



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

Abuja, 16th February 2010

**SUPPLEMENTARY ACT A/SA.2/01/10 ON ELECTRONIC
TRANSACTIONS WITHIN ECOWAS**

THE HIGH CONTRACTING PARTIES,

MINDFUL of Articles 7, 8 and 9 of the ECOWAS Treaty as revised on the establishment of the Authority of Heads of State and Government and defining its composition and functions;

MINDFUL of the Supplementary Protocol A/SP.1/06/06 establishing the amendment of the said Treaty;

MINDFUL of Article 27 of the said Treaty on Science and Technology; and

MINDFUL of the provisions of Articles 32 and 33 of the said Treaty in the areas of Communications and Telecommunications;

MINDFUL of Article 50 of the said Treaty relating to Trade promotion;

MINDFUL of Article 57 of the ECOWAS Treaty as revised on judicial and legal cooperation which prescribes that Member States undertake to promote judicial cooperation with a view to harmonising judicial and legal systems;

MINDFUL of Supplementary Act A/SA 1/01/07 of 19 January 2007 on the harmonization of the policies and regulatory framework of the Information and Communication Technologies sector;



CONSIDERING that, with the development of computer networking the number of electronic transactions is on a constant rise; that, as an indication, electronic transactions bear on the production, promotion, sale, distribution of products, services and trade through electronic communication including distance interrogation, invoice despatching;

CONSIDERING that the volume of electronic transactions is currently relatively low within ECOWAS, but its potential growth is undeniable;

CONSIDERING that the main impediments to the development of e-transactions are linked to inadequate regulation on the legal recognition of data messages, recognition of electronic signature subject to the regulation of the systems of payment within space, the absence of specific legal rules to protect consumers, intellectual property, personal data and information systems and lack of legislation peculiar to electronic transactions;

CONSIDERING that these impediments to the development of e-transactions are equally linked to the application of electronic techniques to trade, services and administrative acts; to the conclusive elements introduced by digital techniques including (time-stamping, certification, to the rules applicable to the means and services of encryption; to the supervision of on-line advertisements; and to the absence of appropriate fiscal and customs legislations on e- transactions;

CONVINCED that this observation justifies the establishment of a normative appropriate framework to deal with the legal, cultural, economic and social environment of the West African zone;

DESIROUS of adopting this Supplementary Act on electronic transactions within ECOWAS, with a view to ensuring the necessary security and legal framework for the emergence of reliable electronic transaction in the sub-region;

AFTER THE OPINION of the ECOWAS Parliament dated 23 May 2009;

ON THE RECOMMENDATION of the Sixty-third Ordinary Session of the Council of Ministers held at Abuja on the 20th and 21st November 2009;



HEREBY AGREE AS FOLLOWS:

CHAPTER I
GENERAL PROVISIONS

Article One: Definitions

For the purposes of this Supplementary Act, the expressions below shall be defined as follows:

Certification: the formal recognition that the assessed product or system is able to protect up to a level specified by a certified body;

Encryption: any technique that consists of transforming digital data into an unintelligible format using cryptology methods;

Electronic communication means making available through a process of electronic or electromagnetic means, signs, signals, written documents, images, sounds or messages of any kind;

Secret conventions: the unpublished keys that are required in order to use a cryptology means or service for encryption and decryption operations.

Electronic mail: any message in the form of text, voice, sound or image, which is dispatched by a public communication network and stored on a network server or in the recipient's terminal until such time as the latter recovers it;

Cryptology: the science of protecting and ensuring security of information, in particular for purposes of confidentiality, authentication, integrity, and non-repudiation;

Electronic data interchange (EDI): the electronic transfer from computer to computer of information using an agreed standard to structure the information;

PRINT: List of letters of characters, figures or other signs or symbols that have intelligible meaning irrespective of the medium and modality of transmission

Information: any element of knowledge that is likely to be represented by conventions to be used, preserved, processed or disclosed. Information may be expressed in written, visual, sound, digital or other forms;



Data message: information generated, sent, received or stored by electronic, optical or similar means including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or teletype;

Direct prospecting: any message aimed at promoting, directly or indirectly, goods, services or the image of a person selling goods or providing services.

Electronic Signature: Any data emanating from the use of a reliable data procedure or identification procedure which guarantees its link with the act that it is attached to.

Document: A document is the result of a series of letters, characters, figures or any other signs and symbols that hold intelligible significance, whatever their medium or modes of transmission

Article 2: Scope

This Supplementary Act aims at establishing a harmonized framework for the regulation of electronic transactions within the ECOWAS zone. Its shall apply notably to all transactions whatever their nature and which take the form of electronic messages.

Article 3: Exclusions

The following areas shall be excluded from the scope of this Supplementary Act:

- 1) Legally-authorized gambling, even in the form of bets and lotteries;
- 2) legal representation and assistance services;
- 3) activities carried out by notary publics in application of legislations in force.

CHAPTER II:

ELECTRONIC COMMERCE

Article 4: Access to information

Without prejudice to the other obligations regarding disclosure provided for under existing legislative and regulatory texts in force in the ECOWAS member countries, any natural person or legal entity carrying out an activity within the scope of applications of this Supplementary Act shall provide all those to whom supply of goods and services is addressed with easy, direct, and permanent access using an open standard to the following information;



- 1) first name and surname, in the case of a natural person, and the corporate name, in the case of a legal entity;
- 2) The full geographical address where the natural person/legal entity is established, the e-mail address, as well as the telephone number of the business;
- 3) If the natural person/legal entity is subject to formalities for registering businesses or a national registry of businesses and association, such registration number, its corporate capital, and the address of its/his corporate headquarters;
- 4) Whether natural person/legal entity is subject to value added tax, the corresponding tax identification number;
- 5) Where the activity is subject to a system of authorisation, the name and address of the body that issued the authorisation;
- 6) Where the natural person/legal entity is a member of a regulated profession, reference to the applicable professional rules, the professional title, the ECOWAS member country where such title was issued, as well as the name of the professional order or body with which the natural person/legal entity is registered.

Article 5: Indication of price

Any natural person or legal entity carrying out the activity defined within the scope of applications of this Supplementary Act shall, even in the absence of a contract, as long as they make reference to a price, indicate such price in a clear and unambiguous manner, and in particular where taxes and cost of delivery are included.

Article 6: Contractual liabilities of the electronic supplier of goods and services

1) Any natural person or legal entity that carries out the activity described under the first paragraph of within the scope of applications of this Supplementary Act shall be liable by rights vis-à-vis the contracting party for the proper fulfilment of the obligations arising from the contract, whether he is responsible for fulfilling such obligations himself or through a service provider, without prejudice to his right to seek redress from the latter.

2) Nevertheless, all or part of this liability may be waived if the natural person or legal entity is able to provide evidence that the non fulfilment or poor fulfilment of the contract is attributable either to the contracting party or to a situation beyond its control.

Article 7: Applicable law

1) The activities defined within the scope of applications of this Supplementary Act shall be subject to the law of member countries of the ECOWAS region on whose territory the person carrying out the activity is established.



2) This provision is without prejudice to the freedom of the parties in choosing the laws that shall apply in their transactions. However, in case the parties fail to choose, the law to be applied shall be the law of current residence of the consumer when it is not against his interest.

**CHAPTER III:
ELECTRONIC ADVERTISING**

Article 8: Identification of the advertisement

Any advertising in whatever form, which is accessible through an online communication service, shall clearly be identifiable as such. It shall clearly identify the individual or legal entity on whose behalf the advertising is being conducted.

Article 9: Identification of price

Advertisements and in particular promotional offers such as discounts, premiums or gifts, as well as promotional contests or games that are dispatched by electronic mail must be clearly and unequivocally identifiable in the subject of the mail immediately upon reception by the addressee, or if this is technically impossible, in the body of the message.

Article 10: Identification and accessibility of the offer

Where promotional offers, contests and games are offered by electronic means, the conditions for enjoying such offers, as well as those for participating in such contests or games shall be clearly indicated and easily accessible.

Article 11: Prohibition of direct prospecting

Within the ECOWAS space, it is prohibited to carry out direct prospecting by sending out a message by means of a call processor, fax machine or electronic mail, or any other electronic communication means using the contact information, in whatever form, of an individual who has not given his prior consent to receive direct prospecting by such means.

[Handwritten signatures and initials]



Article 12: Exceptions

Notwithstanding the provisions of the preceding Article, direct prospecting is authorised where:

- 1) the recipient's contact information was obtained directly from him;
- 2) the direct prospecting relates to comparable products and services provided by the same individual or legal entity.

Article 13: Obligation to indicate contacts

Within the ECOWAS space, messages sent by electronic means for purposes of direct prospecting shall contain the valid contact information by which the recipient may effectively request for such communications to cease, with no additional cost other than those linked to the transmission of such a request.

Article 14: Prohibition of Identity dissimulation

Within the ECOWAS space, it is also prohibited to dissimulate the identity of the individual on behalf of whom the communication is being sent out and to indicate a subject that is not related to the proposed delivery or service.

CHAPTER IV:

ELECTRONIC CONTRACT CONCLUSION

Article 15: Electronic contract negotiation

Electronic means may be used to disclose the contract conditions or information relating to goods and services.

Article 16: Transmission of contract information by electronic means

Information requested with a view to entering into a contract or information that is sent in the course of performance of the contract may be transmitted by electronic means where the recipient has accepted the use of such means.

Article 17: Transmission of information to a professional

Information meant for a professional in an electronic transaction may be sent to him by electronic mail if he has communicated his professional electronic address.



Article 18: Provision of contract conditions by supplier

A supplier who offers in a professional capacity, by electronic means, to supply goods and services shall provide the applicable contract conditions in a manner that makes it possible to record and reproduce them. The offer shall include:

- 1) the various steps to be followed to execute the contract by electronic means;
- 2) the technical means by which the user, prior to concluding the contract, may identify errors made in entering data and correct such errors;
- 3) the languages proposed for concluding the contract;
- 4) where a record of the contract is retained, the modalities of such recording by the initiator of the offer, and the conditions of access to the recorded contract;
- 5) the means of consulting, by electronic means, the professional and commercial rules to which the initiator of the offer intends to subject himself, where applicable.

Article 19: Condition of contract validity through electronic means

For the contract to be validly concluded, the recipient of the offer shall have the right of reviewing the details of his order, and in particular the price, before confirming the order, thus notifying his acceptance.

Article 20: Acknowledgement of receipt

- 1) The initiator of the offer should acknowledge receipt of the order thus sent without any unjustified delay, and by electronic means.
- 2) The order, confirmation of acceptance of the offer, and the acknowledgment of receipt shall be considered as having been received when the parties to whom they are addressed are able to have access to them.

Article 21: Exemptions

Exemptions may be made to the provisions of Articles 19 and 20 of this Supplementary Act for agreements concluded between professionals.



Article 22: Freedom of choice of electronic means

In the absence of any legal provisions to the contrary, no individual shall be compelled to commit himself legally through electronic means.

Article 23: Electronic preservation of documents

Where a document is required to be legally binding, it may be drafted and preserved in electronic form in conditions that it can be properly identified and the integrity of the originator is guaranteed.

Article 24: Exceptions

Exception shall be made to the provisions of Article 23 of this Supplementary Act for the following:

- 1) Private agreements relating to family law and inheritance;
- 2) Private agreements relating to personal or real, civil or commercial securities, except where these are entered into by an individual for the requirements of his profession

Article 25: Registered letter sent by electronic means

A registered letter may be sent by electronic means on condition that the mail be forwarded by a third party according to a procedure that makes it possible to identify such third party, designate the sender, guarantee the identity of the addressee, and establish if the letter was submitted or not to the addressee.

Article 26: Submission of a document

Submission of a document in electronic form shall be considered effective when the addressee, after having read it, acknowledges receipt of the document.

Article 27: Respect of particular conditions of a document through electronic means

Where a hard copy is subject to particular conditions of legibility and presentation, the electronic document shall also comply with similar requirements.



Article 28: Requirement for the despatch of several copies

The requirement to send several copies of a document shall be deemed to have been met in the electronic form if the document can be printed by the addressee.

Article 29: Electronic document accepted for invoicing

An electronic document shall be accepted for invoicing in the same manner as a hard copy, as long as the authenticity of the origin of data contained therein and the integrity of their content can be guaranteed.

Article 30: Electronic document accepted as proof

An electronic document shall be accepted as proof in like manner as a hard copy and shall have the same evidential weight as the latter, subject to the possibility of duly identifying the person from whom it emanates, and to the document being drafted and recorded in conditions that guarantee its integrity.

Article 31: Proof of existence of an obligation

Any individual who supplies goods and services by electronic means and who seeks to demand the fulfilment of an obligation should prove the existence of such obligation, and where he seeks to exonerate himself, should prove that the obligation is non-existent or inoperative.

Article 32: Determination of proof

Where the legal provisions of Member States have not set other principles, and in the absence of valid agreements between the parties, the magistrate shall settle conflicts of documentary proof by determining by all means which title is most plausible, irrespective of the medium.

Article 33: Evidential weight of documents established by electronic means

- 1) A copy or any other reproduction of documents established by electronic means shall have the same evidentiary weight as the document itself when it is certified as accurate by bodies approved by a government authority.
- 2) Where applicable, such certification shall lead to the issuance of a certificate of compliance.



**CHAPTER V:
SECURITY OF ELECTRONIC TRANSACTIONS**

Article 34: Electronic signature

1) Electronic signature consists of the use of a reliable identification process guaranteeing its link with the document to which it is attached. It shall be accepted in electronic transactions.

2) The process shall be presumed reliable when the electronic signature is created, until evidence is shown to the contrary.

Article 35: Conditions of acceptance of electronic signature

An electronic signature created by a secure arrangement that the signatory can maintain under his exclusive control, which is based on a digital certificate, shall be accepted as a signature in like manner as a handwritten signature.

**CHAPTER VI:
OTHER PROVISIONS**

Article 36: Other Specific texts

Activities relating to recording, archiving, authentication and certification are governed by appropriate specific texts.

Article 37: Sanctions

The Member State shall define the appropriate sanction relative to violation of Article 11, 13 and 14 of this Supplementary Act.

**CHAPTER VII:
FINAL PROVISIONS**

Article 38: Amendment and review

1) Any Member State, the Council of Ministers and the ECOWAS Commission may submit proposals for the amendment and review of this Supplementary Act.



2) All amendment and revision proposals shall be submitted to the ECOWAS Commission for onward communication to the Member States not more than thirty (30) days after reception. The Council of Ministers shall examine the amendment and revision proposals on expiry of a period of three (3) months granted the Member States to enter their observations.

3) The amendment and revision shall be adopted by the Council of Ministers and submitted to the Authority of Heads of State and Government for approval and signature. The amendments and revisions shall enter into force, in conformity with the provisions of Article 40 of this Supplementary Act.

Article 39: Publication

This Supplementary Act shall be published by the Commission in the Community Official Journal within thirty (30) days of the date of signature by the Authority of Heads of State and Government. It shall equally be published by each Member State in its national Gazette thirty (30) days after notification by the Commission.

Article 40: Entry into force

This Supplementary Act shall enter into force once it is published in the Community's Official Journal and in the Official Gazette of each Member State. This Supplementary Act shall be annexed to the ECOWAS Treaty of which it shall be an integral part.

Article 41: Depository authority

This Supplementary Act shall be deposited with the Commission which shall transmit certified true copies of this Supplementary Act to all the Member States and shall register it with the African Union, the United Nations Organisation and all other regional and international organizations cooperating with ECOWAS and such organisations as the Council may determine by virtue of Articles 83, 84 and 85 of the Revised ECOWAS Treaty.

**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 ABUJA, THIS 16TH DAY OF FEBRUARY 2010

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



H. E. Mr. Jean Marie EHOZOU
Minister of Foreign Affairs,
African Integration, Francophony
And Beninois in the Diaspora
For and on behalf of the President
of the Republic of Benin

H. E. Mr. Blaise COMPAORE
President of Faso
President of the Council of Ministers

H. E. Mr. José BRITO
Minister of Foreign Affairs,
Cooperation and Communities
For the Government of Cabo Verde

H. E. Mr. Youssouf BAKAYOKO
Minister of Foreign Affairs
For and on behalf of the President
of the Republic of Côte d'Ivoire

H. E. Dr. Aja Isatou NJIE-SAIDY
Vice President,
For and on behalf of the President of the Gambia

H. E. Pr. John Evans ATYA-MILLS
President and Commander in Chief
of the Republic of Ghana

H.E. Malam Bacai SANHA
President
of the Republic of Guinea Bissau

H. E. Mrs. Ellen JOHNSON-SIRLEAF
President of the Republic of Liberia

H. E. Dr. Badara ANOU-MACALOU
Minister of Malians in the Diaspora and
African Integration
For and on behalf of the President
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Acting President,
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H. E. M. Abdoulaye WADE
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H. E. Ernest Bai KOROMA
President of the Republic of Sierra Leone

H. E. Mr. Koffi ESAW
Minister of Foreign Affairs and Regional Integration
For and on behalf of the President of the Togolese Republic