



**THIRTY-FIRST SESSION OF THE AUTHORITY OF HEADS  
OF STATE AND GOVERNMENT**

Ouagadougou, 19 January 2007

**SUPPLEMENTARY ACT A/SA.1/01/07 ON THE HARMONIZATION OF  
POLICIES AND OF THE REGULATORY FRAMEWORK FOR THE  
INFORMATION AND COMMUNICATION TECHNOLOGY (ICT) SECTOR**

**THE HIGH CONTRACTING PARTIES;**

**MINDFUL** of Articles 7, 8 and 9 of the ECOWAS Treaty as amended establishing the Authority of Heads of State and Government and defining its composition and functions;

**MINDFUL** of Article 33 of the said Treaty, which provides that Member States shall, in the area of telecommunications, develop, modernize, coordinate and standardize their national telecommunication networks in order to provide reliable interconnection among Member States, and shall coordinate their efforts with a view to mobilizing national and international financial resources through participation of the private sector in the provision of telecommunication services;

**MINDFUL** of Decision A/DEC.14/01/05 on the adoption of a regional telecommunication policy and development of GSM regional roaming in the ECOWAS Member States;

**MINDFUL** of Decision A/DEC.11/12/94 on the establishment of an ECOWAS technical advisory committee on telecommunication regulation;

**CONSIDERING** that the Community has resolutely embarked upon a process of liberalizing telecommunication services and infrastructures by 2007;

**CONSIDERING** that this liberalization process is giving rise to flourishing markets calling for a framework that is conducive and attractive to investment;

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**DESIROUS** of adopting a harmonized information and communication technology (ICT) policy framework in the West African sub region;

**ON THE PROPOSAL** of the meeting of Ministers in Charge of Telecommunication held in Abuja on 11<sup>th</sup> May 2006;

**ON THE RECOMMENDATION** of the fifty-seventh session of the Council of Ministers held in Ouagadougou from 18 to 19 December 2006.

## **AGREE AS FOLLOWS**

### **CHAPTER I**

#### **Definitions, objectives and scope**

##### **Article 1: Definitions**

- 1 For the purposes of this Supplementary Act, the following definitions shall apply:

**Authorization:** Administrative Act (individual license, concession contract or general authorization) which grants a set of rights and obligations to an entity and grants the entity the right to establish and exploit telecommunication networks or offer telecommunication services.

**Allocation** (of a frequency band): Entry in the Table of Frequency allocations of a given frequency band for the purpose of its use by one or more terrestrial or space *radiocommunication services* or the *radio astronomy service* under specified conditions. This term shall also be applied to the frequency band concerned.

**ARTAO:** West Africa Telecommunications Regulators Assembly (WATRA)

**Assignment (of a radio frequency or radio frequency channel):** Authorization given by an administration for a radio *station* to use a radio frequency or radio frequency channel under specified conditions.

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**National Regulatory Authority:** the agency, or one of several agencies, to which a Member State has given responsibility for performing any of the regulatory functions referred to in this Supplementary Act.

**Authority:** as defined in Article 7 of the ECOWAS Treaty.

**Council:** the Council of Ministers as established pursuant to Article 10 of the ECOWAS Treaty.

**Consumer:** a natural person who uses or requests a publicly accessible telecommunication service for non-business purposes.

**Supplementary Acts:** Specific Supplementary Acts relating to interconnection, legal Regime applicable to network operators and service providers, numbering, spectrum management, and universal service.

**Telecommunication equipment:** equipment, including hardware and software, used to provide telecommunication services.

**Terminal equipment:** any equipment intended to be connected, directly or indirectly, to a termination point of a telecommunication network for purposes of the transmission, processing or receipt of information. This does not include equipment for accessing radio or television broadcasting services intended for the public which are transmitted over the air, by cable or by other means of communication, except where such equipment can also be used to access telecommunication services.

**Member State:** a State Party to the ECOWAS Treaty, as provided for in the preamble thereto.

**Essential requirements:** requirements necessary to guarantee the following, in the general interest:

- the safety of users and of personnel operating telecommunication networks;

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- the protection of networks, and particularly the protection of exchanges of control and management information pertaining to networks;
- the interoperability of networks, services and terminal and the protection of data;
- where applicable, the proper and efficient utilization of the radio spectrum,
- environmental protection, town planning and regional development issues,

**Service provider:** any natural or legal person that provides a telecommunication service to the public.

**Provision of a telecommunication network:** the setting up, operating, overseeing or making available of a telecommunication network.

**Information and communication enterprise:** any entity

- a) that executes a commercial agreement or
- b) that is engaged in a business activity having a connection to information and communication technologies.

**Information:** : signs, signals, writing, images, sounds or information of any other kind which make up the content transmitted by means of communication processes including telecommunication processes.

**Installation:** any equipment, apparatus, cable, radio or optical system, item of infrastructure or technical device that may be of use to information and communication technologies, or any other operation directly related thereto.

**Interoperability of networks and terminal equipment:** the ability of equipment to function, first, with the network, and, second, with other terminal equipment that can be used to access the same service.

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**License** the administrative document (including individual license, concession class license) permitting the operation of a network or the provision of communication services or the use of the radio-frequency spectrum.

**message:** communication of any kind in the form of words, sound, data, text, visual image, signal or code, or in any other form or combination of forms.

**Minister or ministry:** except where otherwise stated, the minister or ministry in charge of information and communication technologies within the government of the ECOWAS Member State.

**Operator:** any juridical person operating a telecommunication network that is open to the public, or providing a telecommunication service to the public.

**Legal person:** a legal entity consisting of a natural person, society, association, joint venture, trust or corporation.

**Radio-communication :** any emission, broadcasting, transmission or reception of radio waves specifically for telecommunication purposes.

**Broadcast:** any radio-communication whose emissions are intended to be received by the public.

**Telecommunication network:** any installation or group of installations that provides for the transmission or routing of telecommunication signals, and for the exchange of control and management information relating thereto, between the network's termination points.

**Commission:** the Commission of ECOWAS.

**Telecommunication service:** the service, usually provided on a fee-paying basis, which consists wholly or primarily of transmitting or routing signals over telecommunication networks, or a combination of those functions, including transmission services over networks used for broadcasting, but which excludes services consisting of providing content with the aid of telecommunication networks or services or of exercising editorial responsibility with respect to such content.

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**Information and communication services:** services that involve the use of information and communication technologies, including telecommunication services.

**Information and communication technologies (ICTs):** technologies used to gather, store, use and send information, including technologies that involve the use of computers or any communication system, including any telecommunication system.

**Telecommunication:** any transmission, emission or reception of signs, signals, writing, images, sounds or information of any kind by wire, by optical means, by radio, or by any other electromagnetic system.

**Treaty :** the ECOWAS Treaty, as revised on 24 July 1993 and in June 2006.

**UEMOA :** the West African Economic and Monetary Union (WAEMU).

**User:** any natural or juridical person that uses or requests a telecommunication service that is open to the public.

**End user:** a user that does not provide public telecommunication networks or publicly accessible telecommunication services.

- 2 Any terms contained in this Supplementary Act that are not defined in paragraph 1 above shall have the meanings given to them in the Treaty.

## **Article 2: Objectives, scope and periodic review**

- 1 The aim of this Supplementary Act is to establish a harmonized framework for information and communication technology (ICT) policy and regulation. It establishes the responsibilities of Member States and their respective national regulatory authorities by setting out the central principles of ICT policy and regulatory guidelines. It is supplemented by five further Supplementary Acts dealing with specific aspects of the ICT sector and focusing on the telecommunication sector in particular. It establishes a series of procedures aimed at assuring the harmonized application of the regulatory framework throughout ECOWAS.
- 2 The provisions of this Supplementary Act shall not apply to regulations in the area of broadcasting policy and content.





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- 3 The provisions of this Supplementary Act and other Supplementary Acts will be re-examined periodically, with a view to determining whether they need to be amended to take account of new developments in the area of ICTs and/or ICT markets.

## **CHAPTER II**

### **Guidelines for a policy for information and communication technologies**

#### **Article 3: Development and scope of ICT policy**

- 1 The Member States shall ensure that, in developing and defining their national ICT policies, they take into account all social, economic, legal and policy information so as to set up a suitable policy and realistic objectives.
- 2 To this end, the Member States shall refrain from including an excessive number of items and sectors in the scope of the policy, and from the outset focus the national ICT policy on the industry itself.

#### **Article 4: Importance of a clear policy**

The Member States shall ensure that a clear ICT policy is put in place, by identifying objectives, which will be translated into policy, and then into legal rules of a legislative or regulatory nature, to be applied by the regulatory body.

#### **Article 5: Objectives of ICT policy**

- 1 The Member States shall ensure that the national ICT policy has the following objectives:
  - a) creation of an environment that is propitious to the sustainable dissemination and development of ICTs;
  - b) establishment of a strong, stable and competitive ICT industry in the country and the region, respectively;
  - c) growth in existing services and in the range of new services and installations that are available;
  - d) provision of affordable, broadly available, top-quality services;

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- e) access to ICTs, by application of the principle of technology neutrality throughout the territory of the Member States;
- f) development and institution of appropriate policies and programs for universal access, with, for example, some of the key actions which can help in the further development of a national information infrastructure and the achievement of universal access objectives: provision of broadband capacity, availability of services at affordable costs, availability of services at affordable costs, provision of standards to address reliability and redundancy issues, ensuring adequate capacity to provide service on demand, accessibility of services by the large majority of consumers, facilitating the delivery of a wide range of value-added services, facilitating the chance to access information;
- g) attracting investment in the sector;
- h) encouraging innovation, development and utilization of new technologies;
- i) optimization of countries' limited resources, such as the radio spectrum and numbering space;
- j) promoting information sharing, transparency and accountability, and reducing bureaucracy within and between organizations, and towards the public at large;
- k) attaining a specified minimum level of information technology resources for educational institutions and government agencies;
- l) development of expertise, in the individual countries and within the region, in setting up and managing ICTs;
- m) promotion and increase of ICT use by providing individuals and organizations with a minimum level of ICT knowledge and high-quality training;
- n) assistance in understanding information technology, its development and its cross-disciplinary impact;
- o) promotion of local content development.

#### **Article 6: Governance principles for the ICT sector**

In order to adopt an acceptable and sustainable ICT policy for the entire Community, the Member States shall ensure that the authorities responsible for defining and developing such a policy take the necessary steps to ensure good governance in the sector, by means of the following.

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**a) Promotion of stakeholder awareness, by**

- promoting stakeholder participation and constitution-building throughout society;
- introducing internet at the earliest possible stage in school programs.

**b) Ensuring broad-based stakeholder participation and planning, by:**

- promoting ICTs through workshops, seminars, media events and pilot projects to show the practical benefits of ICTs;
- cultivating ICT champions.

**c) Political buy-in and championing on a local and national level, by:**

- ensuring communication between interested parties, such as the regulator, ministries, operators, the private sector, NGOs, beneficiaries;
- ensuring participation and buy in at the local level;
- ensuring that ICT policy is tailored to the realities of the market, by analyzing the situation in advance and involving local players in the process.

**d) Coordination with other policies/priorities by focusing on the objectives of ICT policy without ignoring the synergy between sectors.**

**e) Relevance and usefulness of policy and projects, by**

- aiming for innovation;
- defining targets, such as internet to municipalities, broadband to rural areas, etc.

**f) Transparent decision-making procedures, by**

- adopting transparent decision-making and rule-making procedures relating to ICT policy and regulation;
- consulting the public so as to ensure a transparent rule-making and decision-making process.

**g) Sustainability of projects, by**

- ensuring adequate training;
- taking account of realities in the technologies introduced through ICT initiatives;

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- having appropriate timing.
- h) The **regional and international framework**, thanks to the policy of coordination with other initiatives in the region and globally.

### **CHAPTER III**

#### **Institutional framework for the ICT sector**

##### **Article 7: Cooperation at the level of the institutional framework**

The Member States shall ensure that sufficient attention is paid to the institutional framework governing ICT policies, by ensuring that cooperation is set up between the various bodies responsible for the sector, so as to make administration of sector activities efficient.

##### **Article 8: Allocation of tasks**

The Member States shall ensure that the responsibilities and terms of reference of each member of the institutional framework are clearly defined so as to avoid any uncertainty regarding the allocation of tasks. To this end, the allocation of tasks must be reflected in national regulations that apply to the ICT sector, so that the relations between the different entities can be determined, along with the credibility of the members in the performance of their tasks.

##### **Article 9: ICT policy function**

The Member States shall ensure that the national ICT policy performs the following functions, which fall within the remit of the responsible Minister:

- a) develop and review ICT policies consistent with the purposes of the present Supplementary Act;
- b) be responsible for matters of international telecommunications affecting the country;
- c) propose a policy related to the provision of universal service and submit it to the Government for approval;
- d) follow up the implementation of this policy for the purpose of expanding the scope of coverage of ICT services, both horizontally and vertically, in such a way as to meet the requirements of economic and social development in the country, and draw up plans that encourage investment, on a competitive basis, in the ICT sectors.

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#### **Article 10: Regulatory guidelines**

- 1 The Member States shall ensure that ICT regulations set for the manner in which the national ICT policy is to be applied, and in particular:
  - a) by defining the basic regulatory principles (for example the right to access) and processes (for example, licensing);
  - b) by providing the statutory foundation and mandate for the sector's institutions (for example, consultative and regulatory bodies);
  - c) by specifying the regimes under which the regulator operates and which define its functions and degree of independence, and also detail the legal principles that lead to the implementation of policy and policy objectives, such as tariff structures and universal access programs.
- 2 The Member States shall ensure that regulatory functions for the sector are performed by the national regulatory authorities in an independent, proportionate, impartial and transparent manner with a view to achieving the following objectives:
  - a) Adoption of the principle that regulation should be technology-neutral, and therefore a prohibition against granting unjustified advantage to any particular technology.
  - b) Gradual creation of an open and competitive market for telecommunication networks and services, with:
    - full respect for the interests of users, as regards choice, price, quality and returns;
    - prevention of any distortion and restriction of competition in the telecommunication sector, with due allowance for ongoing transitional regimes;
    - encouragement of rational investment in the infrastructure;
    - efficiency in the allocation and assignment of limited resources.
  - c) Development of the interior market:
    - by watching over the transition of the Member States towards the elimination of barriers;
    - by facilitating the installation and development of trans-national networks and interoperability of services within ECOWAS;
    - by ensuring that, in similar circumstances, there is no discrimination in the treatment accorded to operators and providers of telecommunication services, with due allowance for ongoing transitional regimes;

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- by letting the information society develop within ECOWAS: with the growth of the telecommunication infrastructures, provide support for content services, including broadcasting content.
- d) Support the interests of the population and the struggle against poverty within ECOWAS:
- by supporting the construction of universal access to telecommunication services in accordance with the terms of the Supplementary Act on universal access/service;
  - ensuring a high level of protection of personal data and privacy;
  - requiring transparency of tariffs and conditions for using telecommunications services, addressing the needs of specific social groups, such as low-income groups, people living in isolated rural areas, and disabled persons.

#### **CHAPTER IV**

##### **National regulatory authorities**

##### **Article 11. Status, independence transparency of the national regulatory authorities**

- 1 The Member States shall ensure that the national regulatory authorities exercise their powers in an impartial and transparent manner.
- 2 Member States shall guarantee the independence of the national regulatory authorities with respect to the political authorities and all organizations providing telecommunications networks, equipment or services, or otherwise active in the sector, by ensuring that the former are legally distinct from and functionally independent of the latter.
- 3 Those Member States that retain ownership or control of companies that provide telecommunication networks or services shall ensure complete and effective separation of the regulatory function from the activities associated with ownership or control.
- 4 The Member States shall take the necessary steps to guarantee the following:
  - a) clear, precise terms of reference for the national regulatory authorities and decision-making bodies;
  - b) clear, transparent internal procedures for the national regulatory authorities, including:
    - decision-making procedures for the decision-making bodies of the national regulatory authorities,





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- decision-sharing among the deliberative bodies,
  - incompatibility of the functions of the members of decision-making bodies with any other activity in the sector,
  - prohibition on staff members taking on any other paid work or holding any direct or indirect interest in any company in the sector,
  - staff recruiting and nomination of leadership on the basis of a transparent procedure by which candidates are invited to apply on the strength of relevant experience in the ICT domain and demonstrated professional qualifications,
  - establishment of a fixed remuneration scheme for the members of the decision-making bodies,
  - prohibition on members being re-appointed more than once,
  - protection of members against dismissal except in the case of demonstrated grave misconduct;
- c) the creation of transparency mechanisms and the distribution of procedures for consultation with the sector players, giving interested parties an opportunity to bring forward their observations on proposed measures within a reasonable time-frame, as well as creation of a central information desk to give access to all of the ongoing consultation exercises and publish the results of public consultations, except in specifically described cases where confidentiality is an issue;
- d) creation of provisions to ensure that these tasks are only performed by duly sworn persons;
- e) publication of an annual report of activities.
- f) the publication of all decisions of regulatory authority in the Official Journal of the Member State concerned or in an official regulatory authority publication or by any other relevant means.

**Article 12: The resources of the national regulatory authorities**

- 1 The Member States undertake to do what is necessary to give the national regulatory authorities the financial and human resources they need to perform their tasks in an impartial, autonomous and transparent manner.
- 2 The Member States undertake to give preference to self-financing schemes for the national regulatory authorities, and to provide for all or a portion of the operator contributions, fees and other financial compensation paid by the operators to be allocated to their work in this sector. In any event, the funding systems for the national regulatory authorities must not have the effect of restoring the influence and the interests of organizations that were supposed to be kept at arm's length through the separation of the regulatory and operating functions.

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**Article 13: Areas of activity of the national regulatory authorities**

- 1 The Member States shall inform the Commission of the Community of the existence of any national regulatory authorities charged with the application of the present Supplementary Act, the implementation measures relating thereto, and their respective responsibilities, taking care to avoid overlapping tasks.
- 2 The Member States shall publish the tasks to be performed by the national regulatory authorities in a readily accessible form, particularly in cases where different bodies have been entrusted with those tasks.
- 3 The Member States shall ensure that the following regulatory tasks are performed by the respective national regulatory authorities:
  - a) developing, at the request of the relevant government authority or at the initiative of the national agency, proposals to:
    - adapt the legal, economic and security framework in which ICT activities take place, such as draft laws, decrees and ministerial directives relating to the regime of activities for the different operators active in the ICT sector, and
    - ensure effective competition, with technology-neutral regulation wherever possible;
  - b) processing license applications, preparing and carrying out licensing procedures by competitive bidding, and preparing and updating, in consultation with the other ministerial bodies involved, the texts for the licensing terms of reference that lay down the rights and obligations of public telecommunication network operators;
  - c) accepting the preliminary files for telecommunication activities requiring authorization. The national regulatory authorities must deliver authorization and prepare the associated documents, including the terms and conditions for authorization;
  - d) delivering registration and verification certificates, for all those activities of operators and service providers that are subject to a requirement for declaration;

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- e) delivering mandatory specifications and approvals for terminal equipment and verifying conformity;
- f) monitoring compliance with existing regulations and terms of licenses, authorizations and declarations granted in the ICT sector. To this end, the national regulatory authorities will receive and study all information and documentation required from the operators of telecommunication networks and services under the terms of their licenses and terms of reference, and request any additional information that may be needed;
- g) monitoring the ICT industry under economic and technical aspects, in accordance with normal practice and internationally recognized protocol, taking into account technology convergence in the ICT domain;
- h) fostering and protecting effective competition and a fair and efficient market between the organizations involved in the ICT industry in their respective countries, duly taking into account the public interest and preventing distortion and restriction of competition in the ICT sector;
- i) establishing, for operators, performance standards relating to the provision of ICT services, and monitoring compliance with those standards;
- j) conducting monitoring, and submitting reports to the responsible Minister, on information relating to the sector, such as the performance of the public operators, the quality of consumer services, and consumer satisfaction, measured according to existing international codes of practice;
- k) dealing with all questions relating to the protection of the interests of consumers, which includes setting up a suitable system for receiving consumer complaints, the conduct of investigations, concerning ICT services, and submission of such complaints to the appropriate agency, where required;
- l) the fulfillment, by the public operators, of their obligations as promulgated, so as to ensure that adequate, high-quality, affordable services meeting the various needs of the consumers are being delivered;

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- m) elaborating and, if necessary, revising the accounting requirements and tariff principles to be used by operators and service providers;
- n) regulating the protection and security of data;
- o) security and quality of every ICT service, and, to that end, determining the technical standards for those services and the connection of user equipment to communication networks;
- p) managing and assigning spectrum, and monitoring usage conditions;
- q) allocating numbering resources and managing the numbering plan;
- r) examining and monitoring the implementation of interconnection and network access conditions, in accordance with the terms of the Supplementary Act on access and interconnection in respect of ICT sector networks and services;
- s) implementing the policy for the development of universal service, in accordance with the terms of the Supplementary Act on universal access/service and network performance obligations;
- t) implementing the tariff policy applicable to telecommunication services;
- u) authorizing or regulating the registration, administration and management of domain names in the country, and providing a structured mechanism for their management;
- v) monitoring the development of new information and communication technologies and developing measures to stimulate and facilitate investment in the ICT sector;
- w) encouraging regional ICT connectivity and trade in services.

- 4 In those cases in which the granting of licenses or authorizations is entrusted to a body separate from the national regulatory authorities, the Member States shall make the necessary legal and regulatory provisions to charge those authorities with investigating applications and providing detailed opinions prior to the granting of such authorization.

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**Article 14: Provision of information**

Member States shall ensure that organizations providing telecommunication networks and services provide all the information, including financial information, necessary for national regulatory authorities to ensure conformity with the provisions of, or decisions made in accordance with this Supplementary Act or the specific Supplementary Act. Said organizations shall provide such information promptly on request, respecting the deadlines and providing the level of detail required by the national regulatory authority. The information requested by the national regulatory authorities shall be proportionate to the performance of that task, and those authorities shall give the reasons justifying the request for information. The principle of business secrecy is not applicable to national regulatory authorities. Nevertheless, such entities must respect the confidentiality of all information received.

**Article 15: Monitoring and sanctioning powers**

- 1 The Member States undertake to invest the necessary powers in their national regulatory authorities to apply sanctions and monitor the activities of the sector, including:
  - a) mandatory approvals and specifications, and the conditions for equipment usage;
  - b) terms and conditions for limited resources;
  - c) compliance with the obligations incumbent on operators and providers of telecommunication services, in accordance with the applicable regime, in particular those of operators and service providers in a dominant position.
- 2 Member States undertake to make the legal and regulatory arrangements needed to endow the national regulatory authorities with the power to impose sanctions. This power will include:
  - a) the possibility of requiring the modification of unfair provisions in user agreements or conventions governing interconnection or access to the network of operators;

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- b) fining operators and service providers who infringe against telecommunication sector legislation to compel them to meet their obligations;
  - c) imposing penalties against operators and service providers who fail to comply with the obligations incumbent on them in the exercise of their activity;
  - d) revoking, suspending, or proposing the revocation or suspension of authorization in cases where the operator or telecommunication service provider is guilty of an infringement and fails to remedy the situation within a reasonable time after being duly notified by the national regulatory authority.
- 3 The Member States shall satisfy themselves that the national regulatory authorities exercise the powers with which they have been endowed in a proportionate manner, respecting the principle of adversarial process, and in accordance with transparent, objective and non-discriminatory procedures.

**Article 16: Settlement of disputes**

- 1 Without prejudice to any action that the ECOWAS institutions or one or more Member States may bring in application of the Treaty, the Member States shall ensure that all telecommunication operators and service providers are able to have recourse to the responsible national regulatory authority in the event of any dispute relating to:
- a) any violation by a telecommunication operator or service provider of any legal or regulatory provisions governing telecommunication or of any contractual terms;
  - b) any denial of interconnection or capacity or infrastructure leasing that is not in accordance with the conditions stipulated in the applicable texts and to any disagreement relating to the application or interpretation of reference interconnection offers or interconnection agreements;
  - c) the conditions under which an operator is granted or denied occupancy rights within the public persons domain, or rights-of-way over private property for the purposes of setting up and operating a telecommunication network;

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- d) the exercise of special or exclusive rights by an entity active in the sector.
- 2 The Member States shall also ensure that every user is able to have recourse to the national regulatory authority in the event of any dispute relating to:
- a) a violation, by a telecommunication operator or service provider, of its terms of reference or other such document containing the conditions of its authorization or declaration;
  - b) the legal basis of any provision of a standard consumer subscription contract.
- 3 The Member States shall ensure that the national regulatory authorities put in place transparent, non-discriminatory procedures for dispute settlement. In particular, they shall ensure that the national regulatory authorities
- a) make rulings within a reasonable period of time;
  - b) respect the principle of adversarial process and the rights of the defense, by giving the parties an opportunity to present their observations;
  - c) duly substantiate their decisions;
  - d) make their decisions public in accordance with the conditions and within the limitations foreseen under national law.
- 4 The Member States shall further take those measures that are needed to ensure that, in the event of an imminent serious violation of any regulation governing the telecommunication sector, the national regulatory authorities shall be empowered to impose staying measures after the parties have been heard, particularly in order to protect the continuity of operation of networks and services.
- 5 The Member States shall ensure that the procedure established above is applicable in the event of a dispute between parties based in two different Member States.

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- 6 Any party may refer the matter under dispute to either of the national regulatory authorities concerned. The national regulatory authorities will coordinate their efforts so as to resolve the dispute in a manner consistent with the guiding principles of the above regulation.
- 7 In the absence of a reaction from the authority in question, or of coordination between the authorities, and in order to arrive at a solution, any party may refer the matter to the Commission of ECOWAS, by addressing a copy of the referral to each of the parties and national regulatory authorities concerned. The Commission of ECOWAS will take all necessary steps to achieve settlement of the dispute in question by the responsible national authorities within a reasonable time frame.

**Article 17: Right of appeal**

- 1 The Member States shall take the necessary measures to ensure that mechanisms exist at the national level to allow any person concerned to appeal against any decision of the national regulatory authority before a judicial authority that is independent of the parties involved, the government, and the national regulatory authority in question.
- 2 The appeal body must be in a position to examine not only the procedure which led to the decision of the national regulatory authority being taken, but also the facts of the case. Pending the results of the appeal, the decision of the national regulatory authority shall be enforced, unless a stay of execution is obtained.
- 3 If the appeal body is not a judicial body, then its decisions must be justified in writing, and examined in the last instance by the national judiciary.

**Article 18: Cooperation between national regulatory authorities**

- 1 The Member States shall promulgate procedures for cooperation and consultation between the national regulatory authority or authorities responsible for regulating the ICT sector, the national authorities responsible for applying competition law, and those responsible for applying the law relating to the protection of consumer rights, on subjects of common interest.

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- 2 The Member States shall ensure that the missions of those authorities do not overlap, and undertake to promote the exchange of information between said authorities, by ensuring that such correspondence remains confidential.

## **CHAPTER VIII**

### **Final provisions**

#### **Article 19: Time-frames for transposition**

- 1 Member States shall take all necessary steps to adapt their national sectoral legislation to this Supplementary Act no later than two years following the date of its entry into force. They shall inform the Commission of those steps immediately.
- 2 The legal texts agreed to shall contain a reference to this Supplementary Act or shall have such a reference attached to them when they are officially published.
- 3 When, based on this Supplementary Act, national regulatory authorities take decisions that are liable to have an impact on exchanges between Member States and on the establishment of the common market, they shall ensure that the measures and substantiating arguments are communicated to the Commission one month prior to their implementation.

#### **Article 20: Implementation**

1. When, based on this Supplementary Act, national regulatory authorities take decisions which are expected to have an impact on exchanges between Member States and on the establishment of the single market, including;
  - a) the implementation of the tariff policy applicable to telecommunication services;
  - b) the implementation of the universal service development policy;

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- c) interconnection;
- d) measures to authorize the establishment, operation and/or provision of telecommunication services open to the public,

Member States shall ensure that the measures in question and substantiating arguments are communicated to the Commission one month prior to their implementation.

2. The national regulatory authority shall take into consideration the observations of the Commission.
3. The measures shall take effect one month after the date on which they were communicated, unless the Commission informs the national regulatory authority that they are incompatible with this Supplementary Act.
4. Under exceptional circumstances, where the national regulatory authority considers it urgent to take action to safeguard competition and protect users' interests, it may adopt proportionate measures immediately, applicable for a limited period only. Those measures shall be communicated without delay to the Commission for comment.
5. When Member States adopt transposition measures for this Supplementary Act, they shall ensure that the planned measures along with substantiating arguments are communicated to the Commission one month prior to implementation of the measures.
6. Member States shall take into consideration the remarks of the Commission. The measures shall take effect one month after the date on which they were communicated, unless the Commission informs the Member States that the measures proposed are incompatible with this Supplementary Act.
7. Member States shall communicate to the Commission any provisions of domestic law which they adopt in the field governed by this Supplementary Act.

#### **Article 21: Information report**

Member States shall, no later than six months following the date of entry into force of this Supplementary Act, communicate to the Commission the steps taken or which are in the course of approval or implementation for the purpose of implementing this Supplementary Act.

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**Article 22: Publication**

This Supplementary Act shall be published by the Commission in the Official Journal of the Community within thirty (30) days of its signature by the Chairman of Authority. It shall also be published by each Member State in its National Gazette within the same time frame.

**Article 23: Entry into force**

1. This Supplementary Act shall enter into force upon its publication. Consequently, signatory States and ECOWAS Institutions pledge to commence the implementation of its provisions on its entry into force.
2. This Supplementary Act is annexed to the ECOWAS Treaty of which it is an integral part.

**Article 24: Depository authority**

This Supplementary Act shall be deposited with the Commission which shall transmit certified true copies thereof to all the Member States and shall register it with the African Union, the United Nations and such other organisations as Council may determine.

**IN WITNESS WHEREOF, WE, THE HEADS OF STATE AND GOVERNMENT OF  
THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES, HAVE SIGNED  
THIS SUPPLEMENTARY ACT**

**DONE AT OUAGADOUGOU, THIS 19<sup>TH</sup> DAY OF JANUARY 2007**

**IN SINGLE ORIGINAL IN THE ENGLISH, FRENCH AND PORTUGUESE  
LANGUAGES, ALL THREE (3) TEXTS BEING EQUALLY AUTHENTIC**

His Excellency Thomas Boni Yayi  
President of the Republic of Benin

His Excellency Blaise Compaore  
Chairman of the Council of Ministers  
President of the Faso



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.....  
President of the Republic of Cabo Verde

.....  
**His Excellency Laurent Gbagbo**  
President of the Republic of Cote D'Ivoire

.....  
President of the Republic of The Gambia

.....  
**His Excellency John A. Kufuor**  
President of the Republic of Ghana

.....  
**Hon. Sidibe Fatoumata KABA**  
Minister of International Cooperation  
For and on behalf of the President  
of the Republic of Guinea

.....  
**His Excellency Joao Bernardo Vieira**  
President of the Republic of Guinea Bissau

.....  
**Her Excellency Ellen Johnson-Sirleaf**  
President of the Republic of Liberia

.....  
**His Excellency Toumani Toure**  
President of the Republic of Mali





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His Excellency Mamadou Tandja  
President of the Republic of Niger

His Excellency Olusegun Obasanjo  
President, Commander in Chief of the Armed  
Forces of the Federal Republic of Nigeria

His Excellency Abdoulaye Wade  
President of the Republic of Senegal

Hon. Mohammed Daramy  
Minister of Development and Economic  
Planning, for and on behalf of the President  
of the Republic of Sierra Leone

His Excellency Faure Essozimna Gnassingbe  
President of the Togolese Republic



## **ANNEX**

### **ELEMENTS TO CONSIDER IN DEFINING LEGISLATION ON ICT**

The following model lists the points that are generally covered in a framework law on telecommunications or ICT.

In French-speaking countries, those points are presented as basic principles, which are then developed in detail in the corresponding decrees or other implementing legislation. In the common law system, the framework law normally contains detailed provisions, with the regulator establishing further rules and regulations as required.

Comments and recommendations are included in the main articles.

#### **PART I – PREAMBLE**

- 1) Short title
- 2) Objectives of the legislation
- 3) Definitions

*Recommendation: Use internationally-recognized references and/or definitions such as those used in official ITU texts (e.g. the Radio Regulations).*

#### **PART II – FUNCTIONS OF THE MINISTER**

- 4) Functions of the minister

*Recommendation: The responsibilities and mandate of each player must be clearly defined so as to avoid any misunderstandings or duplication of effort.*

#### **PART III – ESTABLISHMENT AND FUNCTIONS OF THE NATIONAL REGULATORY AUTHORITY**

*Recommendation: Be clear and precise in regard to the responsibilities and mandate of the regulatory body, since this will enable the latter to maintain its independence, particularly vis-à-vis the political establishment. Comment: In French-speaking countries, the detailed development of these points generally takes the form of separate decrees or other regulatory texts. The points to be covered are listed below.*

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- 5) Establishment of the national regulatory authority
- 6) Functions of the national regulatory authority
- 7) Powers of the national regulatory authority
- 8) Composition of the national regulatory authority
- 9) Dismissal of a member
- 10) Vacation of office of the national regulatory authority
- 11) Meetings of the national regulatory authority

*Recommendation: Procedural matters may be dealt with in a separate annex or decree, as the case may be.*

- 12) Remuneration of members
- 13) Independence of the national regulatory authority

#### **PART IV – MANAGEMENT AND STAFF OF THE NATIONAL REGULATORY AUTHORITY**

*Recommendation: Procedural matters may be dealt with in a separate annex or decree, as the case may be.*

- 14) Appointment of the management
- 15) Powers and functions of the executive director/director-general
- 16) Provisions relating to other staff
- 17) Protection of staff

#### **PART V – FINANCIAL AND ASSOCIATED PROVISIONS**

*Recommendation: These are essential to the independence of the regulatory body and must be drawn up with care.*

- 18) Funds of the national regulatory authority
- 19) Annual accounts
- 20) Audit and control
- 21) Financial year

#### **PART VI – LICENSES AND FREQUENCY AUTHORIZATIONS**

*Recommendation: Procedural matters may be dealt with in a separate annex or decree, as the case may be (e.g. in French-speaking countries).*

- 22) Licensing regime

.../...



- 2 -

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.../...





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- 23) Special licenses
- 24) General authorization regime
- 25) Declaration regime
- 26) Free entry
- 27) Requirements for obtaining a frequency authorization
- 28) Obligations associated with frequency authorizations
- 29) Conditions associated with a frequency authorization
- 30) Obligations incumbent on all telecommunication network operators and telecommunication service providers
- 31) Authorization to operate in territorial waters or airspace
- 32) Procedures for the amendment, suspension and termination of licenses and authorizations
- 33) Procedures for the amendment, suspension and termination of frequency authorizations
- 34) Procedures for the renewal of licenses and authorizations
- 35) Procedures for the renewal of frequency authorizations

#### **PART VII – INTERCONNECTION AND ACCESS TO FACILITIES**

*Recommendation: Procedural matters may be dealt with in a separate annex or decree, as the case may be. The principles must appear in the basic legislation.*

- 35) Interconnection
- 36) Access to facilities
- 36 bis) Dispute Resolution

#### **PART VIII – UNIVERSAL ACCESS/SERVICE AND PRICES**

*Recommendation: Procedural matters may be dealt with in a separate annex or decree, as the case may be. The principles must appear in the basic legislation.*

- 37) Universal service
- 38) Prices

.../...



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## **PART IX - SPECTRUM MANAGEMENT, NUMBERING AND INTERNET GOVERNANCE**

*Recommendation: Procedural matters may be dealt with in a separate annex or decree, as the case may be. The principles must appear in the basic legislation.*

- 39) Principles of spectrum management
- 40) Allocation of frequency bands
- 41) Exercise of spectrum management functions
- 42) Monitoring
- 43) Harmful interference
- 44) Space segment
- 45) Numbering plan
- 46) Internet Governance

## **PART X - TERMINAL EQUIPMENT AND TECHNICAL STANDARDS**

*Recommendation: Procedural matters may be dealt with in a separate annex or decree, as the case may be. The principles must appear in the basic legislation.*

- 47) Terminal equipment
- 48) Standards

## **PART XI - TESTING AND INSPECTION**

- 49) Power to request information
- 50) Pre-installation testing
- 51) Standards for testing
- 52) Entry, search and inspection
- 53) Magistrate may issue a warrant

.../...





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## **PART XII – ENFORCEMENT OF THE LAW, INVESTIGATION AND INSPECTION**

*Recommendations: Ensure that the ICT legislation provides the national regulatory authority with the necessary power, independence and authority to be able to gather the information and acquire the human and financial resources it needs (whether through the State budget or its own self-financing) in order to implement, impartially, swiftly and transparently, the will of the legislature. Ensure that the legislation uses clear and unambiguous language to describe the competencies of the national regulatory authority and, where relevant, of other government agencies. To the extent possible, promulgate laws governing the new technologies. Give greater powers to the national regulatory authorities such as to enable them to adapt to changes in the sector. Establish an authority for service providers not holding a license (e.g. internet service providers).*

- 54) Annual report on the activities of licensees
- 55) Investigation of complaints
- 56) Power to conduct inquiries
- 57) Report on investigations
- 58) Responsibility for remedying infringements of license conditions
- 59) Appointment of inspectors
- 60) Powers of an inspector
- 61) Search warrant

## **PART XIII – FAIR COMPETITION AND EQUALITY OF TREATMENT**

*Recommendation: This is a key factor in the regulatory context and should be clearly defined such that the regulator has the appropriate mandate and instruments to impose and accompany such a framework.*

- 62) The national regulatory authority must encourage fair competition
- 63) Prohibition of acts of unfair competition
- 64) Exceptions to fair competition
- 65) Breach of fair competition
- 66) Non-denial of service
- 67) Equality of treatment
- 68) Interconnection of network facilities

.../...



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#### **PART XIV – INFRINGEMENTS**

*Recommendation: Ensure that the ICT law or legislation provides the regulatory authority with a wide range of sanctions to cover minor, moderately serious and serious infringements.*

- 69) Infringements and sanctions in the case of persons not holding a license
- 70) Interception and disclosure of messages
- 71) Interception of government communications
- 72) Transmission of false distress signals, etc.
- 73) Infringements relating to radiocommunications
- 74) Protection of telecommunication facilities
- 75) False warning
- 76) Prosecution under other laws
- 77) Action for damages
- 78) General sanctions

#### **PART XV – ROADWORKS AND ACCESS TO LAND**

- 79) Roadworks
- 80) Repairs and restoration
- 81) Access to land for inspection and maintenance
- 82) Installation of facilities on private land or in private buildings

#### **PART XVI – MISCELLANEOUS**

For example:

- Transitional provisions
- Emergency provisions

#### **ANNEXES**

For example:

- Meetings of the national regulatory authority





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