

CAPACITY BUILDING WORKSHOP ON INSTITUTIONAL AND REGULATORY INSTRUMENTS OF THE YD AUC, KIGALI, RWANDA 22-24, JUNE 2019

AFRICAN AIR TRANSPORT EXECUTING
AGENCY, (EA).

PRESENTATION BY Peter
AMALEBOBA, LEGAL ADVISOR OF THE
AFRICAN CIVIL AVIATION COMMISSION
(AFCAC)

PRESENTATION OUTLINE

- ❖ AFCAC. WHO ARE WE?
- ❖ EA AN INSTITUTION CREATED UNDER YAMO USSOUKRO DECISION
- ❖ DECISIONS OF AU ORGANS ENTRUSTING AFCAC WITH EA (AFCAC CONST)
- ❖ ANNEX 4 : REGULATIONS ON THE POWERS, FUNCTIONS AND OPERATIONS OF THE EA. (SOURCE, STRUCTURE AND SPECIFIC ARTICLES)



OVERVIEW OF AFCAC

A Specialized Agency of the African Union

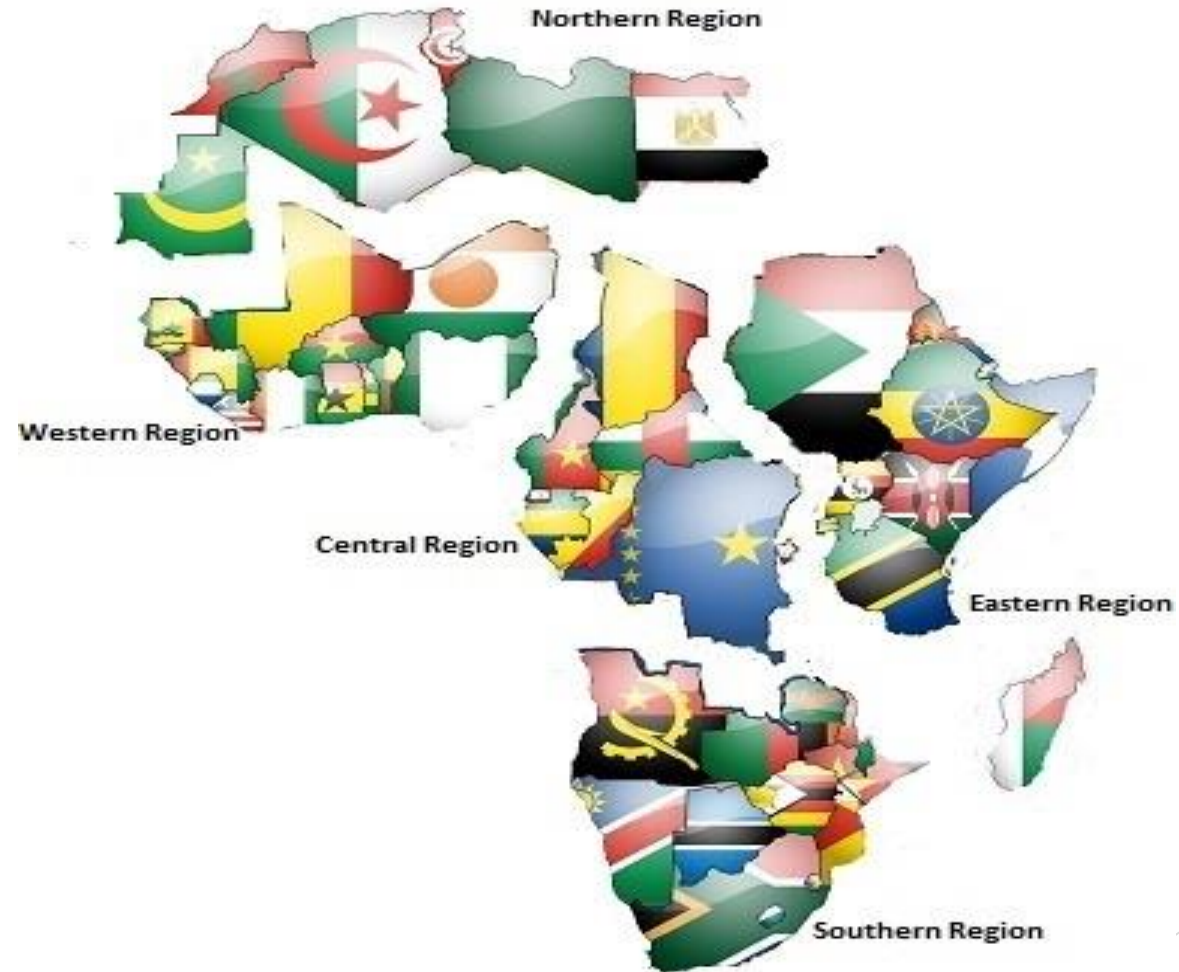
Established through a Constitutive Conference by ICAO and OAU (AU) in 1969.

Became fully established and operational on 11 May, 1978. Revised Constitution of 2009.

Responsible for coordination and orderly development of civil aviation on the continent

Membership

► 55 Member States





Objectives

Formulate and enforce appropriate rules and regulations

Facilitate, coordinate and ensure the successful implementation of the YD

Ensure adherence to and implementation of Decisions of the Executive Council and Assembly.

cooperate with ICAO, RECs and all other relevant organizations which are involved in the promotion and development of civil aviation.



VISION, MISSION AND CORE VALUES

Vision: To foster a safe, secure, efficient, cost effective, sustainable and environmentally friendly civil aviation industry in Africa

Mission: To facilitate cooperation and coordination among African States towards the development of an integrated and sustainable air transport system; and foster the implementation of ICAO SARPs as well as development of a harmonized set of rules and regulations

Our Values:

- Good governance and best practices
- Transparency and accountability
- Professionalism and integrity
- Safe and just culture



Responsibilities of AFCAC

- Formulating and enforcing appropriate rules and regulations which promote fair competition.
- Ensuring adherence to and implementation of Decisions of the Executive Council, and the Assembly; and
- Reviewing any specific problems which may hinder the development and operations of the African civil aviation industry.



Responsibilities of AFCAC

- Coordinating civil aviation matters in Africa and cooperating with ICAO and all other relevant organizations and other bodies.
- Facilitating, coordinating and ensuring the successful implementation of the Yamoussoukro Decision (YD).
- Promoting understanding on policy matters between its member States and States in other parts of the world.
- Fostering the implementation of ICAO SARPs.

Establishment of Executing Agency, (EA)

- Article 9.4 of the YD provides for the establishment of African Air Transport Executing Agency.
- ▶ ‘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.

Establishment of Executing Agency, (EA)

- ▶ Art. 9.5 of YD. “ 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.” ref. Art. 7 of YD
- ▶ Art. 9.6 of YD. “The Executing Agency will also ensure that passenger rights are protected.”

DECISIONS OF AU ORGANS ENTRUSTING AFCAC WITH EA (AFCAC CONST)

- ▶ EX.CL/Dec.359 (XI) wherein the Executive Council took note of 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)
- ▶ Subsequently endorsed by the Assembly of HoG at Summit in 2007 in Accra, Ghana.
- ▶ Art. 4 (J) of 2009 AFCAC Constitution. As one of its functions, “ act pursuant to Art. 9 of the YD to discharge its duties of Executing Agency of Air Transport in Africa”

ANNEX 4 : REGULATIONS ON THE POWERS, FUNCTIONS AND OPERATIONS OF THE EA. (SOURCE, STRUCTURE AND SPECIFIC ARTICLES)

Art. 12.4 of YD. Annexes

- ▶ “Relevant annexes adopted by the competent organs of the African Economic Community shall form an integral part of this Decision.”
- ▶ Art. 7 of the 1991 Abuja Treaty establishing the ECA lists the Organs of the Community to include;
 - a) The Assembly of Heads of State and Government of the,
 - b) The Council of Ministers
 - c) The Specialized Technical Committees etc.

ANNEX 4 : REGULATIONS ON THE POWERS, FUNCTIONS AND OPERATIONS OF THE EA. (SOURCE, STRUCTURE AND SPECIFIC ARTICLES) Cont.

- ▶ Annex 4 is one the those Annexes adopted by the HoSG pursuant to Article 12.4 of the YD.
- ▶ 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}

Structure of the Regulations

► Includes:

1. Preambular Clauses;

makes references to the Constitutive Act of the African Union, the Treaty establishing the African Economic Commission (Abuja Treaty), Decisions of the Executive Council entrusting the EA to AFCAC, Resolution of the first CAMT(Sun City) on the follow-up of the implementation of the YD, the need for effective institutional structure to manage the African Air liberalization process, the need for harmonization of legislation and policies in air transport, need to create a fair level of playing field for all airlines regardless of size and reach, consumer protection among others.

Chapters (5)

- ▶ Chapter 1- Definitions, Scope of Application, Object and Basic Principles
- ▶ Chapter 2-Powers and Functions
- ▶ Chapter 3- Operations of the Executing Agency
- ▶ Chapter 4- Institutional Arrangements
- ▶ Chapter 5- Financial Arrangements
- ▶ Final Provisions (Entry Into Force)
- ▶ Appendix (Procedures to be Applied by the EA. (Rule-Making Procedures)

Articles (22)

- ▶ Chapter.1
- ▶ Art. 1 Definitions
- ▶ Art. 2 Scope and Application
- ▶ Art.3 -Object and Basic Principles
- Chapter 2
- Art. 4 - Functions of the EA
- Art. 5 -Powers of the EA
- Chapter 3
- Art. 6- Implementing Measures at National and Regional Levels

Articles-Cont.

- ▶ Art. 7- Training of Senior Management
- ▶ Art. 8- Monitoring, Evaluation and Reporting
- ▶ Art. 9- Research and Development
- ▶ Art. 10- Work Plans
- ▶ Art. 11- Database, Website, Privacy and Publication
- ▶ Art. 12- Investigation
- ▶ Art. 13- Inspection of Service Providers
- ▶ Art. 14- Imposition of Sanctions
- ▶ Art. 15- Procedures for Development of Decisions, Regulations and Guidelines
- ▶ Art. 16- Procedures for enforcement decisions

Articles-Cont.

Chapter 4.

Art. 17- Oversight role of AFCAC Plenary

Art. 18- The Secretary General (Managing the EA)

Chapter 5-Financial Arrangements

Art. 19- Budget

Art. 20- Implementation and control of Budget

Art. 21- Fees

Art. 22- Entry into force

Appendix (Rulemaking Procedures)

The scope of this Regulation is to;

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

Objective of this Regulation

1. To enable the Executing Agency carry out the effective operation, supervision and management of liberalization of air transport in Africa.
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

Article 12

Investigation

- ▶ 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.

Principles

- ▶ 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.

Powers and Functions of the Executing

- ▶ The Executing Agency shall have the power to:
- ▶ Ensure that the Yamoussoukro Decision is applied consistently throughout the African continent;
- ▶ 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;
- ▶ Formulate opinions, make decisions, guidelines and guidance materials including clarifications of provisions of the Decision and acceptable means of compliance;
- ▶ 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
- ▶ Impose sanctions on airlines
- ▶ Enforce penalties

Monitoring, Evaluation and Reporting

1. 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.
2. Submit annual reports to the Monitoring Body and the organ of the African Union responsible for air transport as appropriate.
3. It shall also;
 - a. conduct regular investigations,
 - b. carry out evaluations,
 - c. Request for and review national aviation regulations including but not limited to economic regulations, air services agreements, and operational statistics of air transport falling within its field of competence.
4. 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.
5. Submission of 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.