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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**

CONCEPT NOTE

ON

**Revision of the Duties and Responsibilities of the Monitoring Body of the
Yamoussoukro Decision**

1. BACKGROUND

The concept of liberalization of air transport in Africa emerged in 1988 with the adoption of the Yamoussoukro Declaration of the Conference of African Ministers responsible for Civil Aviation in Yamoussoukro, followed ten years later by the Yamoussoukro Decision (YD) of 1999. The decision was subsequently endorsed by the AU Heads of State and Government Assembly through Decision AHG/OAU/AEC/Dec.1 (IV) in Lomé, Togo, in July 2000. It came into force since August 12, 2002, after the expiry of the transitional period of 2 years.

Article 9 of the YD establishes the institutions concerned with implementation of the decision. In article 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 was established with responsibility for the overall supervision, follow-up and implementation of this Decision. The Sub-Committee on Air Transport (**CMAT**) is currently a sub-committee of the Sectoral Technical Committee for Transport, Transcontinental and Interregional Infrastructure, Energy and Tourism (**STC TTIET**).

Article 9.2 of the decision establishes the Monitoring Body of the YD 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. It is composed of representatives of the **AU**, **UNECA**, **AFCAC**¹ and **AFRAA** and can be assisted by representatives of sub-regional organizations, as the case may be. Article 9.3 defines the duties and responsibilities of the Monitoring Body as set out in Annex 2 of the Decision with secretariat services required by the Body to be provided by the ECA.

An African Air Transport Executing Agency (AATET) was established in article 9.4, with responsibilities to supervise and manage the African liberalised air transport industry. This entity, also known as the Executing Agency (**EA**) of YD, was finally established in 2007 during the 3rd AU Conference of Ministers responsible for Air Transport, held in Addis Ababa, Ethiopia, in May 2007. The CMAT decided to entrust the

¹ AFCAC – The African Civil Aviation Commission has two major functions – it is the specialised agency of the African Union on matters of Aviation in particular covering matters related to aviation safety and security. However AFCAC is since 2007, the Executing Agency of the Yamoussoukro Decision. Therefore its role in the monitoring body is related to AFCAC as the specialised agency AU.

functions of the Executing Agency (EA) to the African Civil Aviation Commission (AFCAC) in conformity with Article 9.3 of the YD which provides for the establishment of the EA (Doc. EX.CL/350 (XI) and the AU Summit of July 2007 endorsed the resolution on entrusting the functions of the Executive Agency of the 1999 Yamoussoukro Decision to the African Civil Aviation Commission – AFCAC (EX.CL/Dec 359 (XI).

Article 9.5 further indicates that 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 and shall also ensure that consumer rights are protected. To enable the operationalisation of the Executing Agency, the African Ministers of Transport adopted the Regulatory text of the YD, i.e. Competition rules, consumer protection regulations, a dispute settlement mechanism and the Powers and Functions of the EA. The text on the Powers and Functions of the Executing Agency are pertinent in defining the Duties and Responsibilities of the Monitoring Body as defined in Annex 2 of the YD.

Other development pertinent to this review are the (a) the modification of the AFCAC constitution to cater for AFCAC's new role as the Executing Agency of YD, (b) The establishment of an African Civil Aviation Policy and (c) the elaboration of the African Union agenda 2063 in 2013 with specific flagship project on the establishment of the Single African Air Transport Market by June 2017 ((Assembly /AUC/Commitment/XXIV). The Single market will be realised through the full implementation of the Yamoussoukro Decision.

It should be recalled that UNECA played an active and major role in the inception period of YD including carrying out specific studies and providing clarifications on the implementation of the Yamoussoukro Decision. However UNECA's precise role as secretariat of the Monitoring Body was never defined. Hence in due cause, UNECA has not put in the same effort in contributing in the formulation of aviation policy in the continent as in the 90s. As the 'Think Tank' organisation of the African Union, it is important to specify and strengthen the role of the UNECA as secretariat of the Monitoring Body of YD.

To this end, any review of the duties and responsibilities of the Monitoring Body needs to take into consideration these new developments in subsector including provisions in the new YD regulatory text, AFCAC's new

constitution, the establishment of the SAATM, role of the Ministerial Working Group and the STC TIIET.

2. OBJECTIVES

The purpose of this note is to define the revised terms of reference for the Monitoring Body of YD as specified in article 9, cognizance of the policy changes that have taken place in the sub-sector since the Decision was adopted in 1999. During the Second Meeting of the Ministerial Working Group for the establishment of the SAATM, the Monitoring Body met to review the activity plan of the Executing Agency, taking into consideration its powers and functions as defined in the YD regulatory text. It was established that the defined functions of the EA have overlaps with existing functions of the Monitoring as defined in Annex 2 of the YD.

A recommendation was therefore made to the Ministerial meeting for the terms of reference of the Monitoring Body to be revised and the recommendation was accepted by the Ministers. A task team consisting of AUC, UNECA and AFCAC was assigned the task to draft the revised terms of reference of the Monitoring Body. The meeting provided a guideline for the work of the Team by drawing a distinction between those functions that are supposed to be performed on a daily basis such as convening of meetings, research and rule making compared to oversight and advisory duties as listed in the Terms of Reference in the Annex 2 to the YD. Oversight duties are to be assigned to the Monitoring Body and Operational duties assigned to the EA. The team had to ensure and avoid duplication of the duties between of the Monitoring Body and the Executing Agency of YD. UNECA was recognised to continue its role as the secretariat of the Monitoring Body but this role had to be clarified.

3. Assessment of the Current Duties and Responsibilities of the Monitoring Body as in Annex 2 of YD

The duties and responsibilities of the Monitoring Body are defined as *Terms of Reference* in Annex 2 of the YD.

3.1 Current Terms of reference and tasks: There are eleven (11) task specified in the current terms of reference (a) - (k).

Task (a) remains relevant as a task for the monitoring, regarding preparing the relevant annexes to the Decision for adoption by the sub-committee on Air Transport.

Task (b) deals with formulation of proposals on studies, seminars, workshops. A similar function is assigned to the EA in article 5(2d) – Powers and Functions of the EA. Further on in article 5(2f), it is provided that the Monitoring Body can request the Executing Agency to carry out similar functions as indicated in task (b) of YD.

Task (c) allows the Monitoring Body to use Experts to conduct studies. This task can be relegated to the EA.

Task (d) remains relevant in providing technical advice on the implementation of the Decision in as much as the EA is also attributed this role.

Task (e) on receiving declarations made in accordance with the decision is still relevant given that UNECA is still the secretariat.

Task (f) – the Monitoring Body is requested to state its views on any dispute resulting from the application and/or interpretation of the Decision. The dispute settlement mechanism has been defined and in the Powers and Functions of the EA, AFCAC has specified role in dispute settlement. It is therefore recommended that the opinion of the Monitoring Body on disputes may only be necessary if requested. The EA has responsibility to formulate opinions, make decisions publish guideline including clarifications of provisions of the Decision and acceptable means of compliance as in article 6(c) on the Power and Functions of EA. Article 7(b) also provides for the EA to issue opinions upon request from the Monitoring Body. Hence this task can be attributed to the EA.

Task (g) can be reverted to the EA, which has responsibility for the implementation of the competition rules and consumer protection regulation. A new oversight role for the Monitoring Body is to ensure that these regulations are applied, including any decisions and declarations made by the relevant organs of the AU.

Task (h), (i) and (j) remain relevant to the Monitoring Body. With the EA responsible for the smooth functioning of the Single Market, task (k) can revert to the EA. This task is assigned to the EA in article 6(a) in the Powers and Functions of the EA. The Monitoring Body however needs to

ensure a mechanism exist to evaluate the consistent implementation of the Decision throughout the continent. In terms of implementation of the Decision between and within sub-regions, AFCAC and RECS are in the process of establishing an MOC for the smooth implementation of the Decision within sub-regions in accordance with Article **10 (1)** on the Power and Functions of the EA.

3.2 Procedural Matters: This includes the seat of the **committee**, its **meetings, funding** and **working** languages. No major change is foreseen to these provisions except the need to clearly define the duties of the secretariat. To enable UNECA as the secretariat plan its activities in support of the implementation of the Decision and support to the Monitoring Body, it is important that the secretariat is assigned clearly defined responsibilities commensurate with a secretariat of an oversight body.

4. Proposed New Terms of Reference for the Monitoring Body

In order to establish a concert set of duties and responsibilities for the Monitoring Body, it is also necessary to review the AFCAC constitution and the regulation on the Powers and Functions of the Executing Agency. The AFCAC constitution cites the implementation of YD and the Monitoring Body in several provisions.

(i) Article 3 (b) on objectives requires AFCAC to facilitate, coordinate and ensure the successful implementation of Yamoussoukro Decision by supervising and managing Africa's liberalised air transport industry;

(ii) Article 11 (k), under functions of the AFCAC Plenary, the Plenary shall submit its tri-annual report on the state of implementation of the Yamoussoukro Decision to the Assembly of Head of States and Government through the Executive Council;

(iii) the Secretary General of AFCAC shall in article 14 5(a) follow up and ensure the implementation of the resolutions, directives and decisions of the Plenary, Bureau and **Monitoring Body**, in accordance with the rules and regulations of AFCAC, in article 14 5(k) submit to the Bureau and the **Monitory Body** annual reports on the operations of AFCAC; and

(iv) Article 15 requires AFCAC to report to the **Sub-Committee** on air transport whose mandate shall be inter alia, consider and adopt recommendations submitted by AFCAC on all activities concerning the functions of the Executing Agency entrusted to it and other matters

requiring political Decisions in accordance with the African Union procedures. Recalling the task (a) of the Monitoring Body, the Monitoring Body has an implied role here of reviewing any reports submitted by AFCAC under article 15 of the AFCAC constitution. The Plenary of AFCAC meets in ordinary session once every three (3) years during which its budget and work plan is approved (article 10 and 11).

The most relevant provisions of the Powers and Functions of the Executing Agency have already been apprised above in 3. Article 5 (2f) provides that the Executing Agency shall either 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.

In accordance therefore with the guideline from the Second Ministerial Working Group Meeting, held in October 2016, the duties and responsibilities of the Monitoring Body can be classified into the following key tasks:

- ✓ An oversight body on behalf of the Ministers in charge of air transport
- ✓ An advisory body to all stakeholders;
- ✓ It has reporting and monitoring responsibilities to ensure the smooth functioning of the SAATM at a strategic level; and
- ✓ It has an extended role to the implementation of the SAATM.

The revised duties and responsibilities of Monitoring Body based on the above guideline are defined as indicated in Annex 2 (new). As a consequent, the following tasks are also proposed for the Secretariat (UNECA) of the Monitoring Body:

- (a) Ensure the regular meetings of the Monitoring Body are conducted and maintain records of its 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.

5. Conclusion and Recommendation

The paper present the analysis made in defining the revised duties and responsibilities of the Monitoring Body of the Yamoussoukro Decision. The revised terms of reference is based on an assessment of its existing terms of reference vis-à-vis the Powers and functions of the Executing Agency of the Yamoussoukro Decision. With AFCAC assigned the duties of the EA, it was also necessary to apprise the AFCAC constitution, in order to derive the revised terms of reference of the Monitoring Body of the Yamoussoukro Decision.

Recommendation: The Terms of reference of the Monitoring Body as in annex 2 of the Yamoussoukro Decision of 1999 was approved by the Executive Council and Assembly of Head of State in Lome 2000, as part of the Yamoussoukro Decision. It is therefore recommended that the current revised terms of reference of the Monitoring Body be considered by the Expert meeting of the STC and a recommendation for their adoption be made to STC TTIET sub-committee of Ministers in Charge of Air Transport. The revised terms of reference are attached below Annex 2 (new) and the terms of reference as in the YD in Annex 2 – (old).

ANNEX

2 (new)

REVISED DUTIES AND RESPONSIBILITIES OF THE MONITORING BODY (MB)

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 MB 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 advice 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
- (g) 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.

