

Economic Community of West African States, African Regional Bodies

Supplementary Act A/SP.13/02/12 on Sanctions Against Member States that Fail to Honour their Obligations to ECOWAS Act 2-SP13 of 2012

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Supplementary Act A/SP.13/02/12 on Sanctions Against Member States that Fail to Honour their Obligations to ECOWAS
 Contents

Chapter 1 – Obligations for which non-fulfilment is likely to engender sanctions against Member States 1

 Article 1 – Compulsory Acts to be observed and enforced by Member States 2

 Article 2 – Categories of obligations of Member States 2

 Paragraph 1. 2

 Paragraph 2. 2

 Subparagraph i) 2

 Subparagraph ii) 2

 Subparagraph iii) 2

 Subparagraph iv) 2

 Subparagraph v) 2

 Subparagraph vi) 2

 Subparagraph vii) 2

 Subparagraph viii) 2

 Paragraph 3. 2

Chapter 2 – Sanctions applicable in the event of non-fulfilment of obligations 2

 Article 3 – Principle for sanctions 2

 Paragraph 1. 2

 Paragraph 2. 2

 Article 4 – Purpose of sanctions 3

 Paragraph 1. 3

 Paragraph 2. 3

 Paragraph 3. 3

 Paragraph 4. 3

 Article 5 – Judicial sanctions 3

 Article 6 – Political sanctions 3

 Subparagraph (i) 3

 Subparagraph (ii) 3

 Subparagraph (iii) 3

 Subparagraph (iv) 3

 Subparagraph (v) 3

 Subparagraph (vi) 3

 Subparagraph (vii) 3

 Subparagraph (viii) 3

Subparagraph (ix)	3
Subparagraph (x)	3
Subparagraph (xi)	4
Subparagraph (xii)	4
Subparagraph (xiii)	4
Subparagraph (xiv)	4
Subparagraph (xv)	4
Article 7 – Definition of the content of some sanctions	4
Article 8 – Suspension from participation in ECOWAS activities	4
Paragraph 1.	4
Paragraph 2.	4
Paragraph 3.	4
Paragraph 4.	4
Article 9 – Travel ban on leaders, their families and associates	4
Paragraph 1.	4
Subparagraph a)	4
Subparagraph b)	4
Subparagraph c)	4
Paragraph 2.	4
Article 10 – Recall by other Member States of their Ambassadors accredited to a country	4
Article 11 – Embargo on arms entering a Member State	5
Paragraph 1.	5
Subparagraph a)	5
Subparagraph b)	5
Paragraph 2.	5
Paragraph 3.	5
Article 12 – Ban on standing for Presidential office in Member States	5
Chapter 3 – Modalities for implementing sanctions	5
Article 13 – Application of sanctions	5
Article 14 – Power of initiative	5
Subparagraph a)	6
Subparagraph b)	6
Subparagraph c)	6
Article 15 – Allegations of non-compliance or non fulfilment of obligations by Member States	6
Paragraph 1.	6

Paragraph 2.	6
Paragraph 3.	6
Paragraph 4.	6
Article 16 – Indictment of the Member State that fails to honour its obligations to the Community	6
Paragraph 1.	6
Paragraph 2.	6
Paragraph 3.	6
Paragraph 4.	6
Article 17 – Suspension of application of sanctions against a Member State	6
Paragraph 1.	7
Paragraph 2.	7
Article 18 – Notification of sanctions	7
Paragraph 1.	7
Paragraph 2.	7
Article 19 – Application of sanctions and monitoring of their implementation	7
Paragraph 1.	7
Paragraph 2.	7
Article 20 – Suspension of sanctions	7
Paragraph 1.	7
Paragraph 2.	7
Paragraph 3.	7
Paragraph 4.	7
Article 21 – Lifting of sanctions	8
Paragraph 1.	8
Paragraph 2.	8
Chapter 4 – Final provisions	8
Article 22 – Amendment and revision	8
Paragraph 1.	8
Paragraph 2.	8
Paragraph 3.	8
Article 23 – Publication	8
Article 24 – Entry into force	8
Article 25 – Miscellaneous provisions	8
Article 26 – Depository authority	8

Economic Community of West African States

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The High Contracting Parties,

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

RECALLING that ECOWAS has created supranational bodies whose decisions are binding and therefore, applicable directly and in their entirety, in Community Institutions as well as in Member States, with the aim of enhancing their effectiveness;

RECALLING also that ECOWAS has granted its political and judicial Institutions the capacity to enforce compliance and apply the decisions of its supranational bodies;

CONSIDERING that Article 77 of the ECOWAS Treaty stipulates that the Authority can take sanctions against Member States that fail to honour their obligations to the Community;

CONSIDERING that the Protocol A/SP1/12/01 on Democracy and Good Governance, supplementing the ECOWAS Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security in its Article 45 stipulates that the Community can impose different sanctions on Member States where democracy has been disrupted through whatever means;

CONSIDERING that Article 9 of the Supplementary Protocol A/SP1./01/05 amending the Protocol relating to the Court of Justice grants this Court the competence to consider cases of non-fulfilment by Member States of obligations incumbent upon them by virtue of the ECOWAS Treaty, Conventions and Protocols, Regulations, Decisions and Directives;

NOTING that the community provisions in force do not define the obligations, for which non-application or non-fulfilment exposes Member States to sanctions;

DESIRING to establish appropriate sanctions to ensure suitable, just and equitable application;

CONVINCED that the Community can only impose sanctions which are effective and actually applicable against Member States or their leaders, if it has a well-defined sanctions system;

DESIROUS to adopt such a system which would comprise obligations when unfulfilled, are likely to lead to the imposition of sanctions, bringing together in a single document the range of applicable sanctions and defining the modalities for the implementation of the said sanctions, by specifying in particular, the procedures for imposing and lifting sanctions;

ON THE PROPOSAL of the Meeting of Ministers of Justice of Member States held in Abuja on 16 to 17 May 2011;

ON THE RECOMMENDATION of the sixty-seventh ordinary session of the Council of Ministers held in Abuja from 19 to 21 December 2011;

AGREE AS FOLLOWS:

Chapter 1

Obligations for which non-fulfilment is likely to engender sanctions against Member States

1

Compulsory Acts to be observed and enforced by Member States

Member States shall apply and observe Acts of the Authority and Council of Ministers which include the ECOWAS Treaty, Conventions, Protocols Supplementary Acts, Regulations, Decisions and Directives of the Community.

2

Categories of obligations of Member States

1. The obligations contained in the Acts described in Article 1 of this Supplementary Act are divided into two categories. They are those Acts that aim to create within Member States and at the regional level, an atmosphere of true and lasting peace, void of all threat and infringements to constitutional order and those which aim at strengthening and accelerating the process of regional integration.
2. The following shall among others constitute the obligations of Member States, to:
 - i) respect and protect human rights, the rule of law, democracy and constitutional order;
 - ii) ratify ECOWAS Protocols and Conventions;
 - iii) dismantle tariff and non-tariff barriers which hinder the free movement of persons, goods, the right of residence and establishment;
 - iv) pay all financial obligations in general and in particular apply the texts in the Community Levy;
 - v) promptly apply texts adopting the integration policies, projects and programmes of the Community;
 - vi) apply the mandatory texts described in Article 1 of this Supplementary Act;
 - vii) prohibition of the adoption of measures or positions contrary to democratic governance and respect for the Rule of Law, or likely to constitute either a serious threat to regional security or gross and severe human rights abuses, or trigger a humanitarian disaster;
 - viii) refrain from adopting and implementing all measures likely to subvert or compromise the strengthening the process of regional integration.
3. Judgments of the Court shall be binding on the Member States, the Institutions of the Community and on individuals and corporate bodies.

Chapter 2

Sanctions applicable in the event of non-fulfilment of obligations

3

Principle for sanctions

1. Member States or their leaders that fail to honour their obligations to the Community shall be liable to judicial and political sanctions.
2. Leaders of Member States, members of their families and their associates shall also have sanctions imposed on them as stipulated in paragraph 1 of this Article.

4

Purpose of sanctions

1. The aim of imposing sanctions must be to prevent the non-respect or non-application of mandatory Acts defined in Article 1 above from having harmful effects on the functioning of the Community and its Institutions. It is to prevent that such behaviour by Member States from compromising the implementation of Community programmes and lead to gradual blockage in the activities of the Community.
2. Sanctions must encourage Member States to respect and enforce all mandatory Acts of the Community. They must promote the elimination of all obstacles to regional integration and facilitate the achievement of Community goals.
3. To be effective, sanctions to be imposed against Member States must aim at creating conditions for the restoration of normal constitutional processes, when they are imposed for example, in the case of a breakdown in democracy. They must also allow for the righting of a wrong or the acknowledgement of a right denied a citizen, where this right has been conferred by a mandatory Act. The aim of sanctions must be to strengthen the Community and make her more effective.
4. As far as it is possible, sanctions shall not affect the delivery of humanitarian aid to people in the concerned Member State.

5

Judicial sanctions

The Community Court of Justice shall deliver judgments which include but not limited to financial sanctions against Member States in application of Article 24, Paragraph 1 of the Protocol relating to the Community Court of Justice as amended by Article 6 of the Supplementary Article A/SP01/01/05 of 19 January 2005 when it notices that they have failed to honour their obligations as stated in the Community texts.

6

Political sanctions

Sanctions applicable against Member States that do not honour their obligations to the Community may include:

- (i) suspension of any new loans or new assistance granted by the Community;
- (ii) suspension of disbursements for all ongoing loans, projects and Community assistance programmes;
- (iii) non-acceptance of applications to statutory and professional positions within Community Institutions;
- (iv) suspension of the right to vote;
- (v) suspension from participation in Community activities;
- (vi) non-support of applications presented by Member States to elective positions in international organisations;
- (vii) refusal to organise meetings in the concerned Member State;
- (viii) suspension of the concerned Member State from all ECOWAS decision-making organs. During the suspension period, the concerned Member State shall continue to pay its contributions to the Community;
- (ix) travel ban on the leaders their families and their associate, notwithstanding community provisions on free movement of persons;
- (x) freeze their financial assets;

- (xi) recall by other Member States of their Ambassadors from the country where there is a breakdown of democracy;
- (xii) embargo on arms entering the concerned Member State;
- (xiii) ban on standing for the Chairmanship of the Community;
- (xiv) condemnation and refusal to acknowledge unconstitutional Governments;
- (xv) Peace enforcement or restoration of constitutional order by use of legitimate force.

7

Definition of the content of some sanctions

To facilitate consistent and equal application to all Member States, the sanctions below are defined in the following provisions.

8

Suspension from participation in ECOWAS activities

1. When a Member State is suspended from participating in ECOWAS activities, ECOWAS Institutions shall not invite or admit the representatives of this country to its meetings, regardless of the place where these meetings are held. ECOWAS Institutions shall suspend the implementation or monitoring of all projects and programmes underway in this country. All consultations with the leaders of the suspended Member State on Community activities shall cease.
2. The leaders of the suspended Member States shall not be members of any committee constituted by ECOWAS to prepare or monitor the implementation of Community projects or to manage or settle issues regarding the Community. No leader of the suspended country shall be a member of any ECOWAS delegation representing the Community before international authorities or in the implementation of any Community activity.
3. The territory of the suspended Member State shall not be used to hold any meeting or event organised or supported by ECOWAS.
4. When a Member State is suspended from participating in the activities of the Community, these activities shall include all activities organised or co-organised by ECOWAS, within as well as outside the sub-region.

9

Travel ban on leaders, their families and associates

1. When leaders of a Member State, members of their families and associates are banned from travelling, the other Member States, without prejudice to the fullness of their powers and the relevant provisions of the ECOWAS Protocols on Free Movement of Persons, Goods, the Right of Residence and Establishment, shall:
 - a) impose on them restrictions on any travel they shall make to the other Member States;
 - b) impose restrictions on the use of their airspace or territorial waters;
 - c) expel them from their territory;
2. The afore-mentioned travel restrictions shall apply on all occasions except when the leaders under the travel ban are invited by ECOWAS, African Union, European Union and the United Nations or when the travel is for humanitarian reasons.

10

Recall by other Member States of their Ambassadors accredited to a country

When the Authority of Heads of State and Government decides on other Member States recalling their Ambassadors accredited to a country, all diplomatic relations with that country shall also be suspended.

11

Embargo on arms entering a Member State

1. When the Authority of Heads of State and Government decide to place an embargo on arms entering a Member State, other Member States shall put in place an embargo on the delivery of arms, ammunitions, and military equipment to this country. Other Member States shall prevent:
 - a) the sale and/or supply to a country under embargo, by their citizens or from their territory, or through their ships or aircrafts, of weaponry and related materials of all types, including arms and ammunitions, military vehicles and equipments, police equipment and related spare parts;
 - b) entry on the territorial waters of the country under embargo on its territory, of any means of transport carrying weaponry or related materials of all types, including arms and ammunitions, military and police vehicles and related spare parts.
2. When an arms embargo has been decided against a country, the President of the Commission shall not accede to any requests for exemption from the application of the provisions of the ECOWAS Convention on Small Arms and Light Weapons in relation to the prohibition of the transfer of the said arms to the territories of Member States, that the leaders of the country under embargo may make for security reasons, in order to equip public security forces / or for the organisation of international peacekeeping operations.

The President of the Commission shall cease to notify the leaders of the country under embargo, of requests for exemption from the application of the Convention on Small Arms and Light Weapons that he may receive from other Member States, and the responses he will give to such requests.
3. Other Member States shall ensure the strict surveillance of the coastal areas, land borders and air spaces, in order to prevent any violation of the arms embargo by the country against which this sanction has been imposed.

12

Ban on standing for Presidential office in Member States

The perpetrators of Coup d'Etat and their accomplices, governments seeking to remain in power and prevent any possibility of alternation by changing the constitution, as well as participants and beneficiaries of all other anti-constitutional changes shall not stand for presidential office in their respective Member State. ECOWAS and its Member States shall not recognise governments arising from power obtained through such means.

Chapter 3

Modalities for implementing sanctions

13

Application of sanctions

The sanctions defined in Articles 5 to 11 of this Supplementary Act shall be enforced in increasing order of severity.

14

Power of initiative

The procedure expected to lead to the application of sanctions against Member States failing to honour their obligations to the Community are implemented:

- a) upon decision of the Authority of Heads of State and Government;
- b) at the request of a Member State;
- c) on the recommendation of the President of the Commission.

15

Allegations of non-compliance or non-fulfilment of obligations by Member States

1. Cases of non-compliance or non-fulfilment by Member States of their obligations to the Community may be reported by any individual or corporate entity of a Member State, any Community Institution, Member State and may be ascertained by the Council of Ministers of the Authority of Heads of State and Government.
2. The allegations by individuals and legal entities shall be addressed to National Authorities responsible for regional integration or the President of the Commission. When these allegations are addressed to national authorities, the latter shall forward same to the President of the Commission without delay. Allegations by Institutions shall be addressed to the President of the Commission. All allegations shall be presented to the Council of Ministers through the President of the Commission.
3. The President of the Commission shall notify the Member State concerned of the allegation against it and grant it a period of thirty (30) days with effect from the date of notification, to honour the obligations which it is accused of failing to honour, or present a case in its defence.
4. At the expiration of the afore-mentioned thirty (30) day deadline, the President of the Commission shall have a thirty (30) day period to verify whether the concerned Member States has honoured its obligations to the Community. If this is the case, the President of the Community shall inform the initiator of the allegation and present a report to the Council of Ministers at its next Session.

16

Indictment of the Member State that fails to honour its obligations to the Community

1. If, following investigations by the President of the Commission, it is revealed that the Member State has failed to respect or fulfil its obligations, and that after the start of the investigations, the concerned Member State has made no effort to remedy this, the President of the Commission shall make a report contained in a Memorandum addressed to the Council of Ministers.
2. The Council of Ministers shall consider the Memorandum presented by the President of the Commission and set a deadline for the concerned Member State within which it must honour the obligations it is being accused of having failed to respect or fulfil.
3. If at the end of the deadline set by the Council of Ministers, the concerned Member State has still not fulfilled its obligations, the Council of Ministers shall make recommendations to the Authority of Heads of State and Government on the sanctions to be imposed on the concerned Member State, their leaders, members of their families and associates. The Authority shall impose appropriate sanctions.
4. Sanctions imposed against any Member State shall not be subject to appeal before the Community Court of Justice or any other court.

17

Suspension of application of sanctions against a Member State

1. Any Member State, that temporarily finds itself unable to honour the obligations described in Articles 1 and 2 of this Supplementary Act for reasons other than disasters or exceptional circumstances that seriously affect its economy, peace, security and political stability, shall inform the President of the Commission of the circumstances without delay.
2. When, in application of paragraph 1 of this Article, the President of the Commission is informed, the latter shall make a report to the Council of Ministers requesting that no sanctions be taken against the concerned Member State or that the provisions on sanctions be benevolently enforced on the Member State, until such a time as the disasters or exceptional circumstances affecting the country no longer exist.

18

Notification of sanctions

1. Member States shall be immediately notified of sanctions imposed on them. Other Member States as well as all Community Institutions shall also receive notifications by the President of the ECOWAS Commission.
2. The Act referred to in paragraph 1 of this article shall be published in the Official Journal of the Community by the ECOWAS Commission.

19

Application of sanctions and monitoring of their implementation

1. All Member States and Community Institutions shall take the necessary measures to ensure that the Decisions by which sanctions are imposed are fully applied.
2. The President of the ECOWAS Commission shall put in place a Committee for monitoring the implementation of sanctions. The Commission shall, within its means, render the assistance required by the concerned Member State to carry out the obligations it has failed to honour.

20

Suspension of sanctions

1. If no session of the Council of Ministers and the Authority of Heads of State is held in the two (2) months following the observation by the President of the Commission that the Member State concerned has fulfilled its obligations, the President of the Commission shall propose to the current Chairman of the Council of Ministers, who is acting on behalf of the Authority, to suspend the sanctions taken against the concerned Member State.
2. The President of the Commission shall inform the Council of Ministers of the recommendations of its Chairman and the suspension decision taken by the Chairman of the Authority at the next session of the Council
3. A Member State which fails to honour its obligations shall after sanctions proceedings have been commenced against it, present a request to the Council of Ministers through the President of the Commission, for a special time frame allowing it to ensure the respect and fulfilment of its obligations. In this case, the Chairman of the Council of Ministers, on behalf of the Council of Ministers, shall make recommendations to the Chairman of the Authority of Heads of State and Government on the lifting of sanctions. The Chairman later acting on behalf of Authority, after private consultation with his peers, may accede to the request.
4. If at the end of the special time frame, the defaulting Member State honours its obligations, no sanction procedure will be commenced against it. If the Member State does not honour its obligations, the Authority shall impose appropriate sanctions against it.

21

Lifting of sanctions

1. Once it has honoured its obligations, the Member State under sanctions shall inform the President of the Commission of its compliance. The President of the Commission, after ensuring that this is the case, shall present a report to the Council of Ministers by way of a Memorandum. The Council of Ministers, after having noted that the sanctions are no longer necessary, shall recommend their immediate removal to the Authority of Heads of State and Government.
2. Sanctions shall be lifted if, from the opinion of the Heads of State and Government, and on the basis of a substantiated report prepared by an independent body set up by the President of the Commission, the concerned Member State failed to honour its obligations due to reasons and circumstances beyond its control and if, the defaulting Member State satisfies conditions allowing for the sanctions against it to be lifted.

Chapter 4

Final provisions

22

Amendment and revision

1. Any Member State, the Council of Ministers or the ECOWAS Commission may submit proposals for the amendment or revision of this Supplementary Act.
2. Any proposal not originating from the ECOWAS Commission shall be submitted to it. The Commission shall notify Member States no later than thirty (30) days after receipt of such proposals. The Authority shall consider proposals on amendments and revisions after the three (3) month notice period given to Member States.
3. Amendments and revisions shall be adopted by the Authority and shall enter into force upon their publication in the Official Journal of the Community.

23

Publication

This Supplementary Act shall be published by the ECOWAS Commission in the Official Journal of the Community within thirty (30) days of its signing by the Heads of State and Government. It shall also be published by each Member State in its National *Gazette* within thirty (30) days of notification by the Commission.

24

Entry into force

This Supplementary Act shall enter into force upon its publication. Consequently, Member States shall undertake to commence implementation of its provisions upon its entry into force.

25

Miscellaneous provisions

The Supplementary Act shall supersede any other contrary provisions.

26

Depository authority

This Supplementary Act shall be deposited at the Commission which shall forward certified copies to all Member States and shall register same with the African Union, United Nations Organisation and all other organisations selected by the Council.

N 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 Act

Done at Abuja, this 17th day of February, 2012

In single original in English, French and Portuguese languages, all texts being equally authentic