to determine its own destiny, and is underpinned by the AU Vision to build **an integrated, prosperous and peaceful Africa, an Africa driven and managed by its own citizens and representing a dynamic force in the international arena.**

1.6.2 The desired unity is also to promote cooperation in all fields of human endeavour in order to raise the standard of African people, maintain and enhance economic stability, foster close and peaceful relations among Member States and contribute to the progress, development, and economic integration of the continent; and finally, to harmonize policies among the existing RECs and other economic groupings.

1.6.3 Africa's regional and sub-regional institutions are strong development and political institutions that citizens can count on and Agenda 2063 can stand on.

These regional economic groupings have provided good platforms for cooperative efforts to-

wards solving the safety challenges in Africa. These include the implementation of the Cooperative Operational Safety and Continuing Airworthiness Development Programmes (COSCAPs) of the Central African Economic and Monetary Community (CEMAC), West African Economic and Monetary Union (UEMOA), SADC, Banjul Accord Group, EAC Air Safety Projects and the COMESA Communication, Navigation and Surveillance/Air Traffic Management (CNS/ATM) Project.

1.7 CIVIL AVIATION INITIATIVES IN AFRICA

1.7.1 There have been some joint aviation initiatives in Africa though implementation has been minimal. They include:

i) The Yamoussoukro Declaration on a new African Air Transport Policy of

1988, was aimed at progressive amalgamation of African airlines into larger, more efficient and competitive entities through joint activities and operations.

ii) The Yamoussoukro Decision (YD) relating to the implementation of the Yamoussoukro Declaration through the Liberalization of Access to Air Transport Markets. The objective of the YD is to harmonize air transport policies and free exchange of traffic rights in the intra-African market.

During the 30th Ordinary Summit of the African Union (AU) Assembly of Heads of States and Government summit held in Addis Ababa, Ethiopia, on 29 January 2018 the Single African Air Transport Market (SAATM) was launched. An AU Agenda 2063 flagship project, the SAATM aims to liberalize the air transport market in Africa through the full implementation of the provisions of the Yamoussoukro Decision (YD). The African Civil Aviation Commission (AFCAC) being the AU Specialized Agency for all Continental Civil Aviation matters has been charged with the responsibility of being the Executing Agency (EA) of the YD and the SAATM.

iii) Several Resolutions, Declarations and Action Plans were adopted by various conferences of African Ministers of Civil Aviation including the. 2005 Sun City, South Africa follow up of the YD; 2006 Libreville, Gabon adoption of the Libreville Plan of Action which set targets for accident rates and considered an African external policy for negotiation with third parties; the 2007 Addis Ababa Declaration on civil aviation security in Africa; the 2010 Abuja Joint Declaration and a Road map to counter the new emerging threat to civil aviation adopted through collaboration of AU, AFCAC, ICAO and other non Africa ICAO member States. the Almadies (Senegal) and Gauteng (South Africa) Declarations adopted by African Air Traffic Services providers for collaboration in CNS/ATM operations including the Single Sky concept; the 2011 Luanda Declaration adopted by the Second Session of the Conference of African Ministers of Transport; the 2015 Assembly Declaration on the Establishment of a Single African Air Transport Market; the 2016 Windhoek Declaration on Aviation Security and Facilitation in Africa; the 2017 Sharm El Sheik Regional Ministerial Conference on aviation security in Africa and Middle East that adopted the Africa and the Middle East aviation security Roadmap; the 2018 AU Assembly Decision on the Establishment of a Single African Air Transport Market and the 2019 Carbo Verde Ministerial Declaration on Air Transport and Tourism Development in Africa,

1.7.2 There were also other initiatives developed for and implemented in Africa by other States and organizations, such as; ICAO African Regional Comprehensive Implementation Plan and COSCAPs, IATA IOSA and ASET, World Bank Project for Sustainable Air Transport in Africa, US Safe Skies for Africa Initiative , the EU etc.

1.7.3 ICAO AFI Plan

1.7.3.1 The Comprehensive Regional Implementation Plan for Aviation Safety in Africa (AFI Plan) was adopted by the 36th ICAO Assembly to address the aviation safety deficiencies in Africa. The AFI Plan is being implemented through three focus areas:

1. Enabling States to establish and maintain effective and sustainable safety oversight systems;
2. Assisting States to resolve identified deficiencies within a reasonable time; and
3. Enhancing aviation safety culture of African aviation service providers.

1.7.3.2 The implementation of the AFI Plan has been integrated into the programme of activities of ICAO and its Africa Regional Offices.

1.7.8.1 The Comprehensive Regional Implementation Plan for Aviation Security and Facilitation in Africa (AFI SECFAL) Plan was unanimously supported by States and endorsed at the 24th Extraordinary Plenary Session of the AFCAC in July 2014 in Dakar, Senegal; and approved by the ICAO Council as an ICAO Programme at its 203rd Session on 29 October 2014.

1.7.8.2 The objective of the AFI SECFAL Plan is to enhance aviation security in Africa in a sustainable manner.

1.7.8.3 The implementation of the AFI SECFAL Plan has been integrated into the Programme of Activities of ICAO and its African Regional Offices in collaboration with the African Civil Aviation Commission.

1.8 THE NEED FOR AN AFRICAN CIVIL AVIATION POLICY

1.8.1 Despite the various initiatives and sustained efforts to promote civil aviation in Africa, overall success has been too limited and rather slow mainly due to lack of political will as well as institutional and procedural constraints. The initiatives are, in general uncoordinated and generally have different perspectives and objectives that constitute insuperable related policy implementation challenges. In order to shape better thinking and actionable policies, a coherent policy framework has been established to inter alia highlight and muster the necessary political commitment.

1.8.2 Africa has therefore developed a Civil Aviation Policy (the AFCAP) which provides the framework and the platform for the formulation, collaboration and integration of national and multinational initiatives/programmes in various aspects of civil aviation.

1.8.3 The AFCAP is the overarching framework document that expresses the political commitment of African States to work together to achieve common objectives for the positioning of African air transport in the global economy. In this regard, it aims at effective empowerment of national and regional technical bodies to enable them efficiently fulfil their responsibilities.

1.8.4 National policy decision-makers will use the AFCAP as a guide for the development of national and regional policies thereby fostering harmonisation. It will assist Africa to respond to the intricacies of globalisation by forging a paradigm shift in focus, from national to common regional market; and from inter-state to intra-African operations; from regional competition to global competition.

1.8.5 The policy addresses, inter alia, the following issues:

- a. the vision and strategic objectives for African civil aviation
- b. specific targets to bring Africa on a par with the rest of the world, including in safety, security, environmental protection, human capacity development, infrastructure development air traffic and economic statistics
- c. common objectives, policy statements and strategies for the management of the various aspects of civil aviation: - safety, security, environmental protection, airspace management, air transport, human resources etc.
- d. linkage with other socio-economic sectors, e.g. tourism and trade, to boost demand for air transport
- e. a common approach to external relations and foreign operations
- f. a procedure for periodic review and monitoring of implementation of the policies and adoption of regulations and action plans as may be necessary.
- g. the devolution of authority if necessary, from Heads of Government to the conference of Ministers, the AU commission, AFCAC etc.

CHAPTER TWO

OBJECTIVES OF CIVIL AVIATION IN AFRICA

2.0 PREAMBLE

2.0.1 The air transport industry is strategically important to Africa. This is because Africa depends mostly on air transport to link people with each other over its vast and complicated terrain as well as the rest of the world. A safe, secure, efficient environmentally conscious and sustainable Aviation Industry is therefore crucial to support business, trade, tourism, cultural, and social activities which significantly contribute to Africa's economic growth and prosperity.

2.0.2 The main roles of the AU, RECs, AFCAC and Member States in civil aviation are to create enabling environment for the growth of the industry and the safety, security and environmentally consciousness of operations across the continent through:

- adoption of policies that will encourage dynamic growth;
- improving safety oversight through cooperative and collaborative mechanisms;

Protection of the environment from the impacts of aviation;

- efficient operation and management of airports and aviation safety and security;
- efficient airspaces management;
- the development and retention of human resources ;
- infrastructure development; and
- the establishment of policies and mechanisms to prevent and respond to situations having a serious and/or lasting impact on civil aviation; and
- increasing the involvement participation of the private sector, etc.

2.1 VISION FOR AFRICAN CIVIL AVIATION

2.1.1 The vision of African Civil Aviation is :

“To foster a safe, secure, efficient, financially viable, sustainable environment friendly and gender sensitive , civil aviation industry in Africa supported by well-trained, committed and integrous aviation professionals across all ages”

2.2 THE POLICY THRUST OF AFRICAN CIVIL AVIATION

2.2.1 The desire of Member States is to have an African Civil Aviation Policy for the promotion of a harmonised approach to manage all aspects of civil aviation on the African continent amongst which are:

- i) safety;
- ii) security;
- iii) human resource and capacity building;
- iv) infrastructure, equipment and facilities
- v) efficiency;
- vi) Gender;
- vii) young people;
- viii) research and development/new technologies;

ix) environmental protection and

x) Business viability .

2.2.2 The African Union shall adopt policies that will foster cooperative and collaborative arrangements for the sustainable development of civil aviation in the continent.

2.2.3 All civil aviation policies in Member States and RECs shall be consistent with the provisions of the AFCAP.

2.2.4 In order to fulfil these objectives, the following must be accomplished:

(i) Member States shall harmonize their respective national civil aviation policies and those of the REC with the provisions of this Policy.

(ii) AFCAC shall put in place the necessary mechanism for the periodical review of this Policy to ensure that it is consistent with and adapted to the developments in the industry.

(iii) AFCAC shall establish the platform to facilitate the regular exchange of ideas and experiences to cultivate and strengthen the relationship and serve as an interface between AFCAC, Civil Aviation Authorities, RECs, RSOOs, African Airlines and other stakeholders.

iv) AFCAC shall provide advice on the status of compliance of the civil aviation policies of Member States and RECs with the AFCAP.

2.3 STRATEGIC OBJECTIVES

2.3.1 The strategic objectives of civil aviation in Africa shall be as follows:

A. To foster sustainable development of air transport in Africa.

B. To enhance civil aviation safety in Africa. C. To enhance civil aviation security in Africa.

D. To ensure sustainable human resources development for African aviation

E. To strengthen the Rule of Law in African aviation.

F. To minimize adverse effects of aviation activities on the environment; and

G. To facilitate growth and sustainability of Africa's economies

2.4 KEY PERFORMANCE AREAS AND INDICATORS

2.4.1 The key performance indicators for African civil aviation shall be as follows:

2.4.1.1 Safety Performance Indicators:

1. Number of accidents and major incidents;

2. Number of fatalities;

3. Accident rate in the AFI Region as compared to the global average;

4. Safety Management Maturity Level; and

5. Oversight capabilities of the CAAs.

2.4.1.2 Air Traffic Performance Indicators:

1. Aircraft movement – arrivals and departures;

2. Passenger and cargo traffic;

3. International market share;

4. Average load factor for the African air carriers; and

5. African city pairs.

2.4.1.3 Environmental Performance Indicators

1. Number of States with established Environmental Protection oversight units

2. Number of States with established State Environmental Protection programs

3. Number of States with comprehensive Environmental Protection States' Action Plans

4. Number of States that have fully domesticated Annex 16 volumes I,II,III and IV provisions into national regulations as required.

2.5 TARGETS AND STRATEGIES

2.5.1 Building on the key performance areas and indicators, AFCAC, in collaboration with member States shall periodically put in place measurable and achievable targets for African civil aviation. These targets shall be included in schedules to be annexed to this policy.

2.5.2 AFCAC shall monitor, review and report on the achievement of the targets to its Plenary and to the Committee of Ministers responsible for civil aviation.

2.5.3 The following strategies shall be adopted:

(i) Strengthening of regulatory and safety security and environmental oversight capabilities of Member States through the creation of effective autonomous CAAs and /or establishment of RSOOs;

(ii) Development of regulatory frameworks and economic regulations based on ICAO policies and principles which set the basis for user consultation on charges and fees;

(iii) Development, training and retention of qualified aviation personnel;

(iv) Strengthening of service providers and air carriers through creation of enabling environment;

(v) Strengthening and empowering AFCAC to enable it assist States to comply with ICAO SARPs and enforce the full implementation of this policy, the YD and any other resolutions passed by the AU; and

(vi) Strengthening CAA oversight to support airlines that are (financially) transparent, sufficiently capitalized and adequately liquid to support sustainable operations, meet their obligations and withstand unexpected shocks. This will be achieved through the administration of mechanisms that promote a best practice corporate governance structures, risk assessment, internal audit and compliance monitoring within the airlines which will help support a competitive and growing aviation industry.

2.5.4 AFCAC shall coordinate peer review mechanism by encouraging Member States to offer themselves as custodians of continental safety targets or to partner with other Member State(s) to achieve specific or a basket of safety targets or human capacity building targets or specific infrastructure development or partner with Member States on entry into service of new aircraft equipment or research and development on technologies, materials and other phenomenon.

2.5.5 States are encouraged to publish simplified and standardized process for overflight permissions, taking advantage of automation in order to expedite approval of overflight clearance permits for scheduled and non- scheduled flights

2.5.6 States are encouraged to include special provisions for overflight clearance (OVFC) and non-traffic stops in the Bilateral Air Services Agreements (BASA) and Multilateral agreements in order to facilitate exceptions for overflight clearance permits requirements.

2.6 KEY PRINCIPLES

2.6.1 The following key principles shall underpin the AFCAP in guiding the development, management and operations of the african civil aviation industry.

2.6.1.1 Aviation safety and security shall take first priority.

2.6.1.1.1 Aviation safety and security constitute the bedrock upon which the success of the aviation industry is built and therefore shall receive top priority.

2.6.1.2 Liberalisation of the African air transport industry shall be progressively pursued.

2.6.1.2.1 Liberalisation of air services within Africa shall be strongly and continuously pursued due to its potential to enhance capacity, connectivity, service quality and choice as well as encourage competitive fares. Schedules coordination among African airlines shall respond to the lack of connectivity on routes which are economically unviable .

2.6.1.3 Necessity of harmonization, coordination and cooperation

2.6.1.3.1 By its international nature, aviation requires to be coordinated in order to enhance its efficiency, safety, security and regularity. Regional cooperation is imperative as a means to promote the harmonization of aviation policies, regulations and procedures; optimization of scarce resources; and integration of aviation systems.

2.6.1.4 Necessity of regenerating aviation

2.6.1.4.1 A significant proportion of revenues generated by aviation need to be ploughed back into the industry to ensure its regeneration and growth. Furthermore, all financing options shall be pursued, including State funding, public-private partnerships, private investment and development assistance in order to adequately finance safety oversight, infrastructural provision, human resource development, airline capitalisation etc ..

2.6.1.5 Reciprocity in international relations

2.6.1.5.1 In conducting international civil aviation relations, the exchange of opportunities, obligations, rights and privileges shall be on a reciprocal basis and as guided by the AU .

2.6.1.6 The human resource is key to aviation efficiency, safety, security, environmental protection and regularity.

2.6.1.6.1 The human resource is the greatest asset for any nation, sector or enterprise. In aviation, the human resource is particularly critical to the achievement of efficiency, safety, security, environmental protection and regularity, and therefore shall receive due attention. Training and retraining of professionals in quality and quantity in order to address various challenges of the aviation industry shall be relentlessly pursued and their retention in the African aviation industry shall be guaranteed.

2.6.1.7 Necessity of protecting the environment

2.6.1.7.1 Aviation unfortunately contributes to environmental degradation; therefore African States shall contribute to its protection under the guidance of ICAO and the African Union taking into consideration the respective capabilities of African States. Environmental Protection considerations shall be included in all national aviation development plans, policies and strategies

2.6.1.8 ICAO shall be the primary source of guidance on the establishment of regional and national aviation regulatory and institutional frameworks. AFCAC shall in coordination with ICAO and other Stakeholders foster the implementation of the SARPs and necessary guidance related to environmental protection

2.6.1.8.1 All aviation laws, regulations and practices shall be based on the Chicago Convention, air law instruments and guidance provided by ICAO.

2.6.1.9 Need to strengthen sectoral synergies and intermodal integration.

2.6.1.9.1 There is need for synergies between air transport and other sectors such as trade, tourism, energy, etc. There is further need for integrated intermodal system for seamless movement of passengers and cargo.

2.6.1.10 Necessity of regular stakeholder consultations

2.6.1.11 The smooth implementation of the AFCAP requires regular consultations between key stakeholders, primarily the AU Commission (as policy driver), AFCAC (as policy implementer), Member States (given their primary responsibility for safety, security and environmental protection oversight) and regional economic groups (as regional coordinators) and trade and tourism sectors (as air transport beneficiaries). Stakeholder consultations need to be cascaded to regional and national levels as appropriate.

2.6.1.12 Economic Regulation Concept And Methodology

2.6.1.13 Implementing harmonized financial and non-financial metrics for airline compliance in terms of consistency and timeliness of financial reporting.

2.6.1.14 Development of objective financial indicators in assessing the strengths, weaknesses, opportunities and threats of individual airlines in order to take corrective measures. Audited financial statements or financial ratios (e.g. profitability ratios, long-term liquidity ratios, financial strength) provide a method of standardization. In addition, these economic characteristics and competitive strategies give an indication for areas of potential strength that need further investigation.

2.6.1.15 Evaluation of key non-financial indicators in measuring airline performance such as labour, aircraft equipment (fleet acquisition, composition and utilization) and maintenance should be applied as symptoms of satisfactory airline performance.

2.6.1.16 Emphasis of the importance of other non-financial metrics such as the Operations Management, Organization/General Management, Financial Management, Internal Business Processes, Digital Technology as crucial factors in determining the financial health of airlines.

2.6.1.17 (v) Member States shall encourage cooperation among African Airlines including Interlining, codeshare agreements, Joint Venture Agreements, etc

CHAPTER THREE

INSTITUTIONAL FRAMEWORK FOR IMPLEMENTATION, REVIEW AND AMENDMENT OF AFCAP

3.0 The AFCAP is a concise overarching policy framework document, which forms the basis of which African Regional Programmes, Action Plans and common Rules, Regulations and Guidelines.

3.1 The following institutions are stakeholders in the implementation of the AFCAP:-

3.1.1 SUMMIT OF HEADS OF GOVERNMENT

3.1.1.1 The Summit of Heads of Government of the African Union has the ultimate political authority for the adoption of the AFCAP, on the recommendation of the Committee of Ministers responsible for civil aviation.

3.1.2 COMMITTEE OF MINISTERS

3.1.2.1 The Committee of Ministers shall approve the AFCAP and adopt amendments thereto. The Committee shall consider reports on the implementation of the AFCAP at its regular sessions. The Committee shall also ensure full review of the AFCAP at least once every 10 years. The Action Plans adopted by the Ministers shall be in conformity with the AFCAP.

3.1.3 AFRICAN UNION COMMISSION

3.1.3.1 The AUC has functional responsibility to advise the Committee of Ministers regarding the development, review and amendment of the AFCAP with the technical advice of AFCAC. It is the responsibility of the AUC to ensure that there is harmony between the AFCAP and the Constitutive Acts and other Transport policies adopted by the AU, RECs and Member States. The AUC will also ensure that other economic sectors do not adopt policies that have detrimental effect on the growth of civil aviation in Africa.

3.1.4 AFRICAN CIVIL AVIATION COMMISSION (AFCAC)

3.1.4.1 AFCAC as the specialised agency of the AU shall serve as the technical adviser to the AUC and the Committee of Ministers on all matters pertaining to the review and implementation of the AFCAP. In this regard, AFCAC shall coordinate with ICAO States, RECs and other stakeholders and present regular reports on the status of implementation of the AFCAP to the Committee of Ministers and AFCAC Plenary. AFCAC's Work Programmes, Action Plans and harmonised Regulations shall be in conformity with the AFCAP.

3.1.5 MEMBER STATES

3.1.5.1 Member States shall ensure implementation of the AFCAP at the national level and in their bilateral and multilateral civil aviation activities. The AFCAP shall serve as guidance for Member States in the development of national civil aviation policies. Member States shall therefore review their existing policies and formulate future policies in line with the provisions of the AFCAP.

3.1.6 REGIONAL ECONOMIC COMMUNITIES (RECS)

3.1.6.1 RECs shall coordinate the implementation of the AFCAP within their regions. The AFCAP should serve as guidance for those RECs that wish to adopt regional policies in civil aviation. RECs shall therefore review their existing and future policies, Action Plans and regulations in the field of civil aviation to ensure that they are in conformity with the AFCAP.

3.1.7 OTHER REGIONAL BODIES

3.1.7.1 Proliferation of regional organisations in the field of civil aviation should be discouraged, and to the extent possible, AFCAC should be empowered as the responsible agency for all technical matters in civil aviation. However where other regional bodies e.g. the New Partnership for Africa's Development (NEPAD/ Planning and Coordinating Agency (NPCA) and the United Nations Economic Commission for Africa (UNECA), are involved in civil aviation matters, their activities should be coordinated with AFCAC to avoid overlap and confusion. Such activities shall be in conformity with the AFCAP.

3.1.8 CIVIL AVIATION SERVICE PROVIDERS

3.1.8.1 All civil aviation service providers shall promote effective implementation of the AFCAP in their areas of activities and ensure that the spirit of the AFCAP is adhered to.

3.1.8.2 AIRLINES

3.1.8.2.1 The African Airlines Association (AFRAA) together with IATA shall coordinate the activities of the African airlines with respect to the AFCAP and be their spokesperson with respect to their views, interests and challenges in the implementation of the AFCAP.

3.1.9 AIRPORTS

3.1.9.1 African airports operators are encouraged to come together preferably under one pan-African umbrella organisation (or association) to advance their interests and to facilitate harmonised implementation of the AFCAP. In the interim, African airports may coordinate their regional activities through the ACI-Africa.

3.1.10 AIR NAVIGATION SERVICE PROVIDERS (ANSPS)

3.1.10.1 African ANSPs are encouraged to come together preferably under one pan African umbrella organisation/association to coordinate their views and interests and foster harmonised implementation of the AFCAP. In the interim, the ANSPs may coordinate their regional activities through the CANSO-Africa.

3.2 REVIEW AND AMENDMENT OF THE AFCAP

3.2.1 Aviation is a highly dynamic and complex international industry,

hence the AFCAP is not intended to be a static document. Certain developments may necessitate a review and amendment of the policy, such as political decisions and policies of the AU, that have impact on civil aviation, developments in international civil aviation that have impact on African civil aviation, need for more detailed policies to guide Member States to regulate or delineate competencies in specific aspects of civil aviation, need to establish new regional bodies in the field of civil aviation and periodic review to incorporate decisions, resolutions and other policies adopted by the Committee of Ministers. The needs shall be processed through the AUC process in collaboration with AFCAC

3.2.2 Since the adoption of the AFCAP over ten years ago, the aviation industry has witnessed tremendous technological, political and socio-economic development. New initiatives and policies have been adopted at the global stage and on the African continent, thus the need to ensure that the Policy reflects the new developments and trends in areas of safety, Communication, Navigation and Surveillance systems (CNS), Air Traffic Management (ATM), security, environmental protection and consumer protection, for sustainable development of air transport in Africa.

3.2.3 There is also the need to review the AFCAP in order to bring Africa on a par with the rest of the world and ensure that the transformational benefits of aviation, with its linkages to other socio-economic sectors, such as trade and tourism, will increase demand for air transport in Africa and promote investment in infrastructure, facilities and human resource development, in line with the Agenda 2063 of the AU.

3.2.4 Some of the critical developments that have impact on global and African civil aviation and necessitated a review and amendment of the AFCAP include:

a) the AU Agenda 2063 pertaining to the Declaration on the creation of the Single African Air Transport Market (SAATM), adopted by the Assembly of Heads of State and Government of the AU in January 2015;

b) the commitment of Member States of the AU to immediately apply the principles of the YD and to launch the SAATM by 2018;

c) the other Agenda 2063 Projects – the AfCFTA, free movement of persons and the adoption of an African passport;

d) the Global Air Navigation Plan (GANP);

e) the Global Aviation Safety Plan (GASP);

f) the Global Aviation Security Plan (GASeP);

g) the Global Market Based Measures (GMBMs) – Carbon Offsetting Scheme for International Aviation (CORSIA) on Environment;

h) expanded use of new technologies, e.g Remotely-Piloted Aircraft Systems (RPAS) for commercial and recreational purposes;

i) the UN and ICAO's Sustainable Development Goals (SDGs), 15 out 17 of which directly impact civil aviation;

j) the establishment of new regional bodies in the field of civil aviation, such as the Regional

Aircraft Accident Investigation Agencies (RAAIAs); and

k) the need to incorporate Decisions, Resolutions and Policies so far adopted by the Committee of Ministers.

3.3 PROCEDURE FOR REVIEW AND AMENDMENT OF AFCAP

3.3.1 A review and/or amendment of the AFCAP may be undertaken by the directives of the Committee of Ministers on the recommendation of the AUC and/or AFCAC

3.3.2 Member States and RECs may request a review of the Policy. The AUC and AFCAC shall provide advice with respect to such requests.

3.3.3 Other aviation stakeholders may propose amendments to AFCAP, which AFCAC shall consider and provide technical advice .

3.4 PERIOD FOR COMPREHENSIVE REVIEW AND AMENDMENT OF THE AFCAP

3.4.1 A comprehensive review of the AFCAP shall be undertaken at least once in every ten years.

Part Two

Technical Provisions

CHAPTER FOUR

AVIATION LEGISLATION AND REGULATORY FRAMEWORK

4.0 PREAMBLE

4.0.1 The Chicago Convention and its Annexes form the primary international air law regulating the conduct of international civil aviation. In addition, other instruments such as Conventions and Protocols have been concluded for specific areas including safety, aviation security, Environmental Protection passenger and third party liabilities etc.

4.0.2 At the national level, every ICAO Member State is expected to enact its primary aviation legislation that empowers the conduct and oversight of civil aviation activities within its territory. This comprehensive and effective aviation law should be consistent with the environment and complexity of the State's aviation activity and compliant with the requirements contained in the Chicago Convention. Member States should also domesticate other international air law instruments to which they are parties.

4.0.3 States shall also adopt adequate regulations to address, at a minimum, national requirements emanating from the primary aviation legislation and providing for standardized operational procedures, equipment and infrastructures, including safety, aviation security, environmental management and training systems as well as enforcement mechanisms, in accordance with ICAO SARPs. These Regulations, in generic terms, cover all instructions, rules, edicts, directives, and sets of laws, requirements, policies, and orders.

4.1 LEGISLATION

4.1.1 OBJECTIVE

4.1.1.1 The objective of Member States is to put in place primary aviation legislations enacted by their respective parliaments and consistent with international aviation laws, rules and regulations.

4.1.2 POLICY STATEMENT

4.1.2.1 Member States shall have powers to make code of air navigation regulations and the respective CAAs shall have the powers to develop, issue and revise operating regulations and rules consistent with the code of air navigation regulations which shall be in conformity with the States' primary aviation legislations.

4.1.3 STRATEGIES

4.1.3.1 To achieve this objective, the following shall be accomplished:

(i) All existing civil aviation legislations in Member States shall be reviewed and amended to incorporate current ICAO SARPs;

(ii) Member States shall ratify all international air law instruments to which they are parties and incorporate their provisions into the National Laws;

(iii) Member States shall empower their CAAs to implement and enforce all international conventions, protocols, and resolutions

(iv) Member States shall ensure that all their aviation legislations are reviewed and revised to be in conformity with this policy;

(v) Members States shall ensure the timely implementation of the AU and AFCAC Resolutions.

4.2 REGULATORY FRAMEWORK

4.2.1 OBJECTIVE

4.2.1.1 The objective of Member States is to establish and/or enhance an effective civil aviation regulatory system that will promote the sustainable development of civil aviation in Africa.

4.2.2 POLICY STATEMENT

4.2.2.1 Member States shall establish effective and sustainable regulatory oversight systems.

4.2.3 STRATEGIES

4.2.3.1 To achieve the above objective, the following shall be accomplished:

(i) Member States shall establish autonomous CAAs with full regulatory powers for enforcement and oversight of the aviation industry in their respective States without any interference.

(ii) Member States shall ensure adequate funding for the CAAs.

(iii) AFCAC shall work with and support Member States in the establishment of autonomous CAAs .

(iv) Members States shall have collaborative forms of RSOOs in order to strengthen their oversight capabilities through optimisation of resources.

(v) Member States and RECs shall adopt and ensure effective implementation of all AU and AFCAC Resolutions, Rules and harmonised Regulations .

CHAPTER FIVE

AIR TRANSPORT

5.0 PREAMBLE

5.0.1 Globally, air transport has become an enabler for sustainable economic development and a vital engine for global socio-economic growth owing to the fact that it provides a worldwide transportation network .Air transport plays a pivotal role in facilitating tourism, trade, movement of goods, generation of jobs, improvement of living standards, alleviation of poverty and increasing revenue generation. It is often the fastest means of transportation to/from remote areas, and promotes social inclusion by connecting those living in such communities with the rest of their country. The air transport network facilitates swift delivery of humanitarian relief aid and emergency delivery of medical supplies anywhere on the globe. The implementation of the African Continental Free Trade Agreement will not be achieved without an improved intra-Africa air transport connectivity.

5.0.2 The trend all over the world is the liberalization of air transport businesses and services. The purpose of liberalisation is to reduce and eventually eliminate unnecessary restrictions in order to allow more players in the industry and permit free access to the markets. Removal of restrictions creates enabling environment for alliances and/or mergers among service providers, enhances flight interconnectivity thus giving the users more choice and encouraging the use of air services. Achieving sustainable economic development in Africa is highly dependent on the development of air transport and enhancement of air connectivity within the continent. While many air transport markets between Africa and outside of Africa have been liberalized to a significant extent, most intra-African air transport markets remain largely closed due to restrictive BASAs

5.0.3 In Africa, with the adoption of the Yamoussoukro Decision 1999, the speed and pace of liberalization has increased access to air transport markets, harmonization of air transport policies and free exchange of traffic rights. The full implementation of the YD under the Single African Air Transport Market (SAATM) and its robust regulatory framework would strengthen the realization of the objectives of the AU Agenda 2063, and would ensure the sustainable development of air transport and realization of associated socio-economic benefits thereto.

5.1 LIBERALISATION OF AIR TRANSPORT INDUSTRY

5.1.1 OBJECTIVES

5.1.1.1 The objectives of member States shall be to:

- i. Develop a liberalized, agile and competitive air transport industry that responds promptly to the dictates of the market, technological developments and global trends; and
- ii. Promote the implementation of the Single African Air Transport Market (SAATM) through the full implementation of the Yamoussoukro Decision (YD) in order to promote the continent's economic integration agenda.

5.1.2 POLICY STATEMENT

5.1.2.1 There shall be a liberalized, competitive and economically sustainable Single African Air Transport Market .

5.1.3 STRATEGIES

5.1.3.1 To achieve the above objectives, the following shall be accomplished:

- (i) Member States shall ensure full implementation Of the

Yamoussoukro Decision

(ii) AFCAC as the Executing Agency of the Yamoussoukro Decision (YD) shall work with the States and Regional Economic Communities (RECs) to ensure the full implementation of the YD;

(iii) Member States shall ensure that all Air Transport Policies are consistent with the Yamoussoukro Decision.

(iv) Member States shall remove and/or relax all barriers

like Immigration, Customs etc, thereby facilitating free movement of people and goods within the continent in accordance with the AU Protocols on Free Movement of Persons and the African Continental Free Trade Area. In addition Member States shall harmonize safety, security and environmental protection regulations such that a universal licensing and approval regime shall be applicable within the African continent.

(v) Member States shall encourage cooperation among African

Airlines

(vi) Member States shall encourage Private Sector investments, partnership and full participation in Air Transport business.

(vii) Member States shall ensure infrastructural development to address the current and anticipated traffic growth.

(viii) Fares and tariffs among member States shall be liberalised. The respective Civil Aviation Authorities shall ensure that airlines do not engage in anti-trust and predatory practices.

(ix) Member States shall sign on to the Solemn Commitment to implement the Single African Air Transport Market (SAATM) .

(x). Member States shall be guided under the application of the multilateral regulatory framework of the Single African Air Transport Market (Continental Consumer Protection and Competition Regulations) to achieve a balance between the interests of all service providers.

(xi) Member States shall foster efficient, cost effective and sustainable air transport development in Africa.

(xii). Member States shall create a level playing field for all aviation stakeholders so as to ensure a strong and sustainable African aviation industry that is competitive in a global and liberalized environment;

(xiii). Member States shall ensure non-discrimination and transparency in the application of tariffs and charges, and such shall be achieved through consultative engagements with users as espoused in the member State's established economic regulations through compliance with ICAO policies and guidelines;

(xiv). Member States shall ascertain that investments in capacity meet current and future demand in a cost effective manner; and

(xv) Member States shall ensure that service providers consult with users and that appropriate performance management systems are put in place.

5.2 AIR SERVICES AGREEMENTS

5.2.1 OBJECTIVES

5.2.1.1 The objectives of member States shall be to:

(i) Actively participate in the negotiation of international air service agreements in order to increase international commercial air transport services between States.; and

(ii) Establish mechanisms to adhere to the principles of negotiating air service agreements as stipulated in the YD and the AU Policy Guideline for the negotiation of BASAs with third parties,

and the principles of negotiating air service agreements as stipulated in Article 3 of SAATM.

5.2.2 Policy Statement

5.2.2.1 The negotiation of air services agreements with third countries shall be guided largely by economic consideration and the principles of reciprocity that will ensure fair and equal opportunities as stipulated in the YD, SAATM and AFCAP.

5.2.3 STRATEGIES

5.2.3.1 In pursuance of these objectives, the following shall be ensured:

(i) Air Services Agreement negotiation amongst member States shall be in accordance with YD and this AFCAP

(ii) Air Services Agreement negotiation by member States with Third Countries shall be in accordance with the African Union External Guidelines on the Negotiation of Air Service Agreements.

(iii) In order to ensure fair and equal opportunities for African airlines, all Air Services Agreement signed with Third Countries should include Option 2 of the ICAO guidelines on Slot Allocation which states that:

“Each Party shall facilitate the operation of the agreed services by the designated airlines of the other party, including granting the necessary landing and take-off slots, subject to the applicable national and international rules and regulations, and in accordance with the principle of fair and equal opportunity, reciprocity, non- discrimination and transparency”.

“Both Parties shall make every effort to resolve any dispute over the issue of slots affecting the operation of the agreed services, through consultation and negotiation in accordance with the provisions of Article x (Consultation) or through the dispute resolution provisions of Article Y (dispute settlement)”.

5.3 AIR TRANSPORT LICENSING

5.3.1 OBJECTIVE

5.3.1.1 The objective of member States in granting Air Transport Licences and Permits will be to promote growth and healthy competition while balancing the interests of the aviation industry, travelling passengers and the continent as a whole.

5.3.2 POLICY STATEMENT

5.3.2.1 Member States shall only grant Air Transport Licences and Permits to

Air Carriers that fulfill the eligibility criteria set forth in the Yamoussoukro Decision and any other conditions that may be set by AFCAC.

5.3.3 STRATEGIES

5.3.3.1 To achieve the above objective, the following shall be accomplished:

(i) Airlines to be designated shall comply with the eligibility criteria set by the Yamoussoukro Decision.

(ii) The air carrier shall also possess an Air Operator’s Certificate duly issued in accordance with ICAO SARPs.

(iii) A member State may designate an eligible air carrier from another member State to operate air services on its behalf.

(iv) A member State shall have the right to designate a multinational air Carrier owned and effectively controlled by it and/or other State Parties to the YD to operate air services on its behalf.

5.4 COMPETITION AND CONSUMER PROTECTION

5.4.1 OBJECTIVES

5.4.1.1 The objectives of member States are:

- (i) To encourage fair competition by creating level playing field for all aviation stakeholders in order to ensure a strong and sustainable African aviation industry that is competitive in a global and liberalized environment;
- (ii) To protect the rights of consumers against unfair treatment in the provision of services as well as increase their confidence in aviation services in the Continent; and
- (iii) To provide basis of compensation for consumers of air services for any breach of their rights by air transport service providers as well as a mechanism for consumers to seek redress.

5.4.2 POLICY STATEMENTS

5.4.2.1 Aviation Authorities and service providers shall establish consumer service units to enlighten consumers of aviation services of their responsibilities and rights as well as address their grievances.

5.4.2.2 All aviation service providers must avoid all forms of predatory pricing and other anti-competitive behaviours

5.4.3 STRATEGIES

5.4.3.1 In pursuance of these objectives:

(i) Member States shall facilitate the establishment of an

Aviation Consumers Council. The Council shall be made up of industry stakeholders, including users.

(ii) Civil Aviation Authorities shall monitor the activities of Airlines, Travel Agents, Cargo Consolidators, Ground Handling Companies and other service providers to ensure compliance with regulations governing their operations and protection of the consumers of their services.

(iii) AFCAC shall enforce the adopted Rules of competition in Air Transport Services and Dispute Settlement Mechanism.

(iv) AFCAC shall ensure that the competition rules put in place adequately cover third countries and third country companies whose activities may have the effect of distorting competition.

(v). Member States shall promote and guarantee free and fair competition in Intra-African air transport services in order to develop the air transport industry and to contribute to the welfare of the citizens of the State Parties.

(vi) Member States 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.

(vii). Member States and RECs shall ensure that legislation or administrative measures put in place does not discriminate against the provision of services by airlines or associations of airlines of other State Parties.

(viii) Member States or a regional economic community shall, 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 (AFCAC) to review the legislation in question and recommend appropriate amendment of any provision that may directly or indirectly permit or promote anti- competitive behaviour.

5.5 INSURANCE

5.5.1 OBJECTIVE

5.5.1.1 The desire of member States is to ensure that Air Carriers and other aviation service providers put in place adequate insurance coverage for their operations.

5.5.2 POLICY STATEMENT

5.5.2.1 The air carriers' insurance liability required for hull, passenger, crew, baggage and third party as well as insurance liability for other service providers and third party shall be in conformity with International Standards and best practices.

5.5.3 STRATEGIES

5.5.3.1 In pursuance of this objective, the following shall be ensured:

i) Passenger, cargo, third party liability limits and Airlines crew and personnel, aircraft training instructors & trainees' insurance cover shall be regulated.

ii) Insurance Liability Regime for designated air carriers shall be applied based on ICAO published limits or as expressly provided for by AFCAC.

iii) Air Carriers wishing to go on international operations shall adopt the liability limits set at the Montreal Convention of 1999.

i. Member States shall adopt harmonised liability limits for domestic operations. The limits shall be determined by AFCAC in consultation with States and included in a schedule to this Policy (AFCAP).

ii. Service providers in the aviation industry including Airports' and Air Navigation Operators shall put in place adequate third party insurance cover.

iii. Member States shall carry out periodic risk assessment/survey of airports, air navigation and other service providers and their operating environment to identify deficiencies and mitigate the risks.

iv. Member States shall sign and ratify all relevant Conventions and Protocols relating to risks to civil aviation.

5.6 AVIATION TARIFFS AND CHARGES

5.6.1 The proliferation of various taxes and duties on passengers, airports and airlines and air transport, as well as disproportionate or unwarranted concession fees and rents on operators to governments, represent an impediment to air transport. Only justifiable, equitable and non-discriminatory charges on passengers, airports, airlines and air transport are acceptable, as they otherwise engender a negative economic impact hindering the sustainable development of airports and of air transport.

5.6.1.1 Aviation is a major driver of global economic development. As such, airtransport is already a significant contributor to local and national tax authorities around the world via passenger duties, domestic value-added tax (VAT), customs or immigration and other miscellaneous levies. In fact, air transport fully funds its infrastructure operation and development through user charges and in addition is subject to taxes, contributing directly to State coffers a substantial financial inflow as compared to other modes of transport.

5.6.1.2 High tax burden limits the potential economic benefits of air transport. Many governments across the globe view air transport as a luxury for the wealthy, despite a radical decrease in the real cost of air travel over the last decades. Taxation discourages demand for air transport,

which in turn limits connectivity. The high tax burdens in some countries prevent them to fully unlock the economic benefits that air transport can bring to today's globalized society.

5.6.1.3 Consequently, only approved, justifiable, equitable and non-discriminatory taxes and duties on aviation must be considered. Any revenue-generated from air transport specifically should be earmarked for the aviation sector.

5.6.2 OBJECTIVE

5.6.2.1 The objective of member States is to ensure that all aviation tariffs and charges are simple, consistent, economical and non discriminatory in accordance with ICAO policy and guidelines.

5.6.3 POLICY STATEMENT

5.6.3.1 The aviation service providers shall develop tariffs and charges in consultation with the users of their services and in accordance with ICAO policy and guidelines, and file those tariffs and charges with the regulatory authority.

5.6.4 STRATEGIES

5.6.4.1 In pursuit of this objective, the following shall be complied with:

- i) Member States shall ensure that aviation charges are only applied to services rendered.
- ii) Member States shall ensure that the charging system is simple and suitable for general application.
- iii) All user charges shall be in accordance with ICAO policy and guidelines and international best practices.
- iv) Member States shall develop, review and harmonize policies on aeronautical related taxes and charges as well as other non-tariff barriers in consultation with the users of the services.
- v) All aeronautical charges shall be filed with the Civil Aviation Authorities for the purpose of anti-trust and consumer protection. Civil Aviation Authorities and airports and air navigation services providers shall ensure that airport and air navigation services charges are only applied towards defraying the costs of providing facilities and services for civil aviation, and that service providers consult users prior to implementation of such charges.
- vi) Civil Aviation Authorities shall ensure that tariffs and charges are determined on the basis of sound accounting principles and may reflect, as required, other economic principles, provided that these are in conformity with provisions of the *Convention on International Civil Aviation* and this Policy (AFCAP).
- vii) Civil Aviation Authorities shall ensure that tariffs and charges are not imposed in such a way as to discourage the use of facilities and services necessary for safety.
 - (vii) Member States that participate in trade negotiations, agreements and arrangements relating to international air transport shall:
 - a) ensure internal coordination in national administrations and, in particular, the direct involvement of aeronautical authorities and the aviation industry in the negotiations;
 - b) ensure that representatives are fully aware of the provisions of the *Convention on International Civil Aviation*, the particular characteristics of international air transport and its regulatory structures, agreements and arrangements;

c) take into account rights and obligations vis-à-vis those of ICAO Member States which are not members of the World Trade Organization (WTO); and

d) examine carefully the implications of any proposed inclusion of an additional air transport service or activity in the General Agreement of Trade in Services (GATS), bearing in mind, in particular, the close linkage between economic, environmental, safety and security aspects of international air transport.

(viii) Member States shall make every effort pursuant to Article 15 of the Convention to publish any charges that may be imposed or permitted to be imposed by a member State for the use of air navigation facilities and airports by the aircraft of any other member State.

(ix) Member States shall ensure the establishment of Economic Regulations which are to set the basis for user consultation on user charges matters

5.7 ECONOMIC REGULATION OF AIRPORTS AND AIR NAVIGATION SERVICES

5.7.1 OBJECTIVE

5.7.1.1 The objective of member States is to ensure safety and security of operations, development of infrastructure, promotion of competition and fair access of users to airports and air navigation services at rates and charges consistent with ICAO policies and guidelines and the AFCAP

5.7.2 POLICY STATEMENT

5.7.2.1 Member States through the Civil Aviation Authorities shall regulate States shall regulate the the economics of their respective airports and air navigation services in line with international principles and best practices.

5.7.3 STRATEGY

5.7.3.1 In pursuance of this objective of member States: Civil Aviation Authorities shall put in place necessary machinery to regulate the economics of their respective airports and air navigation. Member States and their airports and ANSPs shall make use of ICAO's policies on charges (Doc 9082) and guidance material regarding infrastructure financing (*Airport Economics Manual* (Doc 9562) and *Manual on Air Navigation Services Economics* (Doc 9161) refer). Member States should ensure that revenues generated by the civil aviation sector are re-invested in this sector in accordance with ICAO's policies on charges (Doc 9082), while refraining from imposing taxes for the sale or use of international air transport (Doc 8632). Member States and their airports and Air Navigation service Providers shall pay particular attention to ICAO's policies on charges (Doc 9082) when considering prefunding of an infrastructural project.

Civil Aviation Authorities and airports and Air Navigation Service Providers shall ensure that airport and air navigation services charges are only applied towards defraying the costs of providing facilities and services for civil aviation, and that service providers consult users on such charges.

5.8 FACILITATION

5.8.1 OBJECTIVE

5.8.1.1 The desire of member States is to ensure the smooth and easy flow of air traffic through their airports and territories in accordance with Annex 9 (Facilitation) of the Convention on International Civil Aviation.

5.8.2 POLICY STATEMENT

5.8.2.1 Member States shall ensure effective facilitation of air traffic through their airports and territories.

5.8.3 STRATEGIES

5.8.3.1 In pursuit of this objective, the following shall be accomplished:

i) Member States shall develop and implement a National Air Transport Facilitation Programme in accordance with ICAO Annex 9.

ii) Member States shall establish National Air Transport Facilitation Committees to coordinate facilitation activities between departments, agencies and other organizations of the State concerned with or responsible for various aspects of international civil aviation and other broad policy issues.

iii) Member States shall establish Airports Facilitation Committees in accordance with ICAO Annex 9 and Facilitation Manual.

(iii) Member States shall implement all ICAO Standard on Travel Documents as outlined in ICAO Annex 9

(iv) Member States shall establish and implement passenger data exchange processes and systems including Advanced Passenger Information (API) and Passenger Name Record (PNR).

(v) Member States shall consider easing immigration requirements and formalities among themselves in line with AU aspiration on the Free Movement of People. This is to facilitate expeditiously intra-Africa movement of persons, thereby promoting economic activities, investments and integration of the African continent.

vi) Passenger and Cargo clearances shall be automated at all airports in the continent. Therefore, baggage x-ray machine, passport screening machines, and other necessary equipment shall be provided at all international airports in the Continent.

vii) Member States shall put in place appropriate machinery to enhance coordination and consultations between the Customs, Immigration, Aviation Security (AVSEC) and other relevant government agencies.

viii) African States shall consider easing immigration requirements and formalities among themselves in order to facilitate expeditious movement of persons between them, thereby promoting economic activities, investments and integration of the African continent.

5.9 PANDEMICS AND EMERGENCIES

5.9.1 OBJECTIVE

5.9.1.1 The desire of member States is to establish well-coordinated aviation emergency plans in preparation for outbreak of communicable diseases posing a public health risk and/or public health emergency.

5.9.2 POLICY STATEMENT

5.9.2.1 Member States response to threat of possible pandemic shall be timely, robust, coordinated and well harmonized in accordance with policies and guidelines of ICAO and World Health Organisation (WHO).

5.9.3 STRATEGIES

5.9.3.1 In pursuit of this objective, the following shall be accomplished:

i) Member States shall have national aviation emergency response plans on outbreak of commu-

nicable diseases in accordance with ICAO Annexes 9, 11 and 14.

ii) Airports operators in member States shall adopt the Airports Specific Guidelines on outbreak of communicable diseases as developed by Airports Council International (ACI).

iii) African Airlines shall adopt Airlines Specific Guidelines on outbreak of communicable diseases as developed by International Air Transport Association (IATA).

iv) AU and AFCAC shall support member States to respond to outbreak of communicable diseases posing a public health risk or public health emergency.

v) Member States shall join the ICAO Collaborative Arrangement for the Prevention and Management of Public Health Events in Civil Aviation (CAPSCA), so as to improve preparedness planning and response to public health events that affect the aviation sector.

(vi) Member States shall have National Aviation Plan for Public Health Emergency on outbreak of communicable diseases in accordance with ICAO Annexes

(vii) Member States shall join the ICAO Collaborative Arrangement for the Prevention and Management of Public Health Events in Civil Aviation (CAPSCA), so as to improve preparedness planning and response to public health events that affect the aviation sector.

(viii) Member States shall have National Aviation Plan for Public Health Emergency on outbreak of communicable diseases in accordance with ICAO Annexes 6, 9, 11, 14 & Docs 4444 (PANS-ATM).

(ix). Member States shall put in place a National Aviation Plan that follows the guidance provided by ICAO and preparedness guidance available from the WHO on outbreak of communicable diseases.

(x). Member States shall establish National Air Transport Facilitation Programme (NATFP) and a National Air Transport Facilitation Committee (NATFC) that clarifies roles and responsibilities of all relevant government agencies and ministries and other stakeholders for the prevention and spread of diseases.

5.10 STATISTICS, FORECASTING AND PLANNING

5.10.1 OBJECTIVE

5.10.1.1 The objective of member States is to establish up-to-date data base on aviation activities and operations in order to facilitate forecasting and planning for air transport development.

5.10.2 POLICY STATEMENT

5.10.2.1 Member States shall establish systems to collect, collate and process data and information on all aviation activities under their jurisdiction and operations which shall be easily accessible for use by the industry and other stakeholders for decision and policy-making towards improving safety, operational and economic efficiency of air transport.

5.11.3 STRATEGIES

5.11.3.1 In pursuance of the objective, member States shall:

(i) Set up the necessary system using the ICAO Big Data Analytics to capture, process, analyse and publish industry data to enable member States make more informed decisions.

(ii) Set up data collection and processing systems.

(iii) Submit statistical returns to AFCAC, ICAO and other international organisations as may be required.

(iv) AFCAC shall establish an aviation data collection program to be managed by the Executing Agency (The program is to be known as the African Program on Aviation Data – AfPAD) to cover areas of air transport and facilitation, safety, security, environmental protection, tourism, trade and other related areas.

5.12 EFFECTIVE PARTICIPATION IN REGIONAL AND INTERNATIONAL ORGANISATIONS

5.12.1 OBJECTIVE

5.12.1.1 The objective of member States is to continue to actively participate and be represented in regional and international aviation organizations in order to keep abreast of developments and participate in the policy making process to safe guard the interest of the region.

5.12.2 POLICY STATEMENT

5.12.2.1 Member States shall continue to participate actively in regional and international aviation organisations to pursue their national interest and those of the Continent.

5.12.3 STRATEGIES

5.12.3.1 In pursuance of this objective:

- i) Member States shall encourage their Aviation personnel and agencies to be members of regional and international Associations.
- ii) Member States shall promote the employment of African citizens in regional and international organisations.
- iii) Members States shall timely pay their contributions and dues to regional and international organisations especially AFCAC and ICAO.
- iv) Member States shall actively participate in the activities of regional and international organisations including attendance of meetings, seminars and conference.
- v) AFCAC shall coordinate and facilitate participation of member States and RECs in international aviation organisations.
- vi) AFCAC shall promote the interest of African States in its relationship with other States, ICAO and sister organisations like ECAC, LACAC, ACAC etc.

CHAPTER SIX

AIRPORTS

6.0 PREAMBLE

6.0.1 The responsibility to develop, maintain and manage airports, including the provision of security, rescue and firefighting services and facilities, among others, are vested in the Airports Operators. , Government of member States continue to give full support in the area of security. However in line with the trend all over the world, the airport system in the continent should be liberalised and commercialised with increased private sector participation.

6.0.2 The airports should therefore be developed in accordance with ICAO guidelines, which provide for self-sustenance and discourages the use of funds generated from one airport system to fund other airports.

6.1 AIRPORT DEVELOPMENTS AND MAINTENANCE

6.1.1 OBJECTIVE

6.1.1.1 The objective of member States in developing and maintaining airports and associated infrastructure shall be to ensure safe, secure, functional, cost effective and user-friendly airport System.

6.1.2 POLICY STATEMENTS

6.1.1.2 Member States shall ensure that their airports and associated infrastructure are properly developed and managed taking into consideration the interests of all stakeholders and the National economy.

6.1.3 STRATEGIES

6.1.3.1 In pursuance of this objective:

- i)** All airports developments shall be in accordance with respective Airport's Master Plans and land use plans as approved by the Civil Aviation Authorities.
- ii)** Public/private partnership will be encouraged in the development and maintenance of airports.
- iii)** The Airports Authorities shall ensure that adequate consultations with all stakeholders are carried out all through period of conception, planning process and implementation.

6.2 AIRPORT OPERATIONS AND MANAGEMENT

6.2.1 OBJECTIVES

6.2.1. The objectives of member States are:

- i)** To have, autonomous, competitive and commercialized/privatized airport system.
- ii)** To ensure adequate security and safety within their airport and associated facilities.
- iii)** To ensure that airports effectively play their role in promoting sustainable growth of air transport
- iv)** To co-operate with other countries outside the Continent and international organisations in ensuring security and safety in international civil aviation.

6.2.2 POLICY STATEMENTS

6.2.2.1 Member States shall ensure that their airports systems provide enough capacity that will foster strong and sustainable air transport development.

6.2.2.2 Member States shall encourage private sector participation in the development and maintenance of airports

6.2.2.3 Airports in member States shall be certified by the Civil Aviation Authorities in accordance with ICAO SARPs.

6.2.2.4 Member States shall take all necessary measures to prevent unlawful interference with aircraft and civil aviation facilities and equipment within its territory, assist in preventing similar occurrence in other countries and co-operate in terminating any unlawful interference with aircraft when the need arises.

6.2.3 STRATEGIES

6.2.3.1 In pursuance of these objectives:

i) Member States shall commercialise their airport system and provide enabling environment for private sector participation in the development and operations of airports.

ii) Member States shall ensure adequate funding of Aviation Security and Safety in accordance with ICAO policies.

iii) Civil Aviation Authorities shall put in place appropriate machinery for the certification and licensing of all airports.

iv) Member States shall enact appropriate laws to deal decisively with airports offences including problems like touting, vandalising airport facilities, pilfering/poaching of baggage, land encroachment and other misdemeanours.

v) Member States shall establish Airport Emergency Plans and well- equipped Emergency Operating Centres (EOCs in line with international standards and also put in place procedures to handle unlawful interference with aircraft and civil aviation facilities and equipment.

(vi) Member states shall encourage airports to accelerate the use of adaptive digital communication support in communication, contactless and easily adaptable processes (mobile and digital technology - online check-in, print baggage tags and boarding pass, feed in personal data, including health information online - before arriving at the airport (ready to fly) and also for strategic partnerships and collaboration locally, regionally and globally.

(vii) Member States shall base the recovery of the costs of the airports and air navigation services they provide or share in providing for international civil aviation on the principles set forth in Article 15 of the Convention and ICAO's policies as contained in Doc 9082, regardless of the organizational structure under which the airports and air navigation services are operated;

(viii) Member States shall make every effort pursuant to Article 15 of the Convention to publish any charges that may be imposed or permitted to be imposed by a Member State for the use of air navigation facilities and airports by the aircraft of any other Member State;

(ix) Member States shall adopt the principles of non-discrimination, cost- relatedness, transparency and consultation, as set out in Doc 9082 to ensure compliance by airports and air navigation services providers;

(x) Member States shall ensure that the current ICAO policies for cost recovery of security measures and functions at airports and by air navigation services providers, as set out in Doc 9082, are implemented so that security user charges are reasonable, cost-effective and foster harmonization worldwide; and

(xi) Member States shall cooperate in the recovery of costs of multinational air navigation facilities and services and consider the use of the ICAO policy guidance on the allocation of GNSS costs.

6.3 DEVELOPMENT OF NON-AERONAUTICAL FACILITIES AND SERVICES

6.3.1 OBJECTIVE

6.3.1.1 The desire of member States is for Airports' Operators to have well developed non-aeronautical facilities and services in order to expand the revenue base and generate adequate revenue.

6.3.2 POLICY STATEMENT

6.3.2.1 Member States shall ensure that Airports' Operators continuously take measures to increase generation of non-aeronautical revenues and minimise dependency on aeronautical revenues.

6.3.3 STRATEGIES

6.3.3.1 In pursuit of the objective of member States, the following shall be ensured:

- i) Airports Authorities shall adopt “Single Till” revenue policy.
- ii) Airports Authorities shall adopt Public/Private partnership in the development and collection of non-aeronautical revenues.

6.4 AVIATION SUPPORT SERVICES

6.4.1 OBJECTIVE

6.4.1.1 The objective of member States is to have adequate, efficient, competitive and liberalised Aviation Support Services with opportunities for private sector participation.

6.4.2 POLICY STATEMENT

6.4.2.1 Member States shall encourage the development of efficient Aviation Support Services

6.4.3 STRATEGIES

6.4.3.1 In pursuit of this objective, the following shall be ensured:

- i) Member States shall liberalise aviation support services and create enabling environment for effective private sector participation.
- ii) All Aviation Support Services will not only conform to international standards, but shall meet the standards and requirements set by the Civil Aviation Authorities and the operating procedures of the airports’ operators.
- iii) The operators/owners of airports shall decide on the number of Aviation Service Providers at each airport. However, the Civil Aviation Authorities shall ensure that the policy against monopoly and anti-trust is not compromised.
- iv) Civil Aviation Authorities shall ensure that any company licensed to carry out Aviation support services has adequate resources and facilities for optimal and efficient services.

CHAPTER SEVEN

AIR NAVIGATION SERVICES AND METEOROLOGY

7.0 PREAMBLE

7.0.1 The global air navigation system is becoming more complex as it supports new demand. To manage this complexity, meet the global performance ambitions and realize the GANP vision, the air navigation system must transform and build upon the use of emerging technologies, information and concepts of operations, many of which are not specifically designed for aviation purposes.

The evolution of the air navigation system is built on the notion of management by trajectory, empowered by access to timely and accurate shared information, which should improve mission and business trajectory executions.

The GANP provides a path to the safe, orderly and efficient evolution through the Basic Building Blocks (BBB) and Aviation System Block Upgrades (ASBU) frameworks. Obligations in terms of the provision of essential air navigation services have been reflected in the BBB framework to ensure a robust baseline for the evolution. The evolutionary transformation reflected in the different steps of the conceptual roadmap is also reflected in the ASBU framework to ensure the interoperability of systems, harmonization of procedures and a harmonized approach to the modernization of the global air navigation system. New users, operations and roles, and all stakeholders are part of this structured transformation.

The African States through their Civil Aviation Authorities should keep pace with the global transformational changes that will enable efficient and economical Air Transportation system in Africa and globally.

7.0.2 The major challenge facing member States in the provision of these services is insufficient

funds to implement the CNS/ATM System, maintenance and upgrades of existing facilities consistent with ICAO's Aviation Systems Block Upgrades (ASBUs). ASBU modules are structured in blocks and their implementation must be in line with the operational requirements of the region. The ASBU framework and the technological roadmap have been established to ensure that all conditions for planning activities at national and regional level are met. Various cooperative initiatives have been made to ensure that air navigational services in the continent meet international standards.

7.0.3 African States have continued to participate in the activities of ICAO particularly through the AFIRAN and APIRG/MIDANPIRG meetings and are expected to implement their recommendations.

7.0.4 African States are expected to enhance the capacity and efficiency of AIR NAVIGATION through implementation of ICAO SARPS, relevant documents and GANP.

7.0.5 African States through the PIRGs should establish their own Air Navigation priorities to meet their individual needs and circumstances in line with the Global Air Navigation Priorities.

7.0.6 Common Cybersecurity Strategy in communication, navigation and surveillance.

- Member States recognizing their obligations under the Convention on International Civil Aviation (Chicago Convention) to ensure the safety, security and continuity of civil aviation, taking into account cybersecurity;
- Coordination of aviation cybersecurity among State authorities to ensure effective and efficient global management of cybersecurity risks and
- All civil aviation stakeholders committing to further develop cyber resilience, protecting against cyber-attacks that might impact the safety, security and continuity of the air transport system.

7.1 AIR TRAFFIC MANAGEMENT

7.1.1 OBJECTIVES

7.1.1.1 The objectives of member States are:

- (i) to provide safe, orderly and expeditious flow of air traffic within their airspace and to co-operate and co-ordinate the flow of air traffic with the aeronautical authorities of adjacent airspaces
- (ii) to have a single/seamless African sky with a coordinated air traffic management system.
- (iii) Ensure compliance with the ICAO Global Air Navigation Plan (GANP) and continental air navigation targets which shall be set from time to time.

7.1.2 POLICY STATEMENT

7.1.2.1 African States shall develop an interoperable regional air traffic

management system capable of providing acceptable level of safety and provide optimum economic operations, environmental sustainability and meets national security requirements.

7.1.2.2 African Union and AFCAC shall facilitate the establishment of a seamless African Sky with a well-coordinated Air Traffic Management System.

7.1.3 STRATEGIES

7.1.3.1 In pursuance of these objectives, the following shall be ensured:

- i) Member States shall ensure that ATM is planned, developed and managed in accordance with ICAO SARPS, and AFIRAN or APIRG recommendations and African continental ANS targets.

ii) Member States shall ensure the availability of adequate funds for the implementation of proven modern technologies in the provision of Air Traffic Management such as the PBN, GNSS, etc

iii) AU and AFCAC shall make concerted efforts towards the establishment of a seamless single African Airspace.

iv) AFCAC shall facilitate collaboration among African Air Navigation Service Provider to expedite the establishment of a seamless -airspace.

v) Member States shall take necessary measures including the enforcement of regulatory provisions to ensure the implementation of effective Safety Management Systems

vi) CAAs shall ensure that air traffic incident investigation and reporting is done in accordance with ICAO SARPs and African recommendations, such as Abuja Safety Targets:

vii) Member States shall actively participate in African and applicable PIRGs (eg. APIRG and MIDANPIRG) meetings and establish mechanisms for effective implementation of their recommendations/resolutions.

viii) Air traffic flow management (ATFM) is an enabler of air traffic management (ATM) efficiency and effectiveness. It contributes to the safety, environmental sustainability, efficiency and cost-effectiveness of an ATM system. ATFM aims at enhancing safety by ensuring the delivery of safe densities of traffic and by minimizing traffic surges. Its purpose is, when needed, to balance traffic demand and available capacity

ix) Member States shall as necessary initiate or improve the coordination and cooperation between their civil and military air traffic services to ensure the common use by civil and military aviation of airspace and of certain facilities and services shall be arranged so as to ensure the safety, regularity and efficiency of civil aviation as well as to ensure the requirements of military air traffic are met

X) Member States shall implement the language proficiency provisions with a high level of priority and ensure that flight crews, air traffic controllers and aeronautical station operators involved in international operations maintain language proficiency at least at ICAO Operational Level 4.

7.2 COMMUNICATIONS NAVIGATION SURVEILLANCE (CNS)

7.2.1 OBJECTIVES

7.2.1.1 The objective of member States is to continue to provide Communication Navigation surveillance (CNS) which are in compliance with ICAO SARPs for the safety, regularity and efficiency of flight operations in African and adjacent airspace in a collaborative manner. It also includes ensuring compliance with the ICAO Global Air Navigation Plan (GANP) and continental air navigation targets which shall be set from time to time.

7.2.2 POLICY STATEMENT

7.2.2.1 Member States shall continue to enhance the implementation of CNS in accordance with ICAO SARPs and the recommendations of AFIRAN and applicable PIRGs (e.g. APIRG and MIDANPIRG) .

7.2.3 STRATEGIES

7.2.3.1 In pursuit of these objectives, the following shall be ensured:

i) Member States shall develop national action plans, aligned with the regional performance

objectives for the implementation of Performance Base Navigation (PBN) and elimination of deficiencies in order to achieve the goals set by ICAO.

ii) Member States shall ensure regular calibration of radio navigation aids.

iii) Member States shall collaborate to establish interoperable systems to ensure emergence of a seamless CNS system in the Continent.

iv) Member States should encourage their Air Navigation Services Providers expand the use of Very Small Aperture Technology (VSAT) to ensure proper coordination of the Installation of VSAT and Satellite Communication networks within and among adjacent States.

v) Encourage Member States to support ICAO position in International Telecommunication Union World Radio communication Conferences (ITU WRCs).

7.3 AERONAUTICAL INFORMATION MANAGEMENT (AIM)

7.3.1 OBJECTIVES

7.3.1.1 The objective of member States is to ensure availability of adequate comprehensive navigation data and aeronautical charts at all times for the safe performance of flight operations. This includes ensuring compliance with the relevant parts of the ICAO Global Air Navigation Plan (GANP) and continental air navigation targets which shall be set from time to time.

7.3.2 POLICY STATEMENT

7.3.2.1 Member States shall ensure that aeronautical information/data and aeronautical charts are provided for the safety, regularity and efficiency of flight operations.

7.3.3 STRATEGY

7.3.3.1 In pursuance of these objectives, the following shall be ensured:

i) Member States shall ensure the full implementation of a common reference coordinate system - World Geodetic System -1984 (WGS 84) in Africa.

ii) Member States shall have a quality system for the origination, production, maintenance and efficient distribution of aeronautical information.

iii) Member States shall develop and introduce an ICAO conceptual information data model for the storage, retrieval and exchange of aeronautical data.

iv) Member States shall ensure compliance with the provision of ICAO Annex 15 in the provision of Aeronautical Information Service.

v) Member States shall develop national plans, performance goals and achievable milestones to implement the transition from AIS to AIM in accordance with the ICAO roadmap.

vi) Member states should ensure the availability of System Wide Information Management (SWIM) which will make the possible the deployment of advance end-user applications as it will provide extensive information sharing and the capability to find the right information wherever the provider may be.

vi) Member States to ensure service improvement through digital aeronautical information management (DAIM).

vi) Member States to ensure transition from AIS to AIM making use of AIXM in line with the ICAO roadmap.

7.4 SEARCH AND RESCUE (SAR) COORDINATION

7.4.1 OBJECTIVE

7.4.1.1 The objective of member States is to establish effective Search and Rescue Mechanisms to ensure timely, expeditious and co-ordinated response to aircraft incidents and accidents. This includes ensuring compliance with the relevant continental air navigation targets which shall be set from time to time.

7.4.2 POLICY STATEMENTS

7.4.2.1 Member States shall ensure that their agencies responsible for Air Navigation Services effectively collaborate and co-ordinate with other relevant agencies in aeronautical search and rescue activities within their States as well as adjacent States.

7.4.3 STRATEGY

7.4.3.1 In order to accomplish this objective the following measures shall be undertaken:

- (i) Member States shall establish well-coordinated, well equipped and well-funded Search and Rescue mechanism.
- (ii) AFCAC shall put in place necessary machinery to assist member States develop cooperative and collaborative approaches and agreements to Search and Rescue.
- (iii) Member States with the support from RECs and AFCAC shall enter into Search and Rescue agreements with neighbouring States.
- (iv) Member States shall establish updated agreements and detailed procedures among aviation, maritime and other rescue coordination Centers, for effective coordination and the optimization of resources.
- (v) Member States shall endeavour to be party to COSPAS- SARSAT as providers of ground segments or as user States.
- (vi) Member States to develop and implement regional approach to SAR coordination and co-operation.
- (vii) AFCAC to encourage member States to collaborate with AFRAA for the implementation of GADSS.

7.5 AERONAUTICAL METEOROLOGY SERVICES

7.5.1 OBJECTIVE

7.5.1.1 The objective of member States is to ensure that accurate and timely weather information for air navigation is available at all times and in the form suitable for the operational requirements of the end users.

7.5.2 POLICY STATEMENT

7.5.2.1 Member States shall ensure that their Meteorological Agencies provide accurate and timely weather information required for safe, regular and efficient aircraft operations.

7.5.2.2 African Union and AFCAC shall facilitate the establishment of resource- sharing and cost-effective development of aeronautical meteorological services in Africa under a programme to be tagged (CODEVMET- AFI).

7.5.3 STRATEGIES

7.5.3.1 In order to achieve this objective:

- i) The provision of meteorological information shall be in accordance with the national civil aviation regulations and ICAO SARPs.
- ii) Meteorological Agencies shall be well funded through all possible alternatives, including the

current cost recovery systems established by ICAO to carry out their functions.

iii) Member States shall develop meteorological performance objectives and provide adequate capacity for the meteorological agencies to implement SIGMET and quality management systems.

iv) MET costs shall be transparent, identifiable, and limited to the costs for facilities and services intended exclusively for aeronautical users and not to subsidize other users.

CHAPTER EIGHT

AVIATION SAFETY

8.0 PREAMBLE

8.0.1 Safety is a top priority in aviation. A safe aviation system contributes to the economic development of States and their industries. ICAO recognizes the need for its safety strategy to evolve and ensure its sustained effectiveness and efficiency in the changing regulatory, economic, and technical environments. All Member States have a statutory responsibility to ensure and enhance aviation safety while putting the GASP goals in utmost priority.

8.0.2 Aviation Safety Oversight is a means of ensuring safety in civil aviation through effective implementation of the Safety-related Standards and Recommended Practices (SARPs) and relevant provisions of the Convention.

8.0.3 Effective and autonomous civil aviation authorities are essential for achieving safe and secure air transport on the continent. To optimize resources, States collaborate to establish Regional Safety Oversight Organizations (RSOOs) and Regional Accident and Incident Investigation Organizations (RAIOs).

8.0.4 Safety Management is the responsibility of member States, State regulators for regulatory and oversight and industry service providers for the implementation and practice of safety management systems.

8.0.5 The establishment of regional safety oversight organizations (RSOOs) and regional accident and incident investigation organizations (RAIOs) have great potential to assist States in complying with their obligations

under the Chicago Convention through economies of scale and harmonization on a larger scale resulting from the collaboration among Member States in establishing and operating common safety oversight system and/or accident and incident investigation system.

8.1 SAFETY REGULATIONS AND OVERSIGHT

8.1.2 OBJECTIVE

8.1.2.1 The objective of member States is to ensure a high level of safety in civil aviation operations through compliance with ICAO SARPs. The safe and orderly development of international civil aviation requires that all civil aviation operations be conducted under internationally accepted minimum operating standards, procedures, and practices.

8.1.3 POLICY STATEMENT

8.1.3.1 Member States shall ensure that Civil Aviation Authorities and RSOOs have full powers and independence to carry out effective safety oversight and regulation of the aviation industry.

8.1.4 STRATEGIES

8.1.4.1 In pursuance of these objectives:

i) Member States shall establish and/or strengthen, adequately resourced autonomous Civil Aviation Authorities and to the greatest extent possible minimize conflict of interest in CAAs that include operation of Airports, ANSPs by means of legal provisions and/or management of responsibilities and functions and responsibilities. Member States shall fully cooperate with RECs to establish and/or strengthen the political processes to establish RSOOs and ensure availability of adequate resources to carry out their responsibilities.

Member States shall establish and/or strengthen, adequately resourced autonomous Civil Aviation Authorities and to the greatest extent possible minimize conflict of interest in CAAs that include operation of Airports, ANSPs by means legal provisions and/or management of responsibilities and functions and responsibilities.

Member States shall fully cooperate with RECs to establish and/or strengthen the political processes to establish RSOOs and ensure availability of adequate resources to carry out their responsibilities.

ii) Civil Aviation Authorities and RSOOs shall have oversight responsibilities on all service providers in the industry, including aircraft operators, maintenance and repair organizations, Airports/ Aerodrome and Air Navigation Service Providers, Aeronautical Meteorology, Aviation Training Organizations, handling companies, aviation fuel suppliers, among others.

iii) All aircraft operators, maintenance organisations, aviation licensed personnel, aviation training organisations and airstrip/ aerodrome operators/ owners etc shall comply with relevant regulations.

iv) Member States shall cooperate with RSOOs and RAIOS in order to develop a Regional Aviation Safety Plan (RASP) and National Aviation Safety Plan (NASPs) in line with ICAO Global Aviation Safety Plan (GASP) and Global Air Navigation Plan (GANP).

v) Member States shall collaborate with AU and AFCAC to establish not more than one RSOO per Region/Sub-Region and Regional Accident and Incident Investigation Organizations (RAIOS) and ensure that such RSOOs and RAIOS are adequately funded by the RECs.

vi) Member States and RSOOs shall collaborate to develop and implement African Aviation Safety Programme (AASP) in-line with ICAO SSP requirements.

vii) Member States and Regional/ Sub-Regional Aviation Safety Oversight Organisations (RSOOs) shall develop and implement a national and regional aviation safety plan respectively consistent with the ICAO GASP and monitor its implementation.

viii) Member States shall ensure that the safety inspectors receive adequate training in accordance with an established Inspector Training System.

ix) RSOOs shall get assessed and recognized under ICAO GASOS programme to enable them carry out delegated safety oversight functions on behalf of member States.

x) Member States in collaboration with RSOOs shall develop and implement regulatory frameworks governing the operation of remotely piloted aircraft systems (RPAS) to facilitate the integration of these operations, while not compromising aviation safety and security.

8.2 SAFETY MANAGEMENT

8.2.2 OBJECTIVES

8.2.2.1 The objective of member States is to ensure that the culture of Safety Management is inherent in all civil aviation activities and it shall be implemented consistent with ICAO Annex 19 and the National Aviation Safety Plan (NASP).

8.2.3 POLICY STATEMENTS

8.2.3.1 Member States shall ensure that all aviation stakeholders including the Civil Aviation Authorities and service providers exhibit high safety culture and CAAs shall promote a mix of prescriptive and performance-based regulatory systems.

8.2.4 STRATEGY

8.2.4.1. In pursuance of these objectives, the following shall be accomplished:

- i) Civil Aviation Authorities of member States shall establish State Safety Programmes and promote a mix of prescriptive and performance-based regulatory systems.
- ii) Civil Aviation Authorities of member States shall ensure that all aviation service providers have in place Safety Management System.
- iii) Civil Aviation Authorities of member States and all aviation Stakeholders shall develop and imbibe safety culture in their operations
- iv) RSOOs should collaborate with their member States to develop Regional Safety Programme (RSP) and States Safety Programmes (SSPs)
- v) AFCAC should collaborate with member States and RSOOs to organise ICAO's Train the Trainers course programmes for regulators and service providers and to implement a recurrent training system for safety management
- vi) Seminars, Workshops and Conferences should be organised for all stakeholders to sensitize and enlighten them on the benefits of imbining safety culture.
- vii) Member States shall collaborate with Regional/ Sub-Regional Aviation Safety Oversight Organisations (RSOOs) to develop and implement a national and regional aviation safety plan respectively consistent with the GASP and monitor its implementation.
- viii) Member States and RSOOs shall work together with AFCAC to fully implement the AASP by sharing of roles in safety management.
- ix) Member States to implement national aviation safety plans consistent with the Global and Regional Aviation Safety Plans to continually reduce fatalities and the risk of fatalities.
- x) Member States to support the full operationalization of RSOOs by timely providing the necessary resources in a timely manner.
- xi) Member States shall take the necessary measures to protect safety data and safety information collected for maintaining or improving safety and their related sources, including examining their legislation regulations, policies and adjusting the scope as necessary.

8.3 ACCIDENT INVESTIGATION & PREVENTION

8.3.2 OBJECTIVES

8.3.2.1 The objective of Member States is to ensure timely and thorough investigation of all accidents, major incidents and other incidents depending on the lessons it expects to draw from the investigation for the improvement of safety. The sole objective of the investigation of an accident or incident shall be the prevention of accidents and incidents. It is not the purpose of this activity to apportion blame or liability.

8.3.3 POLICY STATEMENT

8.3.3.1 The Member States shall establish autonomous Accident Investigation and Prevention Agencies at the national and/or regional level for the investigation of aircraft accidents and major incidents; delegation of investigations or parts thereof or enlisting the mutual assistance and

cooperation of States in an investigation.

8.3.4 STRATEGIES

8.3.4.1 In order to accomplish this objective:

i) The Member States shall establish Accident Investigation and Prevention Agencies, and/or RAIOs to guarantee thorough and impartial investigations, and reports by setting up their accident investigation authority as an independent statutory body or by establishing an accident investigation organization that is separate from the civil aviation administration.

ii) Accident Investigation Agencies and RAIOs shall ensure the provision of adequate resources, including funding and qualified, and experienced professionals, for the carrying out of all investigations.

iii) Member States shall make available adequate resources necessary to investigate the full range of aircraft accidents and incidents and to carry out thorough analyses of the accident and incident data received.

iv) Accident Investigation Agencies, and RAIOs shall endeavour to issue Accidents, and Incidents Reports within the time frame and in a manner consistent with the provision of Annex 13.

v) Member States and RECs shall collaborate to establish Regional Accident and Incident Investigation Organizations (RAIOs).

vi) The Member States shall ensure that Aircraft accident investigators receive adequate training commensurate with their responsibilities as an accident investigator, group leader, investigator-in-charge, accredited representative, adviser, or expert/ specialist.

vii) Civil Aviation Authorities of member States shall encourage all operators of aircraft with maximum certificated take-off mass in excess of 27000 kg to establish and maintain a flight data analysis programme as part of its safety management system.

viii) Civil Aviation Authorities of member States shall ensure that operators shall establish an aircraft tracking capability to track aircraft throughout the period of flight operations.

ix) AFCAC shall collaborate with member States and Regional Accident Investigation Agencies to collate and analyse safety data for the AASP.

x) Member States shall support the full operationalization of RAIOs by timely providing the necessary resources.

xi) Member States and regional accident and incident investigation organizations (RAIOs) shall, to the extent possible:

a) provide, on request by other Member States, expert assistance and facilities for the investigation of major aircraft accidents; and

b) afford opportunity to Member States seeking investigation experience to attend investigations of aircraft accidents, in the interest of developing and furthering investigation expertise.

CHAPTER NINE

AVIATION SECURITY

9.0 PREAMBLE

9.0.1 States are responsible for ensuring the implementation of ICAO Annex 17 Standards and Recommended Practices to the *Convention on International Civil Aviation* at National and Airport level.

9.1 AVIATION SECURITY MANAGEMENT

9.1.1 OBJECTIVES

9.1.1.1 The objective of aviation security is to assure the safety of passengers, crew, ground personnel and the general public in all matters related to safeguarding civil aviation against any acts of unlawful interference.

9.1.2.1 POLICY STATEMENT

9.1.2.1 Member States shall ensure compliance with the Standards and Recommended Practices in ICAO Annex 17 Security.

9.1.2.2 Member States shall confirm their resolute support for established Security policy by applying the most effective security measures, individually and in cooperation with one another, to prevent acts of unlawful interference and to punish the perpetrators, planners, sponsors, and financiers of conspirators in any such acts.

9.1.3. STRATEGIES

9.1.3.1 In order to accomplish this objective, African member States shall:

- a) take all necessary actions, consistent with applicable laws, statutes, international agreements and ICAO Standards and Recommended Practices (SARPs);
- b) ratify and domesticate all international legal instruments on Aviation security;
- c) develop and implement National Civil Aviation Security Programmes;
- d) establish functional National Civil Aviation Security Committees;
- e) deploy all available technology, equipment, methodologies and procedures to prevent and counter all threats, particularly new and emerging threats to civil aviation, based on risk assessment;
- f) strengthen Civil Aviation Authorities with adequate human, financial and material resources to ensure effective implementation of oversight functions of aviation security;
- g) develop appropriate national policies for the attraction, development and retention of human resources;
- h) co-operate with other countries and international organizations to strengthen the security of international civil aviation;
- i) ensure that airports, airlines and other entities serving civil aviation put necessary security measures in place to enhance the security of their operations in compliance with national legislation;
- j) develop and implement National Civil Aviation Security Quality Control Programme to determine compliance with and validate the effectiveness of its National Civil Aviation Security Programme;
- k) develop and implement National Training Programme for personnel of all entities involved with or responsible for the implementation of various aspects of the National Civil Aviation Security Programme;
- l) develop and implement training programmes and instructor certification system in accordance with the National Civil Aviation Security Programme;
- m) develop national aviation security certification system to ensure that the persons carrying out screening operations are certified according to the requirements of the National Civil Aviation Security Programme to ensure that performance standards are consistently and reliably achieved;

- n) promote strong security and facilitation cultures and ensure appropriate balance between the two; and
- o) establish Security Risk Management processes, which take into account ICAO's Risk Context Statement and crisis response procedures.

CHAPTER TEN

ENVIRONMENTAL PROTECTION

10.0 PREAMBLE

10.0.1 Environmental protection has become a major concern in civil aviation due to aircraft engine noise, impacts on local air quality and emissions that impact the global climate. There have been concerted efforts through ICAO and industry stakeholders for a global approach on the mitigation of the impact of aviation on the environment to ensure climate resilience and environmental protection. These efforts include:

- (a) Limiting or reducing the number of people affected by significant aircraft noise;
- (b) Limiting or reducing the impact of aviation emissions on local air quality; and
- (c) Limiting or reducing the impact of aviation greenhouse gas emissions on global climate.

10.0.2 On Aircraft Noise Management, ICAO has adopted a Balanced Approach that consists of four principal elements, namely reduction at source (quieter aircraft), land-use planning and management, noise abatement operational procedures and operating restrictions, with the goal of addressing the noise problem in the most cost-effective manner as well as achieving maximum environmental benefits.

10.0.3 Due to the increasing amount of residential development surrounding airports and the continued growth of commercial air travel, air pollution surrounding airports has become a significant concern for local/ regional governments as contaminants emitted by aircraft and airport sources can affect human health and the environment.

10.0.4 In recent years, the scope of ICAO's policy-making to address the environmental impact of aircraft engine emissions has been expanded to include the impact of aircraft engine emissions during flight on climate change. Current estimates show that total carbon dioxide (CO₂) aviation emission is approximately 2% of the Global Greenhouse Emissions. This has however been projected to grow between 3 to 4 percent annually according to ICAO projections.

10.0.5 Significant progress has been made over the years by ICAO in addressing these environmental issues through the work of its Committee on Aviation Environmental Protection (CAEP) and by the industry. This includes the adoption of noise restriction and emissions standards, technological improvement in aircraft engines and fuel operational efficiency as well as the implementation of the only global market based measure applying to CO₂ emissions from international aviation known as Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA).

10.0.6 The United Nations Framework Convention on Climate Change (UNFCCC) principle of common but differentiated responsibilities requires the developed countries to take the lead in addressing climate change while providing necessary support to developing States in their voluntary actions through different mechanisms such as the Clean Development Mechanism (CDM).

10.0.7 The Kyoto Protocol (Article 2.2), which was adopted by the Conference of the Parties to the UNFCCC calls for developed countries (Annex I Parties) to pursue limitation or reduction of greenhouse gases from "aviation bunker fuels" (international aviation) work-

ing through ICAO. Since the 37th ICAO Assembly (2010), to date, the Assembly resolved that States and relevant organizations will work through ICAO to achieve a global annual average fuel efficiency improvement of 2 per cent until 2020 and an aspirational global fuel efficiency improvement rate of 2 per cent per annum from 2021 to 2050, calculated on the basis of volume of fuel used per revenue tonne kilometre performed. To achieve the goals and promote sustainable growth of international aviation, ICAO is pursuing a basket of measures including aircraft technology improvements, operational improvements, sustainable aviation fuels, and market-based measures (CORSIA).

10.0.8 Over the years, Annex 16 to the Chicago Convention on Environmental Protection has evolved and undergone various amendments. Volumes I, II and III in 2017 and Volume IV to the Annex was adopted in 2018 respectively. At the UN level, 17 Sustainable Development Goals (SDGs) some of which address climate change and environmental degradation have also been adopted. At the African Union level, African States have adopted the AU Agenda 2063 including aspirational goals on environmental sustainable climate and resilient economies and communities.

10.1 ENVIRONMENTAL PROTECTION

10.1.1 OBJECTIVE

10.1.1.1 The objective of member States is to ensure the sustainable development of an environmentally friendly civil aviation industry in line with International best practices

10.1.2 POLICY STATEMENTS

10.1.2.1 Member States should take necessary measures to ensure;

(a) The Sustainable development and growth of civil aviation with minimal adverse impact on the environment; and

(b) That Environmental protection is included in all their national civil aviation development policies and plans.

10.1.3 STRATEGIES

10.1.3.1 In pursuit of this objective:

- i.** Member States shall establish environmental protection department/unit within the CAA and provide necessary resources to perform the necessary oversight actions to coordinate and operationalize environmental protection best practices.
- ii.** Member States shall implement applicable ICAO SARPs and best practices on environmental protection related to civil aviation
- iii.** Member States shall support ICAO and AFCAC's efforts to achieve global annual fuel efficiency improvement, the United Nations Sustainable Development Goals and other best practices on Environmental protection.
- iv.** Member States should develop, update and implement their States' Action plans, including the mitigation of CO₂ emission, and share information that could assist other states in the region.
- v.** Member States shall ensure the implementation of mechanism to reduce aircraft emission and limit the adverse impact on the environment while acknowledging the UNFCCC principle of common but differentiated responsibilities (CBDR).
- vi.** Member States shall ensure that their Airlines, Airports, ground handling companies and other major aviation service providers comply with the environmental protection program approved by the civil aviation authority as applicable
- vii.** Member States should implement the Carbon Offsetting Scheme for International Aviation

(CORSA) as applicable in accordance with Annex 16 Volume 4 of the Chicago Convention

- viii. Member States shall encourage their aircraft operators to acquire and use modern, quieter and more fuel efficient aircraft and equipment. In this regard States should ratify the Cape Town Convention on International Interest on Mobile Equipment and Aircraft protocol in order to facilitate cheaper aircraft financing.
- ix. Member States shall accelerate the development and implementation of operational measures and procedures for the improvement of aircraft fuel efficiency to reduce aviation emissions.
- x. Member States shall accelerate efforts on the application of satellite-based technologies that improve the efficiency of air navigation to reduce aviation emissions.
- xi. Member States shall reduce legal, security, economic and other institutional barriers to enable implementation of the sustainable Air Traffic Management (ATM) operational concepts for the efficient use of airspace to reduce aviation emissions.
- xii. Member States shall develop policy actions to accelerate and collaborate with other States and stakeholders as well as support the appropriate development, deployment and use of internationally accredited sustainable alternative fuels for aviation
- xiii. Member State shall cooperate and collaborate with other States, international organizations and other stakeholders on the reduction of global emissions in civil aviation.
- xiv. Member State shall take appropriate measures to accelerate the development of expertise and capacity building in the area of the environmental protection
- xv. Member States shall support AFCAC, in the development of a compendium on States efforts in the area of environmental protection to promote information sharing, awareness and knowledge among States and industry stakeholders
- xvi. Member States shall endeavor to ratify, domesticate and implement all relevant international/regional conventions and protocols and agreements relating to environment and climate change
- xvii. Member States shall work together with AFCAC, ICAO and other relevant international bodies to study, identify develop and implement processes and mechanisms to facilitate the provision of capacity building, technical and financial assistance to developing countries

CHAPTER ELEVEN

HUMAN RESOURCES DEVELOPMENT

11.0 PREAMBLE

11.0.1 Human Resource Development is a continuous process to ensure the development of employees' competencies, dynamism, motivation and effectiveness in a systematic and planned way. Aviation, being a specialised industry requires the services of professionals and highly trained and skilled personnel with the right competencies to achieve high levels of safety, security, environmental protection and efficiency in air operations.

11.0.2 The shortage of skilled personnel in the African aviation industry and in African regulatory bodies had been a cause of serious concern for many years. African civil aviation faced additional problems due to the migration of aviation experts looking for better opportunities overseas. This was exacerbated by the high turnover of aviation professionals in government owned institutions offering less attractive packages compared to employers in the regulated industries, other private sectors and outside Africa. Additionally, has impacted on succession planning across the aviation divide (CAAs and Operators).

11.0.3 The training capacity within Africa is limited. The available training institutions are few and have not always kept pace with the advancements in civil aviation and training technology.

As a result, training frequently had to be performed outside of the continent at high cost to government and industry.

11.0.4 African Training institutions should therefore make harmonized and coordinated efforts towards training professionals and other personnel required by the aviation industry. The African Aviation Training Roadmap by AATO, the Human Resource Development Fund (HRDF) by AFCAC, ICAO TRAINAIR Programme are all programs to build capacity through standardized training and to facilitate coordination and cooperation among training centres using among other things a training plan informed by:

- a. Training Needs Analysis (TNA) facilitated coordinated on a continental basis by AFCAC;
- b. Quantified Targets (Total numerical, fields, management, gender, physically challenged persons and young people. Harmonization of training programs shall include but not limited to:-
- c. Removal of barriers such as language, those faced by physically challenged persons and other aspects;
- d. Commonalities in economies at level of member State and RECs
- e. Commonalities in equipment and infrastructure;
- f. Emerging Technology such as RPAS and anticipated 4th Industrial Revolution Technologies;
- g. Higher and or Tertiary Education Systems.

11.0.5 Consistent with ICAO's Next Generation of Aviation Professionals (NGAP) program, there is need to ensure that enough qualified and competent aviation professionals are available to operate, manage and maintain the future international air transport system. This is critical as a large contingent of the current generation of aviation professionals will retire, and access to affordable training and education is increasingly problematic, and aviation competes with other industry sectors for highly skilled professionals. Deliberate training initiatives aimed at women and young professionals in African can be implemented to ensure robust capacity building in the continent.

11.0.6 In order to harness output of harmonized and commonalities in training, AFCAC shall facilitate and encourage Member States and RECs to recognize or accept qualifications of aviation personnel who will be the output of the said training institutions.

11.1 AVIATION TRAINING

11.1.1 OBJECTIVES

11.1.1.1 The objectives of member States are:

- i. To ensure that they have access to a sufficient number of qualified and competent personnel to operate, manage and maintain the current and future air transport system at prescribed international standards for Safety, Air Navigation Capacity and Efficiency, Security and Facilitation, Economic Development of Air Transport, and Environmental Protection.
- ii. To build partnerships on training and learning related matters through regional cooperation and knowledge exchange, including but not limited to, sharing available training resources, instructors, curriculum designers, courseware and implementing a roster of aviation training experts.
- iii. To ensure that training institutions in Africa constitute centres of excellence, so that Certificates issued by the institutions command respect, recognition and wide acceptability in the international community.
- iv. To develop strategies, best practices, tools, standards and guidelines as applicable and to facilitate information sharing activities that assist the global aviation community in attract-

ing, educating, and retaining the next generation of aviation professionals.

11.1.2 POLICY STATEMENT

11.1.2.1

(i) Member States shall encourage the development of institutions for basic, advanced and refresher trainings to meet the current and future needs of the African aviation industry

(ii) Member States shall build capacity to meet growth in aviation through partnerships on training, regional cooperation, knowledge exchange, and sharing of available training resources.

11.1.3 STRATEGIES

11.1.3.1 In pursuance of these objectives:

- i.** Member States, African Union, AFCAC and REC's shall provide necessary incentives to facilitate private sector investments in the establishment of aviation training organisations especially for the training of Pilots, Engineers, Cabin Crew and other aviation professionals.
- ii.** The Instructional System Development (ISD) methodology Of ICAO TRAINAIR programme shall be used in Aviation Training Organisations (ATOs) in Africa.
- iii.** The procedures, competency requirements and approval processes for the establishment of Aviation Training Institutions/Organisations in Africa shall be harmonised and administered by Civil Aviation Authorities.
- iv.** Member States shall promote and facilitate close co-operation amongst aviation training organizations in Africa to ensure the harmonization and implementation of standards for quality assurance, standardization of courses and the development of "train the trainers" programme.
- v.** Member States shall collaborate with regional organizations such as AFCAC, RSOOs, AATO etc to collect data maintain database on aviation training needs and capacities in Africa, and publish report on the state of aviation training in Africa.
- vi.** Member States in collaboration with regional organisations such as AATO, RSOOs, AFCAC etc shall establish criteria for mutual recognition of credits, certificates, diplomas or degrees issued by Aviation Training Institutions in Africa.
- vii.** Member States in collaboration with regional organizations shall build partnerships on training and learning related matters through regional cooperation and knowledge exchange, including but not limited to, sharing available training resources, instructors, curriculum designers, courseware and implementing a roster of aviation training experts.
- viii.** Aviation training organizations shall join the ICAO TRAINAIR PLUS Programme (TPP) in order to develop, share and deliver training programmes to enhance the qualification of aviation professionals.
- ix.** Member States shall develop and implement Aviation Training and Capacity Building Roadmap based on ICAO guidance.
- x.** Member States and RECS shall assist each other to optimize:
 - a. Access to Funding for Training;
 - b. Access to learning activities for their aviation professionals;
 - c. Innovative methods of delivery of training.
- i.** AFCAC shall assist Member States in achieving and maintaining competency of aviation personnel through training activities. In this regard, AFCAC shall continue to explore trainings and workshops for aviation professionals including through cooperation with other civil aviation organizations.

- ii. Aviation training organizations shall build partnerships on training and learning related matters through regional cooperation and knowledge exchange, including but not limited to, sharing available training resources, instructors, curriculum designers, courseware and implementing a roster of aviation training experts.
- iii. Aviation Training Organizations should place the highest priority on learning activities that support the implementation of Standards and Recommended Practices (SARPs) and ICAO programmes using a competency-based training and Instructional Systems Design (ISD) approach.

11.2 AVIATION HUMAN RESOURCE MANAGEMENT

11.2.1 OBJECTIVE

11.2.1.1 The objective of member States is to ensure capacity building in the aviation industry managed by qualified professionals through the training, recruitment and retention of highly qualified staff,

11.2.2 POLICY STATEMENT

11.2.2.1 Member States shall ensure the development of human resources to effectively manage the aviation industry.

11.2.3 STRATEGIES

11.2.3.1 In pursuit of this objective:

- i. Member States shall ensure that aviation professionals are well motivated and remunerated to forestall brain drain.
- ii. Member States shall remove all physical barriers to free movement of personnel among African States through favourable labour policies.
- iii. Member States in collaboration with relevant regional aviation organizations such as AFCAC and AATO shall establish data base of aviation professionals in Africa.
- iv. Member States shall implement policies that promote transparency, fairness and merit in the recruitment professionals.
- v. Member States shall implement human performance and talent management strategies and frameworks that include attracting, training, cultivating, nurturing and retaining the next generation of aviation professionals.
- vi. Member States shall collaborate with regional organisations and build capacity through implementation of programs to promote women and young professionals in aviation.

CHAPTER TWELVE AVIATION FINANCING

12.0 PREAMBLE

12.0.1 The global trend is that governments are increasingly transferring the responsibility of financing airports and air navigation services to the private sector or to financially autonomous public or semi-public bodies. Where airports and air navigation services have been operated by autonomous entities their overall financial situation and managerial efficiency have generally tended to improve. They are able to implement new financing schemes to improve facilities and provide additional capacity.

12.0.2 In many countries, Government provides direct funding of the civil aviation administration's regulatory functions, while charges and fees of the administration go into Government

offers. In majority of cases such administrations are poorly funded and are ineffective due to competing priorities of Government in the social sectors such as health and education.

12.0.3 An autonomous CAA can be a mechanism for reducing or resolving funding problems. The CAA's costs are met from its licensing, certification and approval fees and charges on those whom it regulates. Some CAAs also generate fund from surcharges levied on passengers and consignees.

12.0.4 In a small traffic State, it may be cost efficient for the autonomous CAA to combine in its structure, a separated regulatory function, and the provision of airport and/or air navigation services.

12.0.5 Regional Safety Oversight Organisations (RSOOs) is also a cost effective and efficient mechanism for regulatory oversight due to inherent economies of scale in the use of resources.

12.1 FINANCING OF INFRASTRUCTURE

12.1.1 OBJECTIVE

12.1.1.1 The objective of member States is to have adequate and modern airports and air navigation infrastructural facilities that meet ICAO SARPs and other international standards

12.1.2 POLICY STATEMENT

12.1.2.1 Member States shall put in place appropriate policies and laws to encourage Public – Private Partnership in the financing and management of airports and air navigational infrastructural facilities.

12.1.3 STRATEGIES

12.1.3.1 In pursuit of this objective:

- i.** Member States shall establish autonomous agencies and implement commercialisation, corporatisation and privatisation in the provision of airports and air navigation services.
- ii.** Member States shall encourage Airports and air navigation service providers to implement innovative financing scheme to modernise their infrastructure and increase capacity.
- iii.** Airports and air navigation service providers shall put in place effective cost and revenue accounting system, sound methodology for determining the cost basis for charges, internationally recognized cost recovery policies and effective mechanism for the collection of charges in order to attract Private sector financing.
- iv.** Airports Authorities shall adopt “Single Till” revenue policy.
- v.** Airports Authorities shall adopt Public-Private partnership in the development and collection of non-aeronautical revenues.
- vi.** Service Providers may consider the use of pre-funding fees as a means of financing long-term, large-scale investment provided there is effective and transparent economic oversight of user charges and the related provision of services, including performance auditing and benchmarking. They shall ensure consultation with users is conducted in a collaborative manner, according to ICAO guidelines.
- vii.** States shall take pragmatic measures to build a transparent, stable and predictable investment climate to support aviation development, for example, by engaging multi-stakeholders, diversifying funding sources and elevating the role of private sector, including through private investment, business reform, private finance initiatives, public-private partnership (PPP) and various incentive schemes. International private capital flows, particularly foreign direct investment, along with a stable international financial system which are also vital complements to domestic public and private resources.

viii. States shall include major aviation infrastructure projects in the priority list of international public finance and assistance for development.

ix. States, financial institutions and other development partners, including the aviation industry and private sector, are encouraged, wherever appropriate, to give preference to ICAO for the identification, formulation, analysis, implementation and evaluation of aviation-related projects, including through its Technical Cooperation and Assistance Programmes.

12.2 FINANCING OF REGULATORY FUNCTIONS

12.2.1 OBJECTIVE

12.2.1.1 The objective of member States shall be to have effective Civil Aviation Authorities that are adequately funded to carry out their regulatory oversight responsibility.

12.2.2 POLICY STATEMENT

12.2.2.1 Member States shall ensure that Civil Aviation Authorities are adequately funded and have statutory sources of revenues.

12.2.3 STRATEGIES

12.2.3.1 In pursuit of this objective:

i. Regulatory oversight functions shall be funded through a percentage Sales Charge on cost of tickets sold in member States or a percentage of other aviation charge(s) as may be deemed fit by member States.

ii. CAAs shall charge statutory fees for inspections, Certifications, registrations and issuance of Licences, Certificates, Permits, Approvals, etc.

iii. The Civil Aviation Authorities shall retain all their revenue to ensure sustainability of continuous efficient oversight activities.

iv. Where necessary, member States shall provide subventions and budgetary allocations to the Civil Aviation Authorities without compromising their regulatory independence.

v. Member States shall encourage the establishment of RSOOs to facilitate pooling of resources and to achieve economies of scale.

PART THREE OTHER PROVISIONS

CHAPTER THIRTEEN

INTERMODAL TRANSPORT SYSTEMS

13.0 PREAMBLE

13.0.1 Transport is an indispensable tool in facilitating the creation of a single socio-economic space that would lead to free movement of goods and persons in Africa. For transport to play its full role and have an effective impact on the integration of the continent, there is a need for physical integration of networks; operational integration; user-service provider interface; convergence of policies; joint planning and development of transport facilities and systems; harmonization of standards; and joint cross-border investments.

13.0.2 Competitions between the different modes of transportation have tended to produce a transport system that is segmented and un-integrated. Each mode has sought to exploit its own advantages in terms of cost, service, reliability and safety. However, recent developments have made it imperative to both the service providers and the policy makers that the linkages of the

different modes of transportation are necessary for achieving seamless movement of persons and goods.

13.0.3 Air passengers' expectations include rapid and direct transfer from city centre to Airport, easy connection between airport terminals when transiting, quick and convenient transfer of passengers and their baggage from international to domestic terminals, as well as availability of specialized (Air terminal) for check-in in the city centre and provision of special services for persons with reduced mobility.

13.0.4 In the Continent, there are very few examples of intermodal cooperation, and in many cases the infrastructure that would enable effective intermodal travel is either non-existent or insufficient.

13.0.5 To ensure an efficient transportation practice, the use of multimodal transportation is necessary. Multimodal transportation requires the usage of more than one transport mode to move passengers and freight from one point to another. Combining two or three modes of transport is essential for the smooth transportation of passengers and goods. Various concepts are now in use when more than one mode of transport is used to transport passengers and goods. However only some few countries in Africa practice these concepts efficiently and effectively.

13.1 INTEGRATING CIVIL AVIATION WITH OTHER MODES OF TRANSPORTATION

13.1.1 OBJECTIVE

13.1.1.1 The objective of member States shall be to have a well-integrated transport system which will link air transportation to other modes of transport for seamless movement of passengers and cargo.

13.1.1.2 POLICY STATEMENT

13.1.1.3 Member States shall ensure easy and good access to their airports and between airport terminals through well integrated road and rail transportations systems.

13.1.1.4 Aviation development in the Continent shall be consistent with the Strategic Framework and Priority Action Plan of Programme for Infrastructure Development for Africa (PIDA) for 2010 -2040

14.3 STRATEGIES

13.3.1 In pursuit of this objective:

- i. Member States shall have convergence of policies; joint planning and development of transport facilities and systems; and operational integration for linkage and connectivity between air transportation and other modes of transport.
- ii. Member States shall put in place appropriate policies and laws that will promote cross border investments in intermodal transportation.
- iii. Member States shall formulate appropriate policies and laws that ensures that airports, road and rail infrastructure providers implement inter linkages and common information and distribution system across the airline, road and railway system
- iv. States are encouraged to implement highly effective ICT systems within the various transport networks to ensure an efficient transport operation through proper monitoring, and coordination of the different networks to provide a successful intermodal integration.

CHAPTER FOURTEEN

LINKAGE OF CIVIL AVIATION WITH OTHER SOCIO-ECONOMIC SECTORS

14.0 PREAMBLE

14.0.1 Civil aviation includes air transport (commercial carriage by air), general aviation, commercial aerial works (such as aerial crop dusting photography and surveying), infrastructure (such as airports and air navigation facilities) and manufacturing and maintenance (such as for aircraft, engines, and avionics). Air transport is at the core of civil aviation business.

14.0.2 Air transport has traditionally experienced higher growth than most other industries. Demand for air transport is closely linked with economic development; at the same time air transport is a driver in an economy. The contribution of air transport and related civil aviation industries to local, regional or national economies includes the output and jobs directly attributable to civil aviation as well as the multiplier or ripple effect upon other industries throughout the economy.

14.0.3 Air transport is however highly sensitive to, and dependent on, economic developments in other sectors. This was evident during recent global economic crises. In this regard there are various factors that impact the health of Air Transport including:

14.0.3.1 Economic and socio-political factors: a) Growth; Recession; and Inflation b) Civil unrest and wars

14.0.3.2 Natural hazards:

a) Adverse weather or climatic events (e.g. hurricanes, winter storms, droughts, tornadoes, thunderstorms, lightning, heavy rain, snow, winds and restrictions on visibility and wind shear);

b) Geophysical events (e.g. earthquakes, volcanoes, tsunamis, floods and landslides);

c) Geographical conditions (e.g. adverse terrain or large bodies of water);

d) Environmental events (e.g. wildfires, wildlife activity, and insect or pest infestation); and/or

e) Public health events (e.g. epidemics of influenza or other diseases).

14.0.4 The following socio-economic sectors have significant impact on the growth and health of the Air Transport Industry:

14.0.4.1 Trade: The Air Transport industry is a prime mover of international trade.

Majority of passengers transported by air are business travellers and tourists while most goods particularly perishable and high value items are transported predominantly by air. So also are mails and parcels.

14.0.4.2 Tourism: Africa boasts of many tourist attractions and destinations and Tourism in the main stay of the economy of many African States. Majority of air travellers from outside the continent are tourists. However a significant portion of the tourist market is dominated by foreign carriers. Furthermore there is little of intra-African tourism.

14.0.4.3 Immigration: The YD promotes the integration of African States however its implementation is hampered as there are currently significant restrictions to movement of persons and goods among many States. This includes in particular the stringent requirements for entry and transit visas for citizens of other African States. This negatively impacts the business of African airlines and constitutes significant impediment to air travel and trade within Africa.

14.0.4.4 Customs: Air transport is often erroneously treated as a cash cow thereby resulting in

the imposition of prohibitive custom tariffs and taxes for cargo, aircraft and aviation equipment and services. Invariably those costs are passed on to the consumers leading to prohibitive costs of air travel, reduced passenger and cargo traffic and unsustainable airline business. The situation is further compounded by complicated customs and foreign exchange regulations and procedures.

14.0.4.5 Information and Communication Technology:- Information and communication technology (ICT) provides the technological backbone for air transport. All logistics for the processing and movement of aircraft, passengers and cargo are impossible without efficient and effective ICT architecture and operation. A disruption to ICT infrastructure in a State has adverse impact on the safety and efficiency of air transport operations.

14.0.4.6 Power:- Civil aviation is a very high tech industry that operates on the basis of precision equipment. The airport and air traffic management facilities, ground and aircraft communication, navigation and surveillance equipment all depend on uninterrupted power supply to function. The incidence of epileptic power supply may lead to catastrophic consequences for the safety and efficiency of flights.

14.0.4.7 The Aviation Fuel Industry: Aviation Fuel constitutes over 40% of the cost of operation of airlines. Therefore the aviation industry is highly susceptible to fuel price escalations. Within the African region the problem has been compounded by erratic supply, imposition of prohibitive taxes and monopolies in the supply of fuel at airports. African airlines being significantly weaker than their foreign competitors are more impacted by these challenges. Thus, pricing methodology should follow assessment from recognized PRAs and additional costs of supply should be transparently disclosed; prices should be exempt from any form of taxation as per article 24 of the Chicago Convention, ICAO Document 8632 and international air services agreements; and the market based formula price should refer to quotations best suited for the specific regional coverage.

14.0.4.8 Research and Development: Ever since the beginning of orderly development of international civil aviation, Africa's focus had been mainly on the operations aspect of the industry, and that could partly be blamed for her minimal performance and share of the industry. In order to ensure sustainable growth and participation in civil aviation, African States need to be more involved in aviation research and development.

14.0.5 At the operational level Air Transport requires the active cooperation of other ministries or agencies, such as:

- Immigration, Passport/visa issuing
- customs and Quarantine
- Environment
- Public and Port Health
- Security and narcotics control
- Tourism issuing authorities
- Foreign Affairs authorities

14.1 OBJECTIVE

14.1.1 The objective of member States is to continuously promote the use of air transport as the engine and driver of economic growth and sustainable development.

14.2 POLICY STATEMENT

14.2.1 Member States shall promulgate laws and policies that ensure that other socio-economic sectors facilitate the sustainable growth of air transport and enable it to play its role for the overall national and continental development.

14.3 STRATEGIES

14.3.1 In pursuit of this objective:

- i. Member States shall adopt and implement policies that will promote increased trade among them in order to increase air traffic;
- ii. Member States shall put in place policies that will encourage their citizens to patronise tourism destinations in Africa as a way of increasing air travel in the continent;
- iii. Tour organisers and African airlines should collaborate more to enable the African air transport industry increase its share of the global tourism into Africa;
- iv. Airport Operators should ensure that their airports are provided with robust ICT support and implement dedicated supply of ICT services to airports and aviation support systems;
- v. Member States shall ensure the provision of dedicated adequate and uninterrupted power supply to airports and air navigation facilities since civil aviation is a very high tech industry that operates on the basis of precision equipment;
- vi. Member States shall review their immigration policies and regulations which will encourage intra African travel through:
 - Removal/relaxing of entry visa requirements for African citizens;
 - Issuance of entry visas at their international airports; and
 - Abolition of visas for transit through their airports.

Member States shall implement favourable custom policies and tariff regimes for:

Aircraft and spares Cargo imports and exports Foreign currency exchange

- vii. Member States shall ensure uninterruptible supply of petroleum products to airports and airlines as well as fair protection of airline from unjustifiable high pricing and sharp practices in the distribution and sales of aviation fuel;
- viii. Member States shall ensure that disruptions to international flights are kept, to the extent possible, minimum and that where this occurs; airlines and passengers are compensated when it is due to socio- political matters;
- ix. Member States shall support their airlines in getting favourable insurance rates and where possible provide guarantees to cover the socio-political risks;
- x. Member States should take measures to establish Research and Development institutions focusing on civil aviation at national and regional levels;
- xi. Member States should facilitate and assist the civil aviation training centres to engage in collaborative arrangements with both national and international universities and research institutes to keep abreast with the technological advancements in the industry;xiii) Member States should integrate aviation in higher institutions of learning as part of Curriculum for the graduate and postgraduate students.
- xii. States shall mainstream and reflect the priorities of the tourism and aviation sectors in economic development planning so that tourism and aviation can be used as an effective economic development driver;
- xiii. States shall establish good governance, i.e. the institutional, legal and regulatory frameworks in which air transport and tourism are designed, implemented and managed;
- xiv. States shall build a strong "Brand Africa" in an increasingly competitive marketplace and a constantly changing business environment to unlock the natural and cultural tourism potential and generate sufficient air traffic demand;
- xv. States shall enable exploration of innovative funding and financing systems to develop quality aviation and tourism infrastructure;
- xvi. States shall enhance and ensure the availability of human capacity with the appropriate technical skills in the tourism and aviation sectors;

xvii. States shall maximize the efficiency of border clearance formalities while strengthening aviation safety, security and the resilience of tourism development; and

xviii. States shall accelerate the regional integration and facilitate the movement of people by air and goods in the African continent;

xix. States shall in cooperation and coordination with the AUC, African RECs, the AFCAC, the NPCA, the AfDB, private sector, international partners and other stakeholders :

a) promote cooperation and compatible decision-making among transport authorities, tourism authorities and other ministries in charge of related portfolios, including finance, economic planning, energy, environment, and trade;

b) consolidate planning and development efforts for aviation, tourism and trade infrastructure, whenever possible, while harmonizing regulatory frameworks and balancing the benefits of these economic sectors;

c) pursue a destination management strategy based on a “smart product mix”, i.e. the establishment of a good integration between tourism and travel, aviation and other service and commodity sectors, to break a vicious circle of economic and logistical disadvantages and enhance structural transformation;

d) institutionalize SAATM at the State level by developing necessary domestic legal and regulatory framework to fully implement it;

e) align and integrate major aviation and tourism infrastructure projects with national and/or regional development plans and budgets, the PIDA Priority Action Plan (PAP) for 2020 – 2030, the AU infrastructure development agenda, as well as forging-African economic cooperation and international assistance platforms such as theTokyo International Conference on African Development (TICAD) and the Forum on China–Africa Cooperation (FOCAC);

f) include and prioritize capacity building projects for trade within the framework of the *MoveAfrica* initiative launched by the NPCA and using and contributing to theHRDF;

g) adopt the visa openness solutions as part of a policy reforms for free movement of people across Africa, through the ICAO Traveller Identification Programme (TRIP) Strategy and the maximum use of information and communication technologies in improving visa procedures; and

h) harmonize domestic laws, policies and procedures to accommodate the issue and use of African Passport;

xx. States shall:

a) take pragmatic measures to build a transparent, stable and predictable investment climate to support quality infrastructure development related to aviation and tourism, for example, by engaging multi-stakeholders, diversifying funding sources, using domestic funds and increasing the participation of the private sector, including through private investment, business reform, private finance initiatives, public private partnerships and various incentive schemes;

b) provide necessary incentives, environment and support for the private sector for its effective participation in African tourism and aviation development;

c) assure certain air services of a public service nature, such as lifeline provision for remote and peripheral destinations, and provide support for the development of international routes linking tourism source markets with LDCs, LLDCs and SIDS using the “essential air service and essential tourism development route” concept developed by ICAO and UNWTO;

d) share and exchange knowledge, experience and best practices with appropriate data and statistics;

e) demonstrate and promote the socio-economic benefits of tourism and aviation, and foster an

informed and engaged public as a crucial partner through public awareness campaigns and education programmes to raise business confidence and obtain buy-in from the wider audiences;

f) draw up a marketing and promotion strategy to support the tourism product developments in conjunction with air transport services, and highlight what Africa can give to the world which the rest of the world does not have; and

g) promote better air connectivity for more efficient use of resources with the aim of contributing to the attainment of the SDGs and beyond.

APPENDIX 1: ABBREVIATIONS

AATO - African Aviation Training Organisation

ACI - Airports Council International

AIS - Aeronautical Information Services

ACIP - African Comprehensive Implementation Programme

AFCAP - African Civil Aviation Policy AFCAC - African Civil Aviation Commission AFI - African Indian Ocean Region

AFIRAN - African Indian Ocean Regional Air Navigation

AFRAA - African Airlines Association

AMU - Arab Maghreb Union

ANR - Air Navigation Regulation

AOC - Air Operator's Certificate

ASECNA - Agency for Aerial Navigation Safety in African and Madagascar

ASET - African Safety Enhancement Team

AUC - African Union Commission

AVSEC - Aviation Security

AU - African Union

BASA - Bilateral Air Services Agreement

BSP - Bill Settlement Plan

CAAS - Civil Aviation Authorities

CAEP - Committee on Aviation Environmental Protection

CBDR - Common But Differentiated Responsibilities

CEN - SAD-Community of Sahel Sonora States

CNS / ATM - Communication Navigation Surveillance/Air Traffic Management

COMESA - Common Market for Eastern and Southern African

COSCAP - Cooperative Operational Safety and Continuing

Airworthiness Development Program

CORSIA - Carbon Offsetting and Reduction Scheme for International Aviation

EAC - East African Community

ECOWAS - Economic Community of West African States

EOC - Emergency Operating Centres

ECCAS - Economic Community of Central African States

EU - European Union

GADSS - Global Aeronautical Distress and Safety System
GASep - Global Aviation Security Plan
GDP - Gross Domestic Product
GNSS - Global Navigation Satellite System
IFATCA - International Federation of Air Traffic Controllers Association
IFATPA - International Federation of Airline Pilots Association
ISSG - Industry Safety Strategy Group
ICT - Information Communication Technology
ICAO - International Civil Aviation Organisation
IGAD - Intergovernmental Authority on Development
IGHC - International Ground Handling Council IATA - International Air Transport Association JAR - Joint Aviation Requirements
LAGS - Liquids Aerosols and Gels MANPADS - Man Portable Air Defence System MASA - Multilateral Air Services Agreement MBM - Market Base Measure
MRTD - Machine Readable Travel Document
NEPAD - New Partnership for Africa Development
PTA - Preferential Trade Area
PBN - Performance Base Navigation
PPP - Public Private Partnership
RAIO - Regional Accident Investigation Organisation
REC - Regional Economic Community
RPAS - Remotely Piloted Aircraft Systems
RSOOS - Regional Safety Oversight Organisations
SADC - Southern African Economic and Monetary Union
SDG - Sustainable Development Goals
SDR - Special Drawing Rights
SARPS - Standard and Recommended Practices
SIGMET - Significant Meteorological (information)
SSFA - Safe Skies for Africa Program
WAEMU - West African Economic and Monetary Union
WHO - World Health Organisation
YD - Yamoussoukro Decision

APPENDIX 2: LIST OF INTERNATIONAL AIR LAW INSTRUMENTS

Warsaw Convention (1929) Rules for international carriage by air
Convention on International Civil Aviation (1944)
International Air Transport Agreement (1944)
International Air Services Transit Agreement
Geneva Convention (1948) Recognition of rights in aircraft
Rome Convention (1952) Damage to third parties on surface
The Hague Protocol (1955). Amending Warsaw Convention of 1929
Guadalajara Convention (1961) Supplementing Warsaw Convention of 1929
Tokyo Convention (1963) Offences and other acts committed on Board Aircraft.
Hague Convention (1970). Unlawful seizure of aircraft
Guatemala City Protocol (1971) Amending Warsaw Convention of 1929 as amended by The Hague Protocol of 1955
Montreal Convention (1971) Unlawful acts against the safety of civil aviation
Additional Protocol No. 1 (1975) Amending Warsaw Convention of 1929
Additional Protocol No. 2 (1975) Amending Warsaw Convention of 1929 as amended by The Hague Protocol of 1955
Additional Protocol No. 3 (1975) Amending Warsaw Convention of 1929 as amended by The Hague Protocol of 1955 and Guatemala City Protocol of 1971
Montreal Protocol No. 4 (1975) Amending Warsaw Convention of 1929 as amended by The Hague Protocol of 1955
Montreal Protocol (1978) Amending Rome Convention of 1952
Protocol relating to an Amendment to the Convention on International Civil Aviation [Article 83 bis] Lease, charter or interchange
Protocol relating to an Amendment to the Convention on International Civil Aviation [Article 3 bis] Non-use of weapons against civil aircraft in flight
Montreal Supplementary Protocol (1988) Acts of violence at airports
COSPAS-CARSAT Agreement (1988) International satellite system for search and rescue
Convention on the Marking of Plastic Explosives (1991)
Montreal Convention (1999) Rules for International carriage by air
Convention on International Interests in Mobile Equipment (Cape Town Convention 2001)
Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment (Cape Town Protocol on Aircraft Equipment 2001)
Convention on Compensation for Damage to Third Parties, Resulting from Acts of Unlawful Interference Involving Aircraft 2009
Convention on Compensation for Damage Caused by Aircraft to Third Parties (General Risks Convention (2009)

Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation (Beijing Convention 2010)

Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft (Beijing Protocol 2010)

The United Nations Framework Convention on Climate Change (UNFCCC)

Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft (Montreal Protocol 2014)

Protocol Relating to an Amendment to the Convention on International Civil Aviation [Article 50(a)] 2016

Protocol Relating to an Amendment to the Convention on International Civil Aviation [Article 56] 2016

All other subsequent Conventions, Treaties and Protocols that will be adopted by ICAO.

APPENDIX 3: SCHEDULE ON TARGETS

The Appendix 3 shall constitute the basis of implementation and oversight of this policy (Attached)

APPENDIX 3 : SCHEDULE ON TARGETS - BASIS OF IMPLEMENTATION AND OVERSIGHT OF AFCAP

S/N	ACTION /ACTIVITIES	RESPONSIBILITY		INDICATOR	TARGET DATES		DESIRED OUTCOME	REMARKS
		Lead	Other		From	To		
1	Nomination of States and RECs Focal Points on the implementation of AFCAP	States, RECs, AFCAC	AFCAC	Nominated Focal Point	Within 3 Months of the approval of AFCAP	Within 6 Months of the approval of AFCAP	Create easy coordination and liaison among Stakeholders	Africa's Regional Economic Communities (RECs) are the key building blocks for economic integration in Africa. Hence, their participation in the implementation of AFCAP is crucial
2	Workshops on AFCAP for States and RECs Focal Points	AFCAC	Partners	No of attendees	Within the first 6 months of the approval of AFCAP		TRAIN THE TRAINER and create a common understanding of AFCAP	Enable stakeholders to be harmonious by fostering consistency when domesticating and implementing the AFCAP
3	Promotion and awareness by all stakeholders	AFCAC	States RECs	Acceptance based on number of feedback received	Continuous		To expedite domestication and engender support for the implementation of the AFCAP	AFCAC to coordinate the awareness activities/advocacy on AFCAP
4	Harmonisation of the AFCAP with States and RECs Policies on Aviation	AFCAC	States, RECs,	Number of harmonised Policies	Continuous		Remove areas of disparity in policies between AFCAP and those of States' and the RECs	Improve policies cohesion amongst States
5	Create a database (i.e. Compendium) on the implementation of AFCAP	AFCAC	States, RECs	No of States that provides info for the database	Within the first 6 months of the approval of AFCAP		Enabled exchange of information amongst State through a public platform/website which would allow AFCAC to easily monitor the exchange of information	Similar to the ICAO Compendium on COVID-19 Response and Recovery Implementation Centre (CRRIC) created to assist implementation, support, coordination, monitoring and reporting activities following the Covid-19 Pandemic
6	Develop questionnaires to obtain feedback on implementation of AFCAP from States, RECs & other stakeholders	AFCAC	States, RECs & other stakeholders	No of responses from stakeholders	Continuous		Level of implementation of the AFCAP by States & RECs	The information contained in the Compendium will be broken into different areas of the AFCAP i.e. Legal, Safety, Air Transport, Facilitation, Security, Environment etc to enable easy monitoring
7	Assistance to States	AFCAC	RECs, partners	No of assistance rendered to States	Continuous		Support States in addressing areas of challenges	Through the coordination of AFCAC, States can assist each other in the implementation of the AFCAP
8	Review of AFCAP	States & other Stakeholders	AFCAC	Updated AFCAP	Every 10 years		Keep the document current and responsive to the needs of State	

