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**THE FIRST ORDINARY SESSION OF THE
AFRICAN UNION SPECIALIZED TECHNICAL
COMMITTEE ON TRANSPORT,
INTERCONTINENTAL AND INTERREGIONAL
INFRASTRUCTURES, ENERGY AND TOURISM**

Lomé, Togo, 13th – 17th March 2017

REALIGNED

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

**ANNEX 4 TO THE YAMOUSSOUKRO
DECISION**



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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 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 too 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), hereinafter called the Executing Agency ;
- CONSIDERING** the Resolution on the follow-up of the implementation of the Yamoussoukro Decision of 1999 adopted by the First African Union Conference of Ministers responsible for Air Transport in Sun City(South Africa) in May 2005;
- CONSIDERING** the Resolution on air transport safety in Africa adopted by the Second Conference of African Union Ministers responsible for air transport in Libreville (Gabon) in May 2006;
- CONSIDERING** the need to speed-up the full implementation of the Yamoussoukro Decision with a view to giving a boost to the operations of African airlines and other air transport service providers and effectively meeting the challenges of globalisation of international air transport;



- RECOGNISING** the need for an effective institutional structure to manage liberalization of the air transport sector on the continent and direct safety, security, dispute resolution, consumer protection among others;
- NOTING** the importance of the harmonization of legislation and policies in air transport necessary to achieve the objectives of the Yamoussoukro Decision;
- MINDFUL** of the interests of the African consumer and the need to protect such interests through active continental, regional and national policies that enhance their sense of safety and eases their burden on travelling in the continent;
- CONSIDERING** the important role that airlines and other air transport service providers play in the process of liberalization and the integration of African economies and the need to support their efforts.

HEREBY MAKE THE FOLLOWING REGULATIONS:

Article 1

Definitions

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.

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



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

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

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

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

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

Article 2

Scope of Application

1. The scope of these Regulations 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.

Article 3

Object and Basic Principles

1. The key objective of these Regulations is to enable the effective operation, supervision and management of liberalisation 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 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 and encourage cross border investments in airlines.
- f. The consideration of liberalised routes as a public good held for the use of and in the interest of the African continent.

Chapter 1 Powers and Functions

Article 4

Functions of the Executing Agency

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**

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, as 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. **Implement** 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 these Regulations 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.

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 2 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

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..
2. The training may be conducted at the regional level or continental levels and, in the case of regional training, shall be conducted or facilitated by the regional economic communities.
3. The Executing Agency shall adopt rules on training and sponsorship of senior personnel.

Article 8

Monitoring, Evaluation and Reporting

1. Having regard to the object of these Regulations, 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. 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:
 - a. conduct regular investigations,
 - b. carry out evaluations,
 - c. request for and review national aviation regulations including but not limited to economic regulations, air services agreements, and operational statistics of air transport falling within



its field of competence.

4. The 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.
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.
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

1. The Executing Agency shall encourage research in areas of its competence.
2. It shall encourage African universities, other educational institutions and research institutes to conduct such research as will enhance understanding and further promote air transport liberalisation in Africa
3. The 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.
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

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

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.
2. The Executing Agency shall compile a central database of air transport on all aspects of its competence.
3. In giving effect to these Regulations the Executing Agency shall be guided by openness,



- transparency and a willingness to publish relevant documentation to all interested parties, including the general public.
4. Without prejudice to paragraph (3) of this Article, measures for the dissemination to interested parties of information shall be based on the need:
 - a. to provide persons and organisations with the information they need to enable them undertake their obligations under the Yamoussoukro Decision;
 - b. to limit the dissemination of information to what is strictly required for the purpose of its users, in order to ensure appropriate confidentiality of that information.
 5. 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 these Regulations.
 6. The Executing Agency shall have an official publication.

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.
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 subparagraph (a), and reporting the same to the Monitoring Body.
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 these Regulations 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 .
4. The officials of the Executing Agency, regional economic communities and State Parties authorised for the purpose of these investigations shall exercise their powers upon the production of an authorisation in writing specifying the subject matter, the purpose of the investigation and the date on which it is to begin. In good time before the inspection, the Executing Agency shall inform the State Party concerned of the investigation of the identity of the authorised officials.
 5. The State Party concerned shall assist the Executing Agency in conducting its investigations.
 6. Investigation reports shall be made available in the official language of the State Party concerned.

Article 13 **Inspections of service providers**

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 these Regulations are empowered:
 - a. To examine the relevant records, data, procedures and any other relevant material;
 - b. Take copies of or extracts from such records, data, procedures and other material;
 - c. Request for oral interviews and explanation;
 - d. To enter any relevant premises.
2. The persons authorised for the purpose of these investigations shall exercise their powers upon production of appropriate identification and written authorisation specifying the subject matter and the purpose of the investigation.
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**

1. The Executing Agency may determine the appropriate sanctions to be imposed for breaches



- of the Yamoussoukro Decision and its implementing rules and regulations.
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.
 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**

1. 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.
2. The Executing Agency shall adopt rules through the procedure of Notification of Proposed Rulemaking on the Yamoussoukro Decision (Hereinafter, YDNPR).
3. The Executing Agency shall adopt detailed procedures for taking decisions and making regulations, and issuing guidelines.
4. 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**



1. The Executing Agency shall establish transparent procedures for taking decisions affecting State Parties, eligible airlines and other air transport service providers.
2. Those procedures shall:
 - a. If they are intended to affect State Parties, ensure that State Parties have been given ample time to remedy the cause of the eventual decision and that such an enforcement decision is based on 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 these Regulations
 - e. Ensure that the decision contains adequate reasons

Chapter 3 Institutional Arrangements

Article 17

Oversight role of the AFCAC Plenary

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 the African Aviation Tribunal, the Board of Appeal and as Expert Mediators pursuant to the Regulations on Dispute Settlement Mechanisms for approval by the Chairperson of the African Union;
 - 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..

Article 18

The Secretary General



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.
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.
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 these Regulations, 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.
 - e. Prepare reports pursuant to Article 8 of these Regulations and submit it to the AFCAC Plenary and relevant organs of the African Union;
 - f. Prepare a provisional budget for the Executing Agency.;

Chapter 4 Financial Arrangements

Article 19

Budget

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.
2. The expenditure of the Executing Agency shall include the staff, administrative, infrastructure and operational expenses.
3. The Executing Agency shall in accordance with these Regulations submit the approved provisional budget and proposed work plan to the organs of the African Union

Article 20

Implementation and control of the budget



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

1. The Executing Agency shall within six (6) months of entry into force of these Regulations submit a draft regulation on fees and charges for approval by the relevant organs of the African Union..
2. The Regulations on fees and charges shall determine in particular the matters for which fees and charges are exigible, the amount and the way in which they are to be paid.

Final Provisions

Article 25
Entry into force

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



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

Section 2 – Rulemaking Procedure

Rule 3 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 airline sector; and
 - v. the objective of developing an efficient, transparent and responsive continental regulatory system.



3. Any person or organisation may propose the development of a new rule or an amendment thereto. The Secretary General shall consider such requests in the context of the revision of the rulemaking programme.
4. Proposals, including the identification of the proposer, the proposed text and the justification for the proposal, shall be sent to the 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 these Regulations.

Rule 4 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 5 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 6 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.
4. The consultation period shall be four (4) months from the date of publication of the proposed rule, unless the Secretary General specifies otherwise.
5. During the consultation period, the Secretary General may, in exceptional and strictly justified circumstances, extend the consultation period specified in paragraph 4 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.
6. 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 7 **Review of comments**

1. The Secretary General shall ensure that comments are reviewed by appropriately qualified experts not directly involved in the drafting of the proposed rule together with the 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 responses 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.
2. 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.

Article 8 **Adoption and Publication**

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.