



**EIGHTY-SEVENTH ORDINARY SESSION OF THE COUNCIL OF MINISTERS**

Abuja, 9-10 December 2021

**REGULATION C/REG.22/12/21 ON THE RULES ON LENIENCY AND IMMUNITY  
PROCEDURES IN COMPETITION WITHIN ECOWAS**

**THE COUNCIL OF MINISTERS,**

**MINDFUL** of Articles 10, 11 and 12 of the ECOWAS Treaty as amended, establishing the Council of Ministers and defining its composition and functions;

**MINDFUL** of the Supplementary Act A/SA.01/12/08 adopting the Community Competition Rules and their implementing rules;

**MINDFUL** of the Supplementary Act A/SA.02/12/08 establishing the ECOWAS Regional Competition Authority, its powers and functions;

**MINDFUL** of the Supplementary Act A/SA.03/12/08 adopting Community rules on investment and their implementation within ECOWAS;

**MINDFUL** of the Supplementary Act A/SA.3/12/21 relating to the amendment of the Supplementary Act A/SA. 2/12/08 on the establishment, functions and operation of the ECOWAS Regional Competition Authority;

**CONSIDERING** that the rules of competition in the functioning of the market may be violated by anti-competitive practices thus affecting the regular functioning of the market;

**CONSIDERING** that transparency in competition matters requires an adequate legal framework, as well as the establishment of procedures aimed at protecting the actors who contribute to the proper conduct of investigations and all procedures aimed at preserving free competition;

**AWARE** that the adoption and implementation of leniency rules and procedures are necessary to promote transparency in competition in the regional market;

**DESIROUS** of amending the Supplementary Act A/SA.2/12/08 on the Establishment, Functions and Operation of the ECOWAS Regional Competition Authority to align its provisions with international and regional standards and best practices in competition matters;

**ON THE RECOMMENDATION** of the meeting of Ministers in charge of Trade held on 25 November 2021;

**AFTER THE OPINION OF THE PARLIAMENT** at its Second Ordinary Session held in Abuja from 30<sup>th</sup> November to 18<sup>th</sup> December 2021.

**HEREBY ENACTS:**

**Article 1: Purpose**

- 1). This Regulation lays down the conditions, rules and procedures for leniency and immunity, under which non-prosecution or a reduction of the applicable sanction/penalty may be granted.
- 2). It also serves as a guide for ERCA in the exercise of its investigative and prosecutorial discretion with regard to participants in illegal cartels who, through their cooperation, help to reveal these practices.

**Article 2: Definitions and Scope**

- 1). For the purposes of these Rules, the following definitions apply:

a. leniency means that a person, undertaking or group of persons involved in a cartel/illegal agreement may benefit from a reduction of any fine for disclosing information on illegal practices and agreements to ERCA;

b. immunity: the fact that ERCA may waive the imposition of a sanction on an undertaking or group of persons involved in a cartel/unlawful agreement because of its cooperation in the investigation of such practices.

- 2). The leniency/immunity rules apply to an undertaking or a group of persons, which carries out profit-making or remunerative activities and is involved in the practices concerned.

- 3). The leniency rules apply irrespective of whether the cartel/illegal agreement takes place within or outside ECOWAS, as long as the practice has an effect on the ECOWAS regional market.

**Article 3: Conditions for Leniency and Immunity**

- 1). An undertaking or person shall be granted leniency if it fulfils the following conditions:

- a. Be involved in cartels/illegal agreements;
- b. Voluntarily report to the ERCA the unlawful cartels/illicit collusive practices;
- c. End its involvement in these practices;

- 2). The following are excluded from the benefit of leniency:

- a. Any employee or group of employees in the service of an enterprise involved in the cartels/illegal agreements;

b. Any person or undertaking not involved in the cartels/illegal arrangements;

c. Any person or undertaking whose disclosure was not made spontaneously.

3) The modalities for the implementation of the leniency and immunity program shall be determined by a manual of procedure on leniency and immunity program.

#### **Article 4: Leniency or immunity procedure**

The leniency or immunity procedure is a confidential procedure and is subject to the following formalities:

##### 1) Formalities required

Any natural or legal person wishing to benefit from leniency with the ERCA must submit a formal application to the ERCA with the following information

a. Company name, full address, name and status of the applicant

b. Facts of the case;

c. Commitment to cooperate fully and sincerely with the ERCA until the conclusion of the investigation.

##### 2) Admissibility of the application

The ERCA will ensure that the application complies with the requirements of these Rules.

##### 3) Consideration of the application

The ERCA considers the application and instructs the applicant to:

a. Provide all evidence, information and documents in its possession or control relating to any cartel-related activity

b. Terminate its participation in the alleged cartel immediately upon application<sup>1</sup>, except to the extent that its continued participation would, in the ERCA's view, be reasonably necessary to preserve the integrity of its inspections;

c) Cooperate truthfully and fully until the conclusion of the case; this includes in particular:

i. Providing the ERCA expeditiously with all relevant information and evidence in the possession or control of the applicant

ii. Making itself available to the ERCA to respond without delay to any request which the ERCA believes may contribute to the establishment of relevant facts;

iii. Making available to current and, where possible, former employees and Directors information for interviews with the ERCA;

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<sup>1</sup> In this paragraph 13, the term "application" means a marker application or a full leniency application (as appropriate).



- iv. Not destroying, falsifying or concealing relevant information or evidence;
- v. Not disclosing the facts or any part of the contents of the leniency application to other cartel members or to any third party, unless and to the extent explicitly authorised by the ERCA;
- vi. Must not have destroyed, falsified or concealed evidence that falls within the scope of the application; or
- vii. Must not have disclosed, directly or indirectly, the facts or any of the contents of the application it is considering, except to other competition authorities;
- viii. If the disclosures are oral, they must be substantiated by the leniency applicant. In these circumstances, the ERCA shall conduct further investigations.

#### **Article 5: Decision of the ERCA**

In the light of the file submitted, the ERCA shall take the following decisions:

##### 1) Leniency and immunity decision

Where the ERCA concludes that the application is well-founded, it grants leniency or immunity to the applicant. However, reductions granted to an applicant under leniency must not exceed 50% of the fine that would otherwise have been imposed.

##### 2) Decision to reject

- a. Where the ERCA concludes that the evidence provided is not sufficient, it will reject the leniency application;
- b. The ERCA terminates the leniency application procedure in case the leniency application is withdrawn or abandoned;
- c. However, the ERCA may open or continue an investigation on the basis of independently obtained information and documents or use them as evidence.

#### **Article 6: Entry into force**

This Regulation C/REG/.22 /12/21 shall enter into force on the date of its signing by the President of the Council of Ministers.

#### **Article 7: Publication**

This Regulation C/REG/. 22 /12/21 shall be published by the Commission in the Official Gazette of the Community within thirty (30) days of its signing.

It shall also be published by each Member State in its Official Gazette, within thirty (30) days of notification by the Commission.

**DONE AT ABUJA, THIS 10<sup>TH</sup> DAY OF DECEMBER 2021**



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**H.E SHIRLEY AYORKOR BOTCHWEY**

**THE CHAIRPERSON**

**FOR THE COUNCIL**