

SUPPLEMENTARY PROTOCOL A/SP.1/01/05 AMENDING

THE PREAMBLE AND ARTICLES 1, 2, 9 AND 30 OF

PROTOCOL A/P.1/7/91 RELATING TO THE COMMUNITY

COURT OF JUSTICE AND ARTICLE 4 PARAGRAPH 1 OF

THE ENGLISH VERSION OF THE SAID PROTOCOL

THE HIGH CONTRACTING PARTIES,

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

MINDFUL of Article 33 of Protocol A/P.1/7/91 relating to amendment to the Protocol on the Community Court of Justice;

MINDFUL of the Rules of Procedure of the Community Court of Justice;

MINDFUL of the Regulation C/REG.15/01/03 dated 23rd January, 2003 as amended by Regulation C/REG.5/6/03 of 27th June, 2003 establishing an ad hoc Ministerial Committee on the harmonization of Community legislative texts, particularly Article 2 thereof, which defines the terms of reference of the Committee;

CONSIDERING that the Article of the Treaty referred to in the Protocol relating to the Community Court of Justice are Articles of the Treaty of 28th May, 1975 and that it is therefore necessary to harmonize such references with Articles of the revised treaty adopted on 24th July 1993;

CONSIDERING the need to align the English version of Article 4 paragraph 1 of the Protocol relating to the Community

Court of Justice with the French version of the text so as to ensure consistency;

CONSCIOUS of the role the Court of Justice can play in eliminating obstacles to the realization of Community objectives

and accelerating the integration process;

CONVINCED of the need to empower the Community Court of Justice to play their part in effectively ensuring that Member States fulfill their obligations.

DESIRING also to take all necessary measures to ensure smooth operations of the Court and guarantee effective implementation of its decisions;

CONSIDERING the report of the fifty-second Session of the Council of Ministers held in Abuja on 16th and 17th July 2004, on the draft Protocol amending the Preamble and Articles 1,2, 9, 22 and 30 of Protocol A/P.1/7/91 relating to the Community Court of Justice and Article 4 paragraph 1 of the English version of the Protocol;

HEREBY AGREE AS FOLLOWS:

Article 1:

References in the Protocol to the Treaty of 28th May 1975 reconciled with references in the Revised Treaty of 1993.

All references to the Articles of the Treaty of 28th May 1975 in the Protocol relating to the Community Court of Justice are

hereby deleted and replaced by references to the revised ECOWAS Treaty adopted on 24th July 1993 as follows:

- a) In the Preamble, references to Articles 4(1), 5, 11 and 56 of the Treaty are replaced by Articles 6, 7, 15 and 76(2) of the revised Treaty respectively;
- b) In Article 1, references to Articles 1, 5, 6, 8(1), 8(2) and 11 of the Treaty are replaced by Articles 2, 7, 10, 17(1), 17(2) 15 of the revised Treaty respectively;
- c) In Article 2, the reference to Article 11 of the Treaty is replaced by Article 15 of the revised Treaty; and
- d) In Article 9, the reference to Article 56 of the Treaty by Article 76(2) of the revised Treaty.

Article 2:

Amendment of Article 4(1) of the English version of the Protocol of the Court reconciled with the French version.

Article 4 paragraph 1 of the English version of the Protocol relating to the Community Court of Justice is amended as follows:

“Article 4: Terms of office of Members of the Court. Members of the Court shall be appointed for a period of five (5) years. Their term of office may be renewed for another term of five (5) years only, except that for members of the Court appointed for the first time, the terms of office of the three (3) members shall expire at the end of three (3) years and the term of the other four (4) members shall expire at the end of five (5) years”.

Article 3:

Article 9 of the Protocol on Community Court of Justice substituted. Article 9 of the Protocol relating to the Community Court of Justice is hereby deleted and substituted by the following new provisions: “Article 9: Jurisdiction of the Court.

1. The Court has competence to adjudicate on any dispute relating to the following:
 - a) The interpretation and application of the Treaty, Conventions and Protocols of the Community;

- b) The interpretation and application of the regulations, directives, decisions and other subsidiary legal instruments adopted by ECOWAS;
 - c) The legality of regulations, directives, decisions and other legal instruments adopted by ECOWAS
 - d) The failure by Member States to honor their obligations under the Treaty, Conventions and Protocols, regulations, directives, or decisions of ECOWAS;
 - e) The provisions of the Treaty, Conventions and Protocols, regulations, directives or decisions of ECOWAS Member States;
 - f) The Community and its officials; and
 - g) The action for damages against a Community institution or an official of the Community for any action or omission in the exercise of official functions.
2. The Court shall have the power to determine any non-contractual liability of the Community and may order the Community to pay damages or make reparation for official acts or omissions of any Community institution or Community officials in the performance of official duties or functions.
 3. Any action by or against a Community Institution or any Member of the Community shall be statute barred after three (3) years from the date when the right of action arose.
 4. The Court has jurisdiction to determine case of violation of human rights that occur in any Member State.
 5. Pending the establishment of the Arbitration Tribunal provided for under Article 16 of the Treaty, the Court shall have the power to act as arbitrator for the purpose of Article 16 of the Treaty.
 6. The Court shall have jurisdiction over any matter provided for in an agreement where the parties provide that the Court shall settle disputes arising from the agreement.
 7. The Court shall have the powers conferred upon it by the provisions of this Protocol as well as any other powers that may be conferred by subsequent Protocols and Decisions of the Community.
 8. The Authority of Heads of State and Government shall have the power to grant the Court the power to adjudicate on any specific dispute that it may refer to the Court other than those specified in this Article.

Article 4:

Insertion of a new Article 10 in the Protocol of the Community Court of Justice.

The Protocol on the Community Court of Justice is amended the insertion of the following new Article as follows:

“Article 10: Access to the Court.

Access to the Court is open to the following:

- a) Member States, and unless otherwise provided in a Protocol, the Executive Secretary, where action is brought for failure by a Member state to fulfill an obligation;
- b) Member States, the Council of Ministers and the Executive Secretary in proceeding for the determination of the legality of an action in relation to any community text;
- c) Individuals and corporate bodies in proceedings from the determination of an act or inaction of a Community official which violates the rights of the individuals or corporate bodies;
- d) Individuals on application for relief for violation of their human rights; the submission of application for which shall:
 - i. Not be anonymous; nor
 - ii. Be made whilst the same matter has been instituted before another International Court for adjudication;
- e) Staff of any Community institution, after the Staff Member has exhausted all appeal processes available to the officer under the ECOWAS Staff Rules and Regulations;
- f) Where in any action before a court of a Member State, an issue arises as to the interpretation of a provision of the Treaty, or the other Protocols or Regulations, the national court may on its own or at the request of any of the parties to the action refer the issue to the Court for interpretation.”

Article 5:

Renumbering of the former Articles 10 to 22.

The former articles 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22 are hereby renumbered to read 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23 respectively.

Article 6:

Insertion of a new provision, which becomes Article 24 of the Protocol of the Court of Justice.

The Protocol of the Community Court of Justice is amended by the insertion of a new provision, which becomes the new

Article 24 and reads as follows:

“Article 24: Method of implementation of Judgments of the Court:

1. Judgments of the Court that have financial implications for nationals of Member States or Member States are binding.
2. Execution of any decision of the Court shall be in form of a writ of execution, which shall be submitted by the Registrar of the Court to the relevant Member State for execution according to the rules of civil procedure of that Member State.
3. Upon the verification by the appointed authority of the recipient Member State that the writ is from the Court, the writ shall be enforced.
4. All Member States shall determine the competent national authority for the purpose of recipient and processing of execution and notify the Court accordingly.
5. The writ of execution issued by the Community Court may be suspended only by a decision of the Community Court of Justice.”

Article 7:

Renumbering former articles 23 to 33. The former articles 23, 24, 25, 26, 27, 28, 29, 30, 31, 32 and 33 are hereby renumbered to read 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 35 respectively.

Article 8:

Substitution of Article 30 of the Protocol of the Community Court of Justice

The Protocol of the Community Court of Justice is amended by the substitution of Article 30 by the following:

“Article 30: Budget of the Court. The budget of the Community Court of Justice shall be dealt with in accordance with the relevant provisions of the Revised Treaty”.

Article 9:

Substitution of Article 31 of the Protocol of the Court.

The Protocol of the Community Court is amended by the substitution of Article 31 by following:

“Article 31: Official languages”

The Official languages of the Court shall be English, French, and Portuguese”.

Article 10:

The provisions of any other prior Protocol that is inconsistent with the provisions of this Protocol shall to the extent of the inconsistency be null and void.

Article 11:

Entry into force

1. This supplementary Protocol shall enter into force provisionally upon signature by the Heads of State and Government.

Accordingly, signatory Member States and ECOWAS hereby undertake to undertake to start implementing all provisions of this Supplementary Protocol.

2. This Supplementary Protocol shall definitively enter into force upon the ratification by at least nine (9) signatory States, in accordance with the constitutional procedure of each Member State.

Article 12:

Depository Authority This Supplementary Protocol and all instruments of ratification shall deposited with the Executive Secretariat which shall transmit certified true copies to all Member States and notify them of the dates of deposit of the instruments of ratification and shall register this Protocol with the African Union, the United Nations Organization and such other organizations as the Council may determine.

IN FAITH WHEREOF, WE, THE HEADS OF STATE AND GOVERNMENT OF THE MEMBER STATES OF THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS), HAVE SIGNED THIS SUPPLEMENTARY PROTOCOL

DONE AT ACCRA, THIS 19TH DAY OF JANUARY 2005.

**IN A SINGLE ORIGINAL, IN THE ENGLISH, FRENCH AND PORTUGUESE LANGUAGES,
ALL TEXTS BEING EQUALLY AUTHENTIC.**