

AFRICAN UNION

الاتحاد الأفريقي



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INDIVIDUAL CONSULTANT

CONSULTING SERVICES FOR LEGAL EXPERT SERVICES TO REDRAFT THE DISPUTE SETTLEMENT MECHANISM AND ESTABLISHMENT OF ITS INSTITUTIONS – ENHANCING THE SINGLE AFRICAN AIR TRANSPORT EFFICIENCY

Reference No.: AUC/IED/C/277

Terms of Reference for Legal Expert Services to redraft the Dispute Settlement Mechanism and establishment of its institutions – Enhancing the Single African Air Transport Efficiency

1. This document outlines the scope of work and key requirements for recruitment of a Legal Expert to elaborate a continental dispute settlement mechanism and related institutional framework as is required for the Single African Air Transport Market. In the process, the Expert will also indicate the possible use of the proposed dispute settlement mechanism for the African Continental Free Trade Area, a major integration projects of the AU agenda 2063 and provide a draft qualification criteria for members of the arbitration process.

Brief Background:

2. In November 1999, African Aviation Ministers adopted the Yamoussoukro Decision on the Liberalisation of Air Transport Markets in Africa. The Decision was, subsequently, endorsed by the Assembly of the Heads of State and Government of the OAU in July 2000 in Lomé, Togo. For the purpose of implementing the Yamoussoukro Decision and in particular paragraph 4 of Article 9 thereof, AFCAC was entrusted in 2007, with the attribution of the Executing Agency and charged to supervise and manage and enforce the liberalization of African air transportation by the Meeting of the African Aviation Ministers. The Yamoussoukro Decision provides for the establishment of a number of regulatory and institutional annexes. Some Institutional and Regulatory annexes of the Yamoussoukro Decision were elaborated and adopted during the Fourth meeting of the Bureau of the Conference of African Ministers of Transport meeting in Malabo, Equatorial Guinea, in December 2014.
3. The regulatory text adopted include:
 - (a) Regulations on Competition in Air Transport Services within Africa -“Competition Regulations”
 - (b) Regulations on the Powers, Functions and Operations of the Executing Agency of the Yamoussoukro Decision or “Regulations on the Executing Agency”; and
 - (c) Regulation on Protection of Consumers or the “Consumer Protection Regulations”) and.

(d) Regulations on Dispute Settlement Mechanisms Relating to the implementation of the Yamoussoukro Decision or the “Dispute Settlement Mechanism Regulations”).

4. The Yamoussoukro Decision makes it imperative that a dispute settlement mechanism be elaborated. Article 8.1 states that 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 and in article 8.2, If the State Parties concerned fail to reach a settlement of the dispute by negotiation within 21 days, either party may submit the dispute for arbitration in accordance with the arbitration procedures set forth in Appendix 2 hereof. The arbitration procedure was defined in the draft dispute settlement mechanism (d), above. The mechanism calls for the African Union to establish the Board of Appeal and the African Arbitration Tribunal.
5. According to African Union review, the medium that was proposed fell short of the structuring of a new institutional mechanism. Consequently, this work is expected to review any shortcoming in the institutional arrangement in that instrument as a point of reference in elaborating the new mechanism.
6. In relation to the African Continental Free Trade Area, the 18th Ordinary Session of the Assembly of Heads of State and Government of the African Union, held in Addis Ababa, Ethiopia in January 2012, adopted a decision to establish a Continental Free Trade Area (AfCFTA) by an indicative date of 2017. The AfCFTA will bring together fifty-five African countries with a combined population of more than one billion people and a combined gross domestic product of more than US \$3.4 trillion.
7. The agreement on AfCFTA covers, at least for the first phase, the trading of goods and services. On trade in services, it covers all four modes of supply, namely Mode 1 Cross border trade, Mode 2 Consumption abroad, Mode 3 Commercial presence, and Mode 4 Presence of natural persons. On 22nd March 2018, the Extra-ordinary Assembly of Heads of States and Government was held in Kigali – Rwanda and at this occasion, 44 African Member States signed the agreement establishing the AfCFTA which included Protocol on Trade in Goods, Protocol on Trade in Services and Protocol on Rules and Procedures for Settlement of Disputes.

Nature of Disputes

8. The regulatory structure of air transport services and invariably of the free trade in services involve disputes of the following nature:
 - Disputes between two or more service providers
 - Disputes between service providers and State Parties to the relevant regulatory instruments
 - Disputes between two or more State Parties to the relevant regulatory instruments

- Disputes between service providers, service users and State Parties on the one side and the regulators (regional and continental) of the relevant mechanism, and
- Disputes between service users and service providers

Geographical Scope of Disputes

9. The scope of the disputes that will be covered by the dispute settlement mechanism will be of cross-boundary nature only and will not involve disputes between citizens of a State Party within the territory of a State Party. The disputes could normally involve two or more States within one or more regional economic communities.
10. The consultancy should therefore provide for a mechanism that ensures that cross border disputes whether involving RECS, multi-RECS, multi – States will be covered.

Objective	<i>Elaborate instruments for establishing the dispute settlement mechanism and its institutions in accordance with AU best practices and meet the requirement of article 8.2 of the Yamoussoukro Decision and criteria for selection of arbitrators.</i>
Scope of the work	<p>Undertake a scope study of the need for a dispute settlement mechanism for the Single African air Transport Market and the one in the structure of African Continental Free Trade Area. The study should take into consideration other dispute settlement mechanism with an international obligation, such as the ones under the Convention on International Civil Aviation (the Chicago Convention). The Consultant should also take into consideration multilateral and bilateral agreements between states, including bilateral air services agreements and draw lessons from existing established dispute settlement mechanism.</p> <p>Carry out consultation with relevant AU organs, AUC offices, RECs, and partners. Indicative list could be the Office of the Legal Counsel, Department of Infrastructure and Energy, Trade and Industry Commission of the AUC, UNECA, the Africa Court of Justice, the African Civil Aviation Commission, the African Airlines Association, Registrars of COMESA, SADC, ECOWAS Courts, the African Human Rights Court, and other Aviation and trade Experts.</p> <p>Determine the requirements for the establishment of such institutions; identify the mechanism of establishing its institution such as an arbitration tribunal for the settlement of disputes at the regional and continental level in Africa Establish/suggest alternative legal instruments suitable for a continental dispute settlement mechanism including use of mediation, consultation, arbitrations, use of courts and other appeal procedures.</p> <p>Draft the required regulations of the continental dispute settlement mechanism and any other instruments such rules of procedures, statutes and</p>

	<p>or any required protocols in compliance with AU structure and Yamoussoukro Decision.</p> <p>In drafting the dispute settlement mechanism, the Consultant should endeavour to ensure that arbitral proceedings to take place either at the Union of within the premises of AU Organs/ Institution /Offices and</p> <p>Draft criteria for the selection of arbitrators.</p>
Specific tasks:	<ol style="list-style-type: none"> 1. Scope study on the needs for dispute settlement in the aviation sector and trade areas 2. Investigate any AU procedure, ad-hoc or official, for the establishment of an arbitration tribunal and develop one in the absence of any such procedure. 3. Identify, in consultation with Experts at the AUC departments of Trade, Infrastructure and Energy and the Legal Counsel of the African Union Commission, the needed dispute settlement mechanism. <p>Also consult the Trade and African Aviation Industry experts on needs in particular AFRAA, consult the following RECs - COMESA, SADC, ECOWAS Courts and the African Human Rights Court</p> <ol style="list-style-type: none"> 4. Draft a statutory instrument required to establish the arbitration tribunal of the dispute settlement mechanism and the establishment of the required institutions. 5. Redraft a revised dispute settlement mechanism regulation based on existing model. 6. Define criteria for the selection of arbitrators for the dispute settlement mechanism. 7. Assist the AUC in organising a validation workshop to validate the drafted instruments and regulations; and. 8. Assist the AUC, where necessary, in organising training workshops relevant existing dispute settlement institutions that could be used.
Suggested Methodology	The assignment will comprise desk research, focused group meetings, questionnaire, interview (face to face, remote, conference type consultations, etc) in relevant African countries. The Consultant would be expected to comment on this terms of reference and demonstrate clear understanding of the required assignment.
Expected Outputs	<p>-Inception report two weeks from date of kick-off (including outline, methodology, documents to be reviewed, list of interviewee, list of institutions to be visited, detailed work schedule/a roadmap/chart with milestones, etc)</p> <p>-Mid-term report at 1 and ½ month from date of kick-off</p> <p>-Draft report that includes Instrument on the dispute settlement mechanism including rule of procedures and regulations for the Single African Air Transport Market, and or the AfCFTA</p>
Assignment Completion Date	Three Months from start of assignment
Expert position	Legal Expert
Category	Senior
Minimum Requirements	Qualification: <i>Candidate must have at least a University Master Degree in business administration, law or a related qualification to law, with a focus on dispute settlement.</i>

	<p>Experience –</p> <ul style="list-style-type: none"> - Minimum 10 years of experience in international and regional development projects with at least 5 years experience working with a regulatory body on air transport multilateral/bilateral air service agreement negotiation or participation in industrial dispute settlement mechanism. - Knowledge of the Yamoussoukro Decision and the African Union programmes air transport liberalisation will be an advantage. - <i>Demonstrated Experience in the drafting of legal instrument related to either civil aviation sector or trade;</i> - <i>knowledge of dispute settlement mechanism in trade in particular application of UNCITRAL rules;</i> - <i>Relevant practical experience and prior expertise in successfully undertaking similar projects and assignments conducted by the consultant in the development of rules of procedures for dispute resolution for an aviation institution or industry;</i> - <i>The Expert is expected to have undertaken an extensive review of existing legal documents, instruments, or other material; and identifies important legal issues, inconsistencies, relevant to the above subject and must have conducted extensive legal research and analysis and prepare studies, comparative studies, briefs, reports and correspondence with the view to align both International multilateral and bilateral agreements;</i> - <i>Knowledge of AU institutions and arbitration mechanisms</i> - <i>Excellent command of English essential and knowledge of French/Portuguese or Arabic will be an advantage/asset;</i> - <i>Past work experience with the African Union Commission and/or its specialised institutions – AFCAC and AFRAA is an advantage.</i> - Proven ability to plan and organise work within a project and independently; ability to make timely decisions
Assignment Duration	Three Month
Location	<p>The study will be home based, the expert will operate from his usual duty stations for the desk work. Missions will be carried out in Addis Ababa for the kick-off meeting and consultation with relevant departments of the Commission. Scoping missions and consultations to AFCAC in Dakar (2 days), AFRAA/IATA/ICAO in Nairobi (2 days, ECOWAS in Abuja (2 days), COMESA courts in Lusaka (2 days), SADC courts in Gaborone (2 days) and consult the African Human Rights Court in Arusha (2 days) and a final meeting in Addis Ababa to submit the report. Based on success delivery of the document, the Commission will engage the consultant as a resource person to validate the draft document. The agenda of these missions shall be reviewed after each mission has been executed starting with the kick-off meeting in Addis Ababa Ethiopia. The objective is to ensure further missions are relevant. The consultant shall therefore indicate a travel plan in the schedule of works.</p>
Working days	40 working days
Period of Execution and Submission	<p>The assignment will last for a period of three months starting from the date of signature of the contract. All reports shall be made available in at least two AU languages by end the three months at the latest (English and French).</p>

	The final report will subsequently be translated by the AUC into the other languages.
Expected start date:	July 2018
Persons/Experts to be consulted	AUC (Director/Experts of Trade & Industry, AfCFTA Unit, Head of Transport& Tourism, OLC, Legal Officer), AFCAC, SG-AFRAA, Legal Affair-IATA, ICAO-(Nairobi), Registrars (COMESA, ECOWAS, SADC Tribunal, Permanent Court of International Arbitration, ICC Tribunal, African Human Rights Court
Available references	Institution and Regulatory Texts of the Yamoussoukro Decision and The Yamoussoukro Decision and AfCFTA dispute settlement regulations. But the consultant should be able to gather and work on all other relevant references for the assignment. For further information Contact: the Division of Transport and Tourism Infrastructure and Energy: Mr. David Kajange - kajange@africa-union.org copy Ngoe Ndoh – NdohN@africa-union.org

Interest individual consultants can bid for one or two lots, but only one contract can be issued per lot to a consultant.

Please find attached the detailed terms of reference for the both Central and Eastern African Regions.

For evaluation of the expressions of interest the following criteria will be applied:

a) General Education Qualification and Relevant Training (20 points);

b) Experience Related to the Assignment (25 points);

c) Technical approach and methodology (40 points)

d) Work plan (10 points)

e) Language (5 points)

Interested candidates are requested to submit the following documents for AUC's consideration:

a) Technical Proposal not exceeding 8 pages on:

- I. understanding and interpretation of the TOR
- II. methodology to be used in undertaking the assignment
- III. time and activity schedule

b) Financial proposal not exceeding 1 page

- I. Consultant's daily rate in US\$
- II. Other costs e.g. travel
- III. Total cost

c) Personal Capacity Statement

- I. Relevant experience related to the assignment (include samples of two most recent similar works and/or references for the same)
- II. Contacts of at least 3 organizations previously worked for
- III. Curriculum Vitae of the Consultant (s)

Further information can be obtained at the address below during office hours 8:00-13:00hrs and 14:00-17:00 hours Local Time.

Proposal must be delivered in a written form to the address below not later than 15:00 hours local time, August 3rd, 2018.

African Union Commission,

Head of Procurement Travel and Store Division

P.O. Box 3243, Roosevelt Street Addis Ababa, Ethiopia

Tel: +251 (0) 11 551 7700 – Ext 4305, Fax: +251 11-551-7844

E-mail: tender@africa-union.org