Rethinking Consumer Protection in Air Transport Services within the Single African Air Transport Market

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Abstract. Annex 6 to the Yamoussoukro Decision is commonly presented as the African counterpart of Regulation (EC) No 261/2004 on air passenger rights. That reading is, however, unduly narrow. This article argues that Annex 6 is not merely a passenger-protection regime, but the consumer-law dimension of the economic constitution of the Single African Air Transport Market (SAATM). Drawing on the travaux préparatoires, on the instrument's normative genealogy, on its substantive architecture and on its institutional setting, the study shows that the African regulation effects a twofold shift: it replaces the passenger with the broader category of the consumer and extends protection to the whole range of air transport services. This evolution turns consumer protection into an instrument for regulating the African air market. The article nevertheless brings out the limits of that construction. The expansion of substantive obligations is not matched by sufficient coordination with national laws, with the Montreal Convention or with African institutional mechanisms. The result is a substantively original but legally unfinished regime, whose effectiveness now depends on clarifying its normative environment and strengthening its enforcement mechanisms.

Keywords: SAATM; Annex 6; consumer protection; air transport; African integration.

Introduction

1. From passenger to consumer: a shift that changes the function of the regime. Consumer protection in air transport services is most often approached through the rights afforded to passengers when carriage is disrupted. This approach originates in the international regime of air carrier liability established by the Warsaw and Montreal Conventions,[1] while the specific rights afforded to passengers in cases of denied boarding, cancellation or long delay stem principally from the regulatory schemes developed in Europe[2] and North America. That development already reflects an enlargement of protection, yet it rests on a single logic: the repair or compensation of the consequences of a malfunction in air carriage. Africa has entered this movement along a path of its own.

2. Often presented as an African adaptation of Regulation (EC) No 261/2004 (the European Regulation) — on account of the similarities it shares with several of that instrument's compensation and assistance mechanisms — Annex 6 to the Yamoussoukro Decision, entitled

[1] *Montreal Convention*, arts 17, 19, 22 and 29; *IATA and ELFAA*, Case C-344/04 (ECJ, Grand Chamber, 10 January 2006) at paras 42–48. These paragraphs explain that the Montreal Convention establishes a regime of compensatory liability, whereas Regulation No 261/2004 institutes an autonomous regime of assistance and care for passengers, complementary to that of the Convention.

[2] This is notably the case of Regulation (EC) No 261/2004 (the European Regulation), which confers on passengers autonomous rights, detached from proof of damage in the sense of liability law: in the event of denied boarding, cancellation or long delay, the passenger enjoys rights to information, assistance, refund and compensation.

"Regulation on the Protection of Consumers of Air Transport Services" (the African Regulation), in fact belongs to a more complex normative trajectory, one born of the circulation, adaptation and gradual recomposition of several passenger-protection models before their integration into the SAATM. It thus invites us to move beyond a reading confined to comparison with the European model, and to ask instead what function consumer protection is meant to perform within the single African air transport market.

3. This shift is neither terminological nor incidental. Whereas the regimes flowing from the Warsaw and Montreal Conventions apprehend the passenger chiefly as the holder of rights tied to the performance of the contract of carriage, the Regulation replaces the single figure of the passenger with a broader category — that of the consumer — whose definition (Article 2) is transplanted directly from Directive 90/314/EEC, since repealed and replaced by Directive (EU) 2015/2302 on package travel.[3] The beneficiary of protection is no longer merely the person carried, but the consumer understood in his several capacities.[4] This enlargement of the beneficiary is matched by a corresponding widening of the material scope of protection.[5] Protection then extends beyond the mere handling of performance failures to embrace consumer information, price transparency and the consumer's safeguard against the operator's default.

4. The originality of the African Regulation thus lies less in the rights it confers than in the function it assigns to them. Consumer protection is no longer an end in itself; it becomes an instrument of regulation designed to accompany the construction of the African market. The question, accordingly, is no longer how faithful Annex 6 is to its European models, but how African law reorganises multiple borrowings into a normative architecture of its own — one that makes consumer protection the material counterpart of the building of the African market in air transport services. It is in the light of this functional transformation that this article proposes to reread Annex 6.

5. The origins of Annex 6: a normative trajectory in the service of liberalising the African skies. The African Regulation cannot be understood apart from the liberalisation process to which it belongs. Its emergence forms part of a normative trajectory begun by the Yamoussoukro Declaration of 7 October 1988, consolidated by the Yamoussoukro Decision of 14 November 1999,[6] carried forward by the first regional passenger-protection initiatives,[7] and

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[3] EC, Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours, [1990] OJ L 158/59, art 2(4), whose tripartite definition of the consumer (principal contractor, other beneficiaries, transferee) is taken up in Article 2 of Annex 6. Neither the UEMOA Regulation nor the CEMAC Regulation defines the consumer: both know only the passenger.

[4] On the embedding of consumer protection within a multilateral framework of guidance, prior to and distinct from the European model, see International Civil Aviation Organization, *ICAO Core Principles on Consumer Protection*, 2015, online: ICAO <www.icao.int/…/ICAO-CorePrinciples_EN.pdf>. Developed following the recommendation of the Sixth Worldwide Air Transport Conference (ATConf/6, Montreal, 18–22 March 2013) and endorsed by the 38th session of the Assembly, these principles (non-binding in scope) structure protection in three stages (before, during and after the journey) and invite States to take them into account in devising or revising their national regimes.

[5] Annex 6 no longer confines itself to organising the legal consequences of flight disruptions. It also regulates unfair commercial practices and information obligations, and imposes obligations on a wider set of air transport service providers, beyond the effective carrier alone.

[6] *Decision Relating to the Implementation of the Yamoussoukro Declaration concerning the Liberalisation of Access to Air Transport Markets in Africa*, adopted 14 November 1999, approved by the Assembly of Heads of State and Government of the OAU at Lomé in July 2000 and entered into force in 2002 [Yamoussoukro Decision]. Its arts 9.4 to 9.6 provide for the creation of an Executing Agency charged with supervising the liberalised market.

completed at continental level by the adoption of Annex 6 in 2017. Consumer protection in air transport services does not appear in Africa as an autonomous policy, but as one of the components of the gradual construction of the single African air transport market.[8]

6. The Yamoussoukro Decision does not yet establish a substantive consumer-protection regime. It lays down only the principle and entrusts implementation to a later instrument. While the Decision directly organises traffic rights, market-access rules and the institutional machinery required to give them effect, it defines neither the substantive rights of consumers, nor the obligations of service providers, nor the remedies needed to make them effective. It confines itself to charging the Executing Agency with safeguarding consumers' rights, leaving to a subsequent instrument the task of specifying their content.[9]

7. From Malabo to Addis Ababa: adoption, then entry into force. Acting on that mandate proved slow. Meeting in Malabo in April 2014, the African ministers responsible for civil aviation examined the draft annexes intended to complete the Yamoussoukro Decision;[10] for want of consensus, their finalisation was entrusted to a working group before the texts were settled by the Bureau of the Conference of African Ministers of Transport on 18–19 December 2014.[11] The annexes — Annex 6 among them — were adopted on 17 March 2017 in Lomé, by the first ordinary session of the African Union Specialised Technical Committee on Transport, Intercontinental and Interregional Infrastructure, Energy and Tourism.[12] Annex 6 presents itself

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[7] Alongside the continental construction, two Regional Economic Communities equipped Africa with air passenger-protection regimes well before the continental instrument. The West African Economic and Monetary Union adopts, at Ouagadougou on 20 March 2003, an eleven-article regulation instituting a right to standardised compensation in cases of denied boarding, cancellation and long delay: see Regulation No 03/2003/CM/UEMOA laying down the rules on compensation for denied boarding of passengers and for cancellation or long delay of a flight, done at Ouagadougou on 20 March 2003, arts 4, 6 and 7 [UEMOA Regulation]; in force on the date of signature (art 11). The Central African Economic and Monetary Community equips itself in turn, on 19 March 2007, with a regulation whose definitions, architecture and amounts reproduce those of the former — a kinship whose key is given by its own preamble, referring to a resolution adopted at Libreville on 2 December 2004 by the ministers responsible for civil aviation of the States of West and Central Africa: see Regulation No 06/07-UEAC-082-CM-15 laying down the air carrier liability regime for breaches of the rules on passenger boarding in the airports of CEMAC Member States, adopted in session on 11 March 2007, signed at N'Djamena on 19 March 2007, arts 1 and 5(2) [CEMAC Regulation]. The minimum compensation is set there at the same amounts as in the West African regulation — CFA 100,000 and 200,000 for flights not exceeding 2,500 kilometres, CFA 400,000 and 800,000 beyond, according to whether the passenger travels in economy or business class: compare UEMOA Regulation, art 4(2).

[8] See also Charles E Schlumberger, *Open Skies for Africa: Implementing the Yamoussoukro Decision* (Washington, DC: World Bank, 2010) at 9–27.

[9] Yamoussoukro Decision, arts 9.4 to 9.6, providing for the creation of an Executing Agency charged with supervising the liberalised market, promoting fair competition and protecting the rights of consumers. Charles E Schlumberger, *Open Skies for Africa: Implementing the Yamoussoukro Decision* (Washington, DC: World Bank, 2010) at 31–36, esp 36 (on the Executing Agency and consumer protection) and at 31–32 (on the elements of "policy implementation" still to be carried out).

[10] Third session of the Conference of African Ministers of Transport (CAMT), Malabo, April 2014; see Executive Council Decision EX.CL/Dec.826(XXV).

[11] Annex 6, preamble, which expressly refers to the work of the Bureau of the Conference of African Ministers of Transport, meeting at Malabo on 18–19 December 2014, and to Executive Council Decision EX.CL/Dec.826(XXV) endorsing the report of the third session of the Conference of African Ministers of Transport.

[12] Annex 6, preamble and entry-into-application clause.

as the execution of that mandate: its Article 3(1) provides that it "shall apply to the implementation of Article 9.6 of the Yamoussoukro Decision".[13]

8. Adoption, however, is not entry into force. Article 31 makes the latter conditional upon endorsement of the Regulation by the Assembly of Heads of State and Government,[14] which came at the thirtieth ordinary session of the Assembly of the African Union, held in Addis Ababa on 28–29 January 2018.[15] The timing is not immaterial: it was at that same session that the Heads of State formally launched the Single African Air Transport Market.[16] The entry into force of the consumer-protection regime and the launch of the single market thus proceed from one and the same institutional act — a sign that consumer protection was conceived not as an adjacent policy but as a condition of the liberalised market's operation.[17]

9. Schlumberger confirms this reading, treating consumer protection as one of the institutional components required to complete the implementation of the Yamoussoukro Decision, and stressing that the Executing Agency is to promote fair competition and consumer protection alike.[18] On this view, Annex 6 appears less as the belated addition of a social policy than as the normative realisation of a requirement already inscribed in the legal architecture of African air transport liberalisation.

10. This trajectory results from the convergence of two distinct dynamics. On the one hand, the Yamoussoukro Decision already linked consumer protection to the objectives of liberalisation, without, however, establishing any genuine substantive regime.[19] On the other, even before the adoption of Annex 6, two Regional Economic Communities had already established passenger-protection regimes: UEMOA, by Regulation No 03/2003/CM/UEMOA (Ouagadougou, 20 March 2003), and CEMAC, by Regulation No 06/07-UEAC-082-CM-15 (N'Djamena, 19 March 2007) — both derived from a common European matrix, Regulation

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[13] Ibid, art 3(1). The French version renders this provision as "Le présent Règlement régit l'application de l'article 9.6 de la Décision de Yamoussoukro": Annex 6 (Fr), art 3(1). The divergence is not immaterial: where the English situates the Regulation within the scope of Article 9.6, the French assigns it a regulatory function over its implementation. The provision that founds the legal title of the whole regime thus does not have the same reach depending on the version consulted.

[14] Annex 6, art 31 ("This Regulation shall enter into force immediately following its endorsement by the Assembly of Heads of State and Government").

[15] African Union, Decision [Assembly/AU/Dec.676(XXX)], adopted by the thirtieth ordinary session of the Assembly of the African Union, Addis Ababa, 28–29 January 2018.

[16] African Union, *Establishment and Launching of a Single African Air Transport Market (SAATM)*, press release, Addis Ababa, 28 January 2018; and Assembly/AU/Dec.665(XXX), *Decision on the Establishment of a Single African Air Transport Market*, 30th ordinary session of the Assembly of the African Union, Addis Ababa, 28–29 January 2018, Doc EX.CL/1067(XXXII).

[17] These instruments correspond to the regulations adopted at Lomé on 17 March 2017 in implementation of the Yamoussoukro Decision: Annex 3 (Dispute Settlement Mechanism), Annex 4 (Regulation on the Powers, Functions and Operation of the Executing Agency of the Yamoussoukro Decision), Annex 5 (Regulation on Competition in Air Transport Services in Africa) and Annex 6 (Regulation on the Protection of Consumers of Air Transport Services) — only the last being the object of the present study.

[18] Charles E Schlumberger, *Open Skies for Africa: Implementing the Yamoussoukro Decision* (Washington, DC: World Bank, 2010) at 14, 32 and 36.

[19] Yamoussoukro Decision, art 9.6 and the appendices relating to the Executing Agency; see also Charles E Schlumberger, *Open Skies for Africa: Implementing the Yamoussoukro Decision* (Washington, DC: World Bank, 2010) at 31–36, esp 36 (on the Executing Agency and consumer protection) and at 31–32 (on the elements of "policy implementation" still to be carried out).

(EEC) No 295/91, distinct from the one to which Annex 6 belongs.[20] Annex 6 arises precisely from the joining of these two movements: the institutional construction of the single African market, and the circulation and subsequent recomposition of passenger-protection models.

11. This trajectory shows that Annex 6 is neither the starting point of consumer protection in Africa nor the mere transposition of a European model. It is the meeting point of distinct institutional and normative developments, whose combination accounts for the originality of the continental regime.[21] That reading shifts the very object of analysis. Annex 6 should no longer be studied as a mere African passenger-protection regime, but as one of the legal instruments through which the single African air transport market is constituted. It is this change of perspective that renews its interpretation.

12. A scholarship still marked by a sectoral reading. This change of perspective has not yet truly been absorbed by the scholarship. Consumer protection in air transport services has generated, in the European and North American legal orders, a now mature body of literature. Regulation (EC) No 261/2004 has nourished a considerable body of writing, ranging from article-by-article commentary[22] to economic analysis, which moves beyond the compensatory conception to view passenger rights as an instrument of regulation — capable of improving service quality as much as of producing perverse effects where incentives are poorly calibrated. More recently, scholars have also addressed the interaction of these regimes with the Montreal Convention,[23] a question revived by the Supreme Court of Canada's judgment in *IATA v Canadian Transportation Agency*.[24]

13. The African literature has followed a different path, focused on liberalisation, market access,[25] competition among carriers,[26] the economic gains of opening up[27] and the place of airlines in the integration process; consumer protection there is most often treated as an expected benefit of liberalisation rather than as an autonomous object of study. Even where that scholarship takes it up, it continues to use "passenger" and "consumer" as synonyms — an assimilation that Annex 6 precisely rejects, by separating the two categories and extending the status of consumer to persons who are not necessarily passengers.[28] This twofold orientation

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[20] UEMOA Regulation No 02/2003/CM/UEMOA, above; CEMAC Regulation No 06/07-UEAC-082-CM-15, above; on their normative kinship, see in particular the citations and preamble of the CEMAC regulation, which refer to the resolution adopted at Libreville on 2 December 2004 by the ministers responsible for civil aviation of the States of West and Central Africa.
[21] Regulation No 03/2003/CM/UEMOA laying down the rules on compensation for denied boarding of passengers and for cancellation or long delay of a flight, done at Ouagadougou on 20 March 2003, arts 4, 6 and 7 [UEMOA Regulation]; in force on the date of signature (art 11).
[22] Jérémy Heymann, *Règlement (CE) n° 261/2004 sur la protection des passagers aériens : commentaire article par article* (Brussels: Bruylant, 2021).
[23] See Haanappel [citation to be completed].
[24] *International Air Transport Association v Canada (Transportation Agency)*, 2024 SCC 30.
[25] Tassew Dufera Tolcha, "Competition in the African Air Transport Market" (2024) 27 Transportation Research Interdisciplinary Perspectives 101209 at 1–2.
[26] Eric Tchouamou Njoya & Aliyu Buhari Isah, "Assessing the Economic Impact of the Single African Air Transport Market: The Case of Tanzania" (2023) 101 Research in Transportation Economics, art 101351 at 2–4 (literature review).
[27] Tabisa N Tshetu, Rose Luke & Jackie Walters, "The Role of African Airlines in Air Transport Liberalisation" (2023) 17 J Transport & Supply Chain Management a925.
[28] Annex 6, art 2 (definition of "Consumer").

explains why Annex 6 continues to be analysed either as an extension of passenger law or as a mere accompaniment to liberalisation, without its own function within the architecture of the SAATM being genuinely examined. Where that scholarship compares national laws with one another, Annex 6 raises the question of the relationship between a continental instrument and the regional regimes that preceded it.

14. A twofold gap, doctrinal and textual. The work closest to the present subject is that of Adejoke O. Adediran, who usefully brings out the regulatory convergence of African consumer-protection regimes.[29] Her analysis rightly credits the interweaving of consumer protection and competition regulation, and documents the convergence of national frameworks. Her study remains centred, however, on the horizontal harmonisation of laws; it reconstructs neither the normative trajectory of Annex 6, nor its successive borrowings from European models, nor its function as an instrument in the material constitution of the single market. The present study lies on a different plane. The problem is not only one of the horizontal convergence of national laws; it is one of vertical and functional legal integration — that is, of the coordination of the continental regime with the surrounding normative orders, and of the institutional conditions of its uniform application. It is this dimension, distinct from the convergence of domestic laws, that Annex 6 leaves unfinished. From this a twofold gap follows. Doctrinal, first: to our knowledge, very few studies have considered Annex 6 as an autonomous consumer regime, endowed with concepts of its own and analysable independently of the debates on liberalisation. Textual, next: no research has undertaken the systematic analysis of its language versions or the comparison of its successive documentary states — thus Article 2, where the French renders by a single word, "bénéficiaire", two figures that the English keeps apart — even though these divergences are a privileged indicator of the text's conceptual hesitations. It is this twofold gap that the present study seeks to fill.

15. Three cardinal notions, three asymmetrical treatments. The existence of a legal regime depends less on the accumulation of the rights it proclaims than on the coherence of the categories that structure it. The regime rests on three cardinal notions — the consumer, air transport services and protection — which determine, respectively, its beneficiary, its object and its purpose. Yet these three notions are not handled according to the same logic: the first is defined,[30] the second remains largely indeterminate,[31] and the third is grasped only through the objectives assigned to it.[32] The question, therefore, is no longer how each is defined, but whether together they are capable of forming a genuine legal regime — one able to order the rights it confers and to inscribe them within the project of liberalisation and integration carried by the Yamoussoukro Decision and the Single African Air Transport Market. Article 9.6 of that

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[29] Adejoke O Adediran, "Regulatory Convergence of Consumer Protection in the SAATM" (2022) 47:4-5 Air & Space L 427.

[30] The consumer is defined — but by an express and ill-calibrated definition, transplanted as such from the European law of package travel, whose three figures (the principal contractor, the other beneficiaries, the transferee) sit uneasily with the scheme of air transport. Cf Annex 6, art 2 ("Consumer"); cf Directive 90/314/EEC, art 2(4).

[31] Air transport services are not defined: the Regulation, which none the less makes them its object, leaves their content to be reconstructed, the corresponding entry of its Article 2 opening with a "means" left without continuation. Cf Annex 6, art 2 (entry "Air transport services", "means" left without continuation).

[32] Protection, finally, is neither defined nor even named for itself: it is grasped only through the objectives assigned to it — to guard the consumer against unfair treatment and against a failure of information. A notion defined, a notion presupposed, a notion left unsaid: this gradation does not reflect an uneven drafting attention.

Decision charged the executing body with safeguarding consumers' rights; Annex 6 purports to carry that mandate into effect.

16. These asymmetries lead to a central question: does Annex 6 to the Yamoussoukro Decision order into a legally coherent regime the rights it confers on the consumer of air transport services and, failing that, what normative and institutional conditions does such coherence presuppose within the Single African Air Transport Market?

17. An original regime: protective in its statements, unfinished in its architecture. Annex 6 does not confine itself to transposing foreign models: it builds an original African regime, one that extends protection beyond the passenger to the whole chain of air transport service providers and is conceived as a condition of market integration. Yet it sets out the protective statements without completing the architecture: a mis-calibrated beneficiary, an undefined object, a merely teleological notion of protection, no coordination with the Montreal Convention, and the predominance of administrative complaint mechanisms. This incompleteness does not condemn the regime; it calls for its doctrinal reconstruction, so as to restore the systemic coherence that its letter does not yet manage to express.

18. Cross-version textual analysis as a contribution. The study rests on a textual and comparative analysis of Annex 6. It takes as its reference text the English version adopted in Lomé on 17 March 2017, the French version being used as a control text.[33] To these two states is added, heuristically, the realigned version of the African Union regulations, wherever it sheds light on a drafting hesitation. Thus the very definition of "air transport services" leaves standing, in the English version, a "means" with no real normative content, while other provisions alter the status of the beneficiaries depending on the version consulted. These divergences are therefore treated not as mere imperfections of translation, but as an object of analysis revealing the text's conceptual hesitations. The analysis is finally conducted in comparative perspective, against the European regime (Regulation (EC) No 261/2004 and its accompanying case law), the North American and Canadian regimes, and the uniform law of the Montreal Convention.[34] This comparison is not meant to measure the African regime against an imported model, but to test the originality it claims: it serves to distinguish what Annex 6 borrows from what it invents, and to situate its solutions within the state of international air transport law to which the same flights remain subject.

19. Building, testing, reconstructing. This article does not set out to offer an exhaustive commentary on the substantive rights conferred by Annex 6. It seeks to reconstruct the legal architecture of the protective regime the instrument establishes. The various rights and obligations will therefore be examined only in so far as they illuminate that reconstruction. The demonstration thus follows the very path by which a legal regime claims to exist. It first establishes what Annex 6 builds: the substantive construction of a consumer regime proper to the Single African Air Transport Market, through the identification of its beneficiary, its object, the substantive content of the rights conferred on the consumer, the duty-bearers who owe the corresponding obligations, and the economic purpose of the whole (I). It then tests that

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[33] This choice is not one of convenience: English is the language in which the regime was negotiated and the one in which several of its notions (first among them the *consumer*, transplanted from an English-language European instrument) alone find their meaning.

[34] Montreal Convention, art 29 (principle of exclusivity).

construction, showing that, for all its substantive ambition, the regime remains legally unfinished: Annex 6 organises neither its insertion into the African and international normative environment, nor the procedural guarantees, nor the institutional architecture indispensable to its uniform application and to the unification of its interpretation (II).

I. A Substantive Consumer-Protection Regime for the African Air Transport Market

20. Annex 6 builds a new substantive regime by successively redefining the beneficiary of protection (A), its object (B), the substantive content of the rights conferred on the consumer (C), the duty-bearers who carry the burden (D) and the economic purpose assigned to that protection (E).

A. The Beneficiary: From Passenger to Consumer — a Functional Expansion Undercut by a Transplanted Definition

21. The consumer as a functional figure of the air market: who is protected? - The first mark of Annex 6's originality lies in its choice of a different category: the consumer. The substitution reveals a change of function. The text no longer seeks merely to protect a person when carriage fails; it organises the conditions under which a person turns to an air service within a liberalised market. Its Article 4 requires States Parties to secure the protection of consumers of air transport services:[35] the text addresses not only passengers who fall victim to an incident, but consumers in their overall relationship with service providers. Protection indeed operates before carriage is performed — information supplied, conditions of sale, practices liable to influence the consumer's economic decision — so that the consumer is protected not merely as a traveller, but as an economic actor.

22. A transplanted consumer: an ill-adapted European category. - Annex 6 does not build a new category: it defines the consumer out of a pre-existing one, drawn from package-travel law. Its Article 2 frames the consumer around three figures — the principal contractor, the other beneficiaries and the transferee:

> *"the person who takes or agrees to take the package (the principal contractor), or any person on whose behalf the principal contractor agrees to purchase the package (the other beneficiaries), or any person to whom the principal contractor or any of the other beneficiaries transfers the package (the transferee)".*[36]

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[35] Regulation on the Protection of Consumers of Air Transport Services, Annex 6 to the Yamoussoukro Decision, adopted at Lomé on 17 March 2017, English version, art 4 [Annex 6].
[36] Annex 6, art 2.

23. This definition reproduces, almost to the letter, Article 2(4) of Directive 90/314/EEC, which defined the consumer as

> *« la personne qui achète ou s'engage à acheter le forfait (le contractant principal), ou toute personne au nom de laquelle le contractant principal s'engage à acheter le forfait (les autres bénéficiaires), ou toute personne à laquelle le contractant principal ou l'un des autres bénéficiaires cède le forfait (le cessionnaire) ».*[37]

24. The correspondence is not merely one of the idea of protection: it goes to the very structure of the category — the same figures, the same articulation, the same anchoring in the logic of the package, understood by the Directive as the combination of at least two services exceeding twenty-four hours or including overnight accommodation.[38] Annex 6 does not, then, draw inspiration from European law: it transplants a determinate construction from it. The transplant is doubly revealing. First, by the time Annex 6 was adopted in 2017, Directive 90/314 was on the way to repeal, replaced by Directive (EU) 2015/2302 with effect from 1 July 2018.[39] The African Regulation thus received a European model that the Union was itself about to abandon.

25. Second, resort to a foreign category is not in itself open to criticism: the difficulty lies less in the borrowing than in the adaptation of the transplanted category to a new function. That difficulty is explained by the ordinary phenomenon of the circulation of norms, which Watson made the principal engine of legal change. From it he draws the *transplant bias*: a system borrows a solution because it is available, prestigious and accessible within a tradition it shares, not because it has judged it the best.[40] This lens accounts for the near-literal reception of the Directive 90/314 definition by the drafters of Annex 6. The fact remains that the category, designed to identify the beneficiaries of a tourist package, is now deployed to govern air transport services within an integrated market: hence a mismatch between the economic function assigned to the consumer and the legal structure chosen to define him.

26. This mismatch is one that the theory of legal transplants helps to analyse: a form may travel without its meaning following. For Legrand, that culturally situated meaning does not survive the move — *"a crucial element of the ruleness of the rule ... its meaning ... does not survive the journey"*;[41] so it was with the public/private distinction, imported into English law from French law in *O'Reilly v Mackman* and then domesticated until it no longer coincided with its source.[42][43] Without embracing that thesis in its radical form — the term-for-term replication attests that a transplant did take place — one may retain that form travels more easily than

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[37] EC, Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours, [1990] OJ L 158/59, art 2(4) [Directive 90/314].
[38] Ibid, art 2(1) (a package is the combination of at least two services exceeding twenty-four hours or including overnight accommodation).
[39] EC, Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, [2015] OJ L 326/1 (repealing Directive 90/314 with effect from 1 July 2018).
[40] Alan Watson, *Legal Transplants: An Approach to Comparative Law*, 2nd ed (Athens, Ga: University of Georgia Press, 1993); Watson, "Comparative Law and Legal Change" (1978) 37:2 Cambridge LJ 313 at 326–327.
[41] Pierre Legrand, "The Impossibility of 'Legal Transplants'" (1997) 4 Maastricht J Eur & Comp L 111 at 123–124.
[42] Pierre Legrand, "The Impossibility of 'Legal Transplants'" (1997) 4 Maastricht J Eur & Comp L 111 at 120, and at 118–119 (*O'Reilly v Mackman*, [1982] 3 All ER 1124 (HL)).
[43] Ibid.

meaning: Watson himself concedes as much, likening the transplanted rule to a tomato plant replanted in another soil, whose graft takes but which is no longer the same.[44]

27. The form was transplanted; the meaning did not follow. The question then becomes one of the effects this dissociation produces in the receiving legal order. Teubner, for his part, rejects the very metaphor of the transplant: the imported rule *"can only serve as an irritation, and never as a transplantation"*.[45] These analyses converge on a point that Article 2 makes visible: the transplanted definition of the consumer is not absorbed without remainder; it introduces a tension. But, as Svetiev establishes in his synthesis of transfers of the European consumer acquis, the fate of a transplant is settled not at the drafting stage — the *ex ante* tailoring of the imported rule being undecidable — but in the existence of institutions of contestation in which the received law is domesticated through practice.[46] The ill-fit of the consumer definition is therefore not fatal in itself; it becomes so only in the absence of a body capable of stabilising its interpretation. It is that absence, far more than any drafting clumsiness, that will seal the regime's incompleteness.[47]

28. Function and definition pulled apart: a hybrid consumer. - This tension surfaces in the scheme of Annex 6, which wavers between two figures: the consumer as a general category of market protection, and the passenger as the concrete beneficiary of carriage-related rights. Article 2 defines the consumer, yet the provisions on scope and on protective mechanisms continue, in large part, to operate around the passenger faced with a disruption of the journey.[48] The category is thus at once expansive and restrictive: expansive, because the inclusion of the *other beneficiaries* and the *transferee* reaches beyond the person who concluded the contract of carriage and captures several forms of economic participation in the service; restrictive, because its wording remains tied to the vocabulary of the *package*, whereas the regime addresses air transport services more broadly.

29. The divergence between the language versions aggravates this fragility. Where the English clearly distinguishes the *other beneficiaries* from the *transferee*, the French uses the term "bénéficiaire" for two distinct legal positions: it calls the second figure "les autres bénéficiaires" and then the third — the one the English designates as the *transferee* — "le bénéficiaire".[49] Directive 90/314 had, however, offered in French the term "cessionnaire", apt to distinguish the assignment of the package from the other forms of benefit. Its disappearance from the French version of Annex 6 is no mere translation slip: it deprives the text of the capacity to separate two legally different situations and enacts, within a single provision, the very loss of meaning that Legrand foretold.

30. Analysis of the beneficiary thus reveals the first tension in Annex 6. The text carries a new ambition: to protect no longer merely a traveller faced with a disruption of carriage, but a consumer embedded in a market for services, by means of a category inherited from a different normative universe. The consumer functionally replaces the passenger, yet remains an imperfect

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[44] Alan Watson, *Legal Transplants and European Private Law* (Belgrade: Alan Watson Foundation, 2006) at 2 and 10.
[45] Gunther Teubner, "Legal Irritants: Good Faith in British Law or How Unifying Law Ends Up in New Divergences" (1998) 61:1 Mod L Rev 11 at 12, 28.
[46] Yane Svetiev, "How Consumer Law Travels" (2013) 36:3 J Consumer Pol'y 209 at 210 and 228–229.
[47] On the absence of a body of interpretive unification, see below, Part II.C.
[48] Annex 6, arts 2 and 3.
[49] Ibid, French version, art 2 [Annex 6 (Fr)].

transplant. If the beneficiary now reaches beyond the figure of the passenger, it must next be asked whether the object of protection likewise reaches beyond the flight alone.

B. The Object of Protection: From Air Transport Services to the Construction of the Market

31. From "air service" to "air transport services": what is protected?. - The subjective expansion of the protective regime established by the African Regulation is matched by an objective expansion,[50] inscribed in the very title of the Regulation (Article 1). Paradoxically, the announced object is not defined, even though "air transport services" is the material anchor of the whole regime. That absence of definition compels one to seek its content in the instruments to which the Regulation is directly connected. As an annex to the Yamoussoukro Decision, Annex 6 must first be interpreted in the light of the latter. It must therefore be ascertained whether the Decision supplies an autonomous definition of air transport services or, failing that, the elements from which their content may be reconstructed.

32. The Yamoussoukro Decision does not define "air transport services" any more than Annex 6 does. It merely cross-refers, for the notions of "air service" and "air transport undertaking", to the definitions in Article 96 of the Chicago Convention. That cross-reference is the starting point of interpretation, but it does not, on its own, determine the content of the notion adopted by Annex 6.

33. That cross-reference has a first limitation. Article 96 of the Chicago Convention defines the "air service", not the "air transport services" to which Annex 6 refers. Whereas the definition of "air service" in Article 96(a) covers the scheduled service, the Yamoussoukro Decision expressly organises the gradual liberalisation of scheduled and non-scheduled intra-African air transport services and recognises the free exercise of traffic rights for both categories of flight.[51] This first limitation is not the only one. The Chicago Convention governs chiefly the inter-State relations of air navigation, whereas Annex 6 governs an economic relationship between consumers and service providers. This difference of purpose is reflected, moreover, in the terminology adopted. Where the Chicago Convention refers to the "air service", Annex 6 uses the expression "air transport services" — telling of an approach oriented towards the service supplied to the consumer.

34. The service is thus no longer envisaged merely as an activity of movement by aircraft, but as a service offered to a user on a market. The Decision already, then, moves beyond the framework of the conventional definition to which it refers.

35. Beyond the flight. The scheme of Annex 6 confirms that its object exceeds the material act of carriage. The text governs commercial practices, information supplied to the consumer,

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[50] Annex 6 to the Yamoussoukro Decision, art 1 (title), art 3 ("Scope of application"), art 4 ("Objectives and principles"), art 7 ("Obligations of service providers").

[51] Decision Relating to the Implementation of the Yamoussoukro Declaration concerning the Liberalisation of Access to Air Transport Markets in Africa, 14 November 1999, ECA/RCID/CM.CIVAV/99/RPT, Annex I [Yamoussoukro Decision], arts 1, 2 and 3.1. Article 1 refers to Article 96 of Chicago and separately defines "scheduled and non-scheduled services"; Article 2 addresses the gradual liberalisation of scheduled and non-scheduled intra-African services; Article 3.1 recognises the free exercise of traffic rights for scheduled and non-scheduled flights of passengers, cargo and mail.

means of communication, payments, refunds, re-routing and compensation.[52] Above all, its Article 7 subjects to the regime's obligations — besides airlines — tour operators, travel agents, airport operators, air navigation service providers, in-flight catering providers and ground-handling companies.[53] This enumeration would be inexplicable if the object of protection were confined to the flight. These operators do not all perform the carriage, but they contribute to producing the service as the consumer buys and experiences it. Article 7 is invoked here not to determine the extent of each actor's liability, but as an indication of the regime's material scope.

36. A reconstructed category. - It is therefore possible to reconstruct the notion of "air transport services", for the purposes of this study, as denoting the whole of the scheduled or non-scheduled services of public carriage of passengers, cargo or mail by aircraft, together with the commercial, airport, technical and organisational services directly connected with their marketing, preparation, performance or completion, in so far as these are liable to affect the rights conferred on the consumer by Annex 6.[54] This proposal is not a legal definition, but a reconstruction made necessary by the silence of the text. It allows one to set aside both an unduly narrow conception, confined to the flight, and an excessive one, embracing every aeronautical activity. The object of protection thus appears as a functional chain of services. Since that chain is produced by a plurality of actors, the analysis must move from the object of the regime to its duty-bearers.

37. This reconstruction confirms that Annex 6 no longer takes as its object air transport considered merely as movement by air. It now apprehends the whole chain of services on which the consumer's experience depends. This expansion of the material scope leads naturally to the content of the rights the regime confers on the consumer.

C. The Substance of Protection: The Consumer's Substantive Rights

38. Rights arising from travel disruption: which rights are conferred?. - The first set of rights takes up and extends the acquis of the European model. In the event of denied boarding, cancellation or long delay, the consumer enjoys a right to information — as to his rights and as to the identity of the effective carrier — a right to assistance (refreshments, accommodation, communications), a right to re-routing or refund, and a right to standardised compensation.[55] That compensation is quantified: it is expressed in dollars according to the duration of the flight, from 250 to 600 US dollars, around thresholds of three and six hours.[56] Overbooking and downgrading

[52] Annex 6, arts 5–6, 10–13 and 21–23. These provisions cover, respectively, the interruption of services and the protection of payments; unfair or misleading practices; means of communication and consumer information; and the rights to refund, re-routing and compensation.

[53] Annex 6, art 7. The French version refers to "les compagnies aériennes, les tour-opérateurs, les agents de voyage, les exploitants d'aéroports, les prestataires des services de navigation aérienne, les personnes chargées du commissariat de bord et les sociétés d'assistance en escale".

[54] This definition is a reconstruction drawn from arts 2, 3(2), 4, 5 and 7 of Annex 6, from art 96 of the Chicago Convention and from arts 1, 2 and 3.1 of the Yamoussoukro Decision. It does not purport to reproduce a positive definition absent from Annex 6.

[55] Annex 6, arts 15 to 23 (rights in cases of denied boarding, cancellation and delay: information, assistance, care, re-routing or refund, compensation).

[56] Annex 6 to the Yamoussoukro Decision, art 16(5)(c) ("Offer by Internet" / "Offre par Internet"), the numbering being that of the official text adopted at Lomé.

give rise to distinct, equally determinate rights. This is the point of maximum precision in the text — and the contrast with the imprecision of the notions analysed above is striking: where the definition of the consumer wavered between two figures, the compensation scale leaves no margin whatever.

39. Annex 6's own reach: beyond Regulation 261/2004. - The second set exceeds the European model and forbids reducing Annex 6 to an incomplete transposition of Regulation 261/2004. The text also protects the consumer against unfair commercial practices and discrimination,[57] and imposes obligations specific to the whole chain of providers — travel agents, tour operators, consolidators, airport operators, air navigation service providers and ground-handling companies.[58] To compare Annex 6 with Regulation 261/2004 alone would make it appear, wrongly, an incomplete European system; in reality it covers a wider field, in which the protection of the disrupted passenger is but one element among others.

40. Two provisions warrant particular mention, one for its originality, the other for the commitments it carries. The consumer's financial protection against the operator's failure or insolvency — the right to restitution of a service paid for but not performed — is potentially the most original provision of the text, in that it shifts protection from repair to the prevention of economic risk.[59] Its full analysis, which calls for comparison with travel-guarantee funds and payment-segregation mechanisms, is reserved.

41. This catalogue, dense and at times remarkably precise, brings out a first paradox. Annex 6 determines with care the rights it confers on the consumer, even as the identification of the operators who must actually answer for them remains outstanding. The rights being now identified, it remains to determine the duty-bearers on whom the regime places the burden.

D. The Duty-Bearers of Protection in the SAATM: From a Status-Based to a Function-Based Test of Attribution

42. A functional test of attribution: who bears the obligations?. - The enlargement of both the beneficiary of protection and the object of the regime necessarily entails a transformation of the duty-bearers. The test for designating the debtor no longer rests on the status of carrier alone: it now depends also on the function each operator performs in supplying the service. Article 7 subjects to the regime, besides the airlines, all of those same operators.[60] The inclusion of actors who do not perform the carriage shows that the debtor is no longer determined by formal status, but by effective participation in the supply of the service. Such a reading finds an echo, by

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[57] Ibid, art 6 (unfair commercial practices) and art 9 (non-discrimination). Article 9(1) of the English version prohibits, in particular, discrimination on grounds of "race", a reference that disappears in the official French version.

[58] Ibid, art 7 (travel agents, tour operators, consolidators, airport operators, air navigation service providers, ground-handling companies).

[59] Annex 6, art 5(1)–(3). The article prohibits airlines, travel agencies, consolidators and package-travel organisers from accepting a payment without insurance cover enabling performance of the contract in the event of an interruption of services, and charges the Executing Agency with establishing a framework for mitigating consumers' losses. Insolvency is one possible instance of failure, but is not expressly targeted by the text.

[60] Annex 6, art 7. The chapeau enumerates the providers subject to the obligations: airlines, tour operators, consolidators, travel agents, airport operators, air navigation service providers, caterers and ground-handling companies. The French version omits the consolidators (consolidator), present in the English version.

analogy, in the case law of the Court of Justice on the European Regulation: interpreting the notion of the effective carrier, the Court holds that this is the carrier who decides to operate a given flight, sets its itinerary and assumes operational responsibility for it — the status of debtor being thus attached to the effective exercise of the carriage function rather than to ownership of the aircraft or to internal agreements between carriers.[61]

43. The logic of the indemnity chain was not born with Annex 6. As early as 2003, the UEMOA regulation on compensation for denied boarding, cancellation and delay already provided, in the particular setting of package travel, a mechanism whereby the air carrier indemnifies the tour organiser, who in turn indemnifies the passenger.[62] This solution was taken up by the 2007 CEMAC regulation, whose preamble reveals a common West- and Central-African matrix settled at Libreville on 2 December 2004.[63] These texts thus display the structure of the first-generation European model, derived from Regulation (EEC) No 295/91, which predates Regulation (EC) No 261/2004.[64]

44. From an indemnity chain to an architecture of liability allocation. - Unlike the UEMOA and CEMAC regulations, whose indemnity mechanism remained confined to the relations between the carrier, the tour organiser and the passenger within package travel, Annex 6 enlarges the circle of operators subject to the regime and organises among them an architecture of liability allocation. It thus names actors hitherto absent from the regional instruments, such as airport operators, air navigation service providers and ground-handling companies. This enlargement of the circle of debtors is, however, only the first aspect of its originality. Annex 6 also organises the liability relations among these operators. Article 28 channels to the carrier the consumer's claim for delays, cancellations and overbooking resulting from the airline's own act or omission, while confining to defective services alone the direct obligation of the other providers towards the consumer — the latter bearing the burden of establishing their negligence

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[61] CJEU, 4 July 2018, *Wolfgang Wirth and Others v Thomson Airways Ltd*, C-532/17, ECLI:EU:C:2018:527 [Wirth]. Interpreting Article 2(b) of Regulation 261/2004, the Court holds that a carrier which lets aircraft and crew on a "wet lease", without assuming operational responsibility for the flight, is not the operating (effective) carrier; the latter is the carrier who decides to carry out the flight and sets its itinerary (paras 34 to 41). The Court holds that the operating air carrier is the one that "decides to operate a particular flight, including to establish its itinerary" and that "the adoption of such a decision thus implies that the carrier is liable for the flight in question". The comparison with Article 7 of Annex 6 is drawn by analogy: the case law identifies a debtor by his function; it does not enshrine a plurality of debtors. For commentary, see Anca Roxana Bularca, "Considerations Regarding the EC Regulation No 261/2004 from the Perspective of the Protection of Passengers, but also of Air Transport Operators" (2021) 14:63 (special issue) Bulletin of the Transilvania University of Braşov, Series VII: Social Sciences & Law [first page] at 94–95.

[62] Regulation No 03/2003/CM/UEMOA laying down the rules on compensation for denied boarding of passengers and for cancellation or long delay of a flight, 20 March 2003, art 5 [UEMOA Regulation]. Entitled "Compensation within the framework of package travel", the article provides that the air carrier indemnifies the tour organiser, who in turn indemnifies the passenger.

[63] Regulation No 06/07-UEAC-082-CM-15 laying down the air carrier liability regime for breaches of the rules on passenger boarding in the airports of CEMAC Member States, adopted 11 March 2007, signed at N'Djamena on 19 March 2007, art 6 (package chain), preamble (common matrix settled at Libreville on 2 December 2004) [CEMAC Regulation].

[64] Council Regulation (EEC) No 295/91 of 4 February 1991 establishing common rules for a denied-boarding compensation system in scheduled air transport, [1991] OJ L 36/5. This regulation, and not Regulation 261/2004 (which is later), is the contemporaneous European model of the 2003 UEMOA regulation.

or carelessness and the causal link.[65] Where several providers have contributed to the same damage, they are jointly and severally liable on the conditions laid down in Article 28(5).[66] Article 29, finally, organises the internal relations among professionals by opening a right of recourse of the carrier against the other providers in the chain, and vice versa.[67]

45. Annex 6 does not, then, substitute a plurality of debtors for the carrier. It distinguishes the external relations, in which the carrier remains the principal debtor towards the consumer, from the internal relations among providers, where the economic burden of the damage is redistributed according to the rules of liability, joint-and-several liability and recourse laid down in Articles 28 and 29. This scheme — from the consumer to the carrier, and then from the carrier to the chain by way of recourse — is the distinctive feature of the continental text. The innovation therefore lies not in the indemnity chain itself, but in the legal organisation it confers upon it.

46. This conclusion implies no reproach to the drafters. The travaux préparatoires show that, in the absence of the national and regional instruments, the only text examined in detail was the Nigerian draft passenger charter. The regional acquis was thus not before them; it is, none the less, the term of comparison by which the specific contribution of Annex 6 can be precisely measured.[68]

47. An unfinished functionalization. - While the text substantially allocates responsibilities among operators, it does not always spell out the criterion of that allocation, nor does it equip itself with the institutional mechanisms to administer it. It is not spelled out, first, where it would be decisive: no provision of Annex 6 distinguishes the contractual carrier from the actual carrier, or addresses code-sharing, even though that configuration makes identifying the debtor particularly delicate.[69] It is not administered, next: the text allocates the obligations and lays down rules of attribution (channelling, joint-and-several liability and recourse) without instituting any authority to secure that attribution where several providers have contributed to the damage, or to guarantee uniform application from one State Party to another. The asymmetry is thus not that of a silent text: it sets a substantial allocation of responsibilities, now markedly developed, against an institutional governance that has remained unfinished. Such an allocation can fully produce its effects only if accompanied by an institutional mechanism able to secure both attribution and uniform application. But the identification of the duty-bearers illuminates more than the mere allocation of obligations: it reveals the function assigned to this protection within

[65] Annex 6, art 28(1) (channelling of the consumer's claim to the carrier for delays, cancellations and overbooking resulting from the airline's own act or omission), art 28(2)-(3) (direct obligation limited to defective services, the consumer having to prove the damage, the third-party provider's negligence or carelessness and the causal link).
[66] Annex 6, art 28(5). Where, by the effect of the Regulation, two or more providers are liable for the same damage, they are jointly and severally liable, without prejudice to national rules of contribution or recourse.
[67] Annex 6, art 29 ("Service providers' right of redress"). The article opens a right of recourse of the indemnifying carrier against the providers in the chain (travel agent, ground-handling, airport operator, navigation service provider, tour operator) and, reciprocally, a right of recourse of the latter against the carrier.
[68] Adejoke O Adediran, "Regulatory Convergence of Consumer Protection in the Single African Air Transport Market: How Far, How Well?" (2022) 47:4–5 Air & Space Law 427, esp at 429–431 (harmonisation of national legislation) and 431–433 (comparative analysis of the Annex 6 regime).
[69] No provision of Annex 6, in its French or English version, deals with code-sharing or with the distinction between contractual carrier and actual carrier. This finding results from an exhaustive check of the text: the only occurrences of the term "code" refer to the "flight code" (Annex 1) and the "postal code".

the general scheme of the single African market. It is that purpose which must now be spelled out.

E. The Purpose of the Regime

48. Consumer law as an instrument of market construction. - This purpose meets the function that scholarship ascribes to consumer law in processes of integration. As Ramsay has shown, consumer law is not reducible to the correction of contractual imbalances: it contributes to the very construction of the single market, of which it forms one of the instruments of regulation.[70] This is precisely the role that Annex 6 assigns to consumer protection within the single African market: not an external constraint imposed upon liberalisation, but the condition of its legitimacy and endurance. This reading is not a doctrinal construction imposed upon the text; it is anchored in the founding instrument itself, whose Article 9.6 charges the executing body with safeguarding the consumer's rights, making that safeguard a component of the economic constitution of the African air market.[71]

49. Article 4: a teleological definition of protection. - This dimension appears clearly in Article 4, which defines protection not by an enumeration of subjective rights but by the objectives it pursues: to guard the consumer against unfair treatment and against a failure to provide information on the services supplied.[72] The technique is telling: Article 4 answers less the question "what rights does the consumer have?" than the question "what economic function must protection perform?". The answer is the balance of the relationship between users and providers, a condition of the market's functioning. The informed consumer is no longer merely a protected subject; he becomes an economic condition of liberalisation.

50. Protection against economic failure. - The logic of market construction reaches beyond the repair of performance incidents. Article 5 offers its most original manifestation: by making the collection of payments conditional on the operator's holding sufficient financial protection, it targets a risk distinct from the disrupted flight — the economic loss flowing from the provider's failure or insolvency, and from the disappearance of a service already paid for.[73] Protection becomes prospective: it seeks to prevent economic risk even before non-performance. In this it meets the logic of package-travel law, where the financial guarantee protects the consumer independently of any non-performance.[74]

51. The collective dimension. - The purpose of market construction is legible, finally, in the collective dimension of the regime, which does not rest on the injured consumer's individual action alone but makes room for the intervention of collective and institutional actors — consumer associations, competent authorities, complaint-handling. A purely compensatory regime intervenes after the damage; a market-constituting regime seeks to identify and correct the

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[70] Ramsay, "Regulation and the Constitution", at 323–324, 326.

[71] Charles E Schlumberger, *Open Skies for Africa: Implementing the Yamoussoukro Decision* (Washington, DC: World Bank, 2010) at 14, 36.

[72] Annex 6, art 4.

[73] Ibid, art 5.

[74] Ramsay, ibid, at 341. The author recalls the long-standing problem, in consumer law, of access to justice for the small claim — minimal for each individual but considerable in the aggregate — a difficulty which, in his account, calls for collective-redress mechanisms. The connection with the financial guarantee of Article 5 is the present author's own.

conduct liable to affect consumers collectively. This dimension finds its clearest expression in the mechanism of collective action — yet that mechanism, present in the English version, disappears from the French (Article 24(7)). The very instrument by which protection ceases to be individual and becomes collective thus exists in only one of the two authentic versions: an early sign of the incompleteness that the following parts will bear out. The consumer none the less remains, within the scheme of the regime, more than an individual claimant for compensation: his protection partakes of the general economic interest.

52. Annex 6 as the consumer dimension of the SAATM's economic constitution. - Analysis of the beneficiary, the object, the substantive content of the rights and the duty-bearers brings out one and the same normative logic. Each of the transformations examined helps to make consumer protection no longer a mere technique of individual repair, but an instrument for the functioning and legitimation of the Single African Air Transport Market. Annex 6 is therefore not reducible to an African passenger-protection regime: it is the consumer-law dimension of the economic constitution of the SAATM.

53. This substantive ambition remains, however, unfinished. While Annex 6 builds a rich body of substantive law, it coordinates that law neither with the surrounding legal orders nor with a procedural and institutional architecture capable of securing its uniform application. The analysis must therefore now leave the substantive construction of the regime to examine the legal conditions of its effectiveness.

II. An Unfinished Legal Architecture

54. The construction of a substantive protective regime does not suffice to bring a coherent legal system into being. Such a system requires, in addition, that the regime be coordinated with the normative environment surrounding it (A), that procedural guarantees secure its effectiveness (B), and that an institutional architecture administer its implementation and unify its interpretation (C). On each of these three planes, Annex 6 remains unfinished: that is the subject of the present part.

A. Normative Integration without a Coordinating Mechanism

55. Annex 6 carries forward a regional acquis made up of the 2003 UEMOA regulation and the 2007 CEMAC regulation, whose own European matrix — distinct from the one usually ascribed to it — will be established below. Yet it contains no mechanism to coordinate itself with that acquis, with the uniform law, or even as to the delimitation of its own field. This unfinished normative integration appears successively in the regime's relations with the other instruments (1) and in the overlapping regimes that result (2).

1. The Absence of Coordination with the Applicable Legal Orders

56. Silence towards the regional acquis. - Annex 6 does not arise in a normative vacuum. African air passenger-protection law precedes it by fourteen years: as early as 20 March 2003, the UEMOA regulation established, for denied boarding, cancellation and long delay, a scheme of standardised compensation coupled with an indemnity chain specific to package travel, in which the carrier indemnifies the organiser, who in turn indemnifies the passenger.[75] The CEMAC regulation of 19 March 2007 takes up its scheme (scales expressed in CFA francs by class and distance, the package chain, assistance and re-routing), its preamble revealing an older common matrix: a resolution of the ministers responsible for civil aviation of the States of West and Central Africa, adopted at Libreville on 2 December 2004.[76] This acquis itself derives from a first-generation European model, Regulation (EEC) No 295/91, whose structure the UEMOA regulation reproduces — which suffices to dispose of any suggestion of descent from Regulation (EC) No 261/2004, adopted almost a year after the West African instrument.[77] The genealogy thus reads: 295/91 → UEMOA 2003 → CEMAC 2007 → Annex 6.

57. Towards this acquis, however, Annex 6 keeps complete silence. It does not mention it in its preamble, cite it in any of its provisions, or repeal or amend it. It superimposes itself on the UEMOA and CEMAC regimes without indicating whether it replaces them, supplements them or coexists with them. This silence is not neutral: it leaves standing, for a single event (a denied boarding on an intra-CEMAC flight, say), two or three compensation regimes whose coordination nothing determines. Which one applies, or how they combine, remains unanswered in the text itself.

58. This silence is the more striking in that it comes with a retreat on a point that the regional acquis had, for its part, expressly guaranteed: access to the ordinary courts. The UEMOA and CEMAC regulations each contained a savings clause preserving, alongside the standardised-compensation scheme, the ordinary civil-liability action. Article 10 of the CEMAC regulation — like Article 10 of the UEMOA regulation[78] — thus provides that its provisions apply "without prejudice to any action in contractual or tortious civil liability that the passenger might bring before the ordinary courts of competent jurisdiction".[79] The UEMOA regulation contained an equivalent savings clause.[80] Annex 6 takes up no provision of this kind: it organises a complaint

[75] Regulation No 03/2003/CM/UEMOA laying down the rules on compensation for denied boarding of passengers and for cancellation or long delay of a flight, 20 March 2003, art 5 (indemnity chain of package travel) [UEMOA Regulation]. The preamble refers to the Warsaw Convention of 12 October 1929 and the Chicago Convention of 7 December 1944, to the exclusion of the Montreal Convention.

[76] Regulation No 06/07-UEAC-082-CM-15 laying down the air carrier liability regime for breaches of the rules on passenger boarding in the airports of CEMAC Member States, signed at N'Djamena on 19 March 2007, art 5 (compensation scales), art 6 (package chain), preamble ("Having taken note of the resolution approving the text laying down the air carrier liability regime […] adopted at Libreville, on 2 December 2004, by the Ministers responsible for civil aviation of the States of West and Central Africa") [CEMAC Regulation]. Like the UEMOA regulation, its preamble refers to Warsaw and Chicago, not Montreal.

[77] Council Regulation (EEC) No 295/91 of 4 February 1991 establishing common rules for a denied-boarding compensation system in scheduled air transport, [1991] OJ L 36/5. The 2003 UEMOA regulation reproduces its structure for denied boarding; the provisions on cancellation and delay are, for their part, probably inspired by the draft regulation then under discussion in Brussels, presented by the Commission on 21 December 2001 [COM(2001) 784 final] and which became Regulation (EC) No 261/2004. The chronology excludes, in any event, that the UEMOA regulation, adopted in March 2003, could have been inspired by Regulation 261/2004, adopted on 11 February 2004.

[78] The two articles bear the same title ("Other remedies"), the same structure (§1 the savings clause, §2 the exclusion of volunteers), and a near-identical wording. The 2007 CEMAC regulation manifestly copied the 2003 UEMOA regulation, down to the numbering.

[79] CEMAC Regulation, art 10.

[80] UEMOA Regulation, art 10: "The provisions of this Regulation apply without prejudice to any action in civil liability that the passenger might bring before the courts of competent jurisdiction." The savings clause of Article 10 of the CEMAC regulation reproduces its substance, down to the title ("Other remedies") and the structure.

scheme that it channels to the carrier (Article 28) and a right of recourse among professionals (Article 29), but nowhere reserves to the consumer the ordinary-law action that the two regional instruments had taken care to preserve.[81] On this precise point, continentalisation does not carry the acquis forward: it curtails it.

59. International uniform law. - If Annex 6 is silent on the regional acquis, it is not silent on international uniform law: it refers to it expressly. But it does so in a way that reveals a coordination defect of another kind — no longer an omission, but a misdirected reference. Twice, and in its operative part, Annex 6 refers to the Warsaw Convention. Article 14 requires airlines to comply strictly with compensation requirements "under the Warsaw liability regime as applicable to each passenger".[82] Article 23(1) states that the standardised compensation it establishes is to be understood as "other than the compensation provided for by the Warsaw Convention applicable to a State Party".[83] The liability regime to which Annex 6 anchors its own scheme is therefore, textually, that of Warsaw.

60. Yet the 1929 Warsaw Convention was supplanted by the 1999 Montreal Convention, which entered into force on 4 November 2003, recasting and succeeding it between States party to both instruments.[84] For intra-African carriage falling within the single market, it is Montreal — not Warsaw — that constitutes the applicable uniform law, wherever the States concerned are parties to it. Annex 6's reference thus points to the very instrument that the uniform law had itself replaced fourteen years before the text was adopted.

61. This misdirected reference is not without explanation, and that explanation should not be withheld. The coexistence of the two conventions is not complete on the continent: not all African States are parties to Montreal, while a greater number remain bound by Warsaw, so that a reference to Warsaw retains residual significance for States not yet party to Montreal. The defect lies, then, not in mentioning Warsaw, but in having made it the sole conventional referent of the scheme — without naming Montreal or addressing the case (the most frequent, on the market's major routes) in which it is Montreal that governs the carriage. Annex 6 coordinates its regime with a convention, but with the one that is waning, and leaves out of its field of vision the one that is rising.

62. One must guard here against overstating the reach of the conflict. What Warsaw and Montreal govern — the carrier's liability for death, bodily injury, delay and damage to baggage or cargo — only partly overlaps the object of Annex 6. These conventions in fact deliberately

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[81] Annex 6, art 28 (channelling of the claim to the carrier) and art 29 (recourse among providers). No provision of Annex 6 reserves to the consumer the ordinary-law action that Article 10 of the UEMOA regulation and Article 10 of the CEMAC regulation preserved.

[82] Annex 6, art 14. The English version, which is authentic on the same footing as the French, provides: "Airlines shall strictly comply with compensation requirements under the Warsaw Liability as applicable to each passenger." The French version renders "compensation" as "indemnisation" — a translational equivalence constant throughout the text, without conceptual significance.

[83] Annex 6, art 23(1): the passenger receives standardised compensation "other than the compensation provided for by the Warsaw Convention applicable to a State Party", in an amount of USD 250 for flights of up to three hours, USD 400 for those of three to six hours, and USD 600 beyond six hours.

[84] Convention for the Unification of Certain Rules for International Carriage by Air, signed at Montreal on 28 May 1999, entered into force on 4 November 2003. Its Article 55 governs its relationship with the Warsaw Convention of 12 October 1929 and the instruments that supplemented it, the Montreal Convention prevailing between States party to both regimes.

exclude denied boarding and cancellation, treated as a total non-performance remitted to domestic law.[85] For these two events, which lie at the heart of the Annex 6 regime, there is therefore no overlap with the uniform law: the conventional reference is here without object. The coordination defect truly operates only where the fields overlap (delay, baggage, bodily injury), and it is at that precise point that the anchoring to Warsaw rather than Montreal may generate uncertainty as to the applicable liability regime. The text does not resolve that question; it does not even pose it.

63. Silence on coordination with national laws. - There remains the third legal order with which Annex 6 must reckon: that of the States Parties themselves. Here the silence is total. The text contains no clause determining its relationship to domestic laws: no provision on primacy, no rule of transposition, no coordination with the national liability or consumer-protection regimes already in force in the States Parties.

64. This silence is the more notable in that the normative reach of Annex 6 vis-à-vis national law is, in reality, narrow. The Yamoussoukro Decision, from which Annex 6 derives, makes its provisions prevail only over the air services agreements concluded between States Parties; it establishes no primacy over domestic law.[86] Annex 6 cannot, therefore, on its own, set aside the national rules with which it comes into contact: it superimposes itself upon them without anything in the text determining which prevails in the event of divergence.

65. This silence is not without consequence for the way Annex 6 will produce its effects from one State Party to another. For the African constitutional traditions do not receive a Community instrument of this kind in the same way: depending on whether the State follows a monist or a dualist tradition, the same text will apply directly or will require transposition. But that question — the differentiated effects of the regime according to the constitutional order of reception — belongs less to the defect of normative coordination than to the institutional governance of the regime; it will be examined under that head below.

66. Thus, whether the regional acquis, the international uniform law or national laws is in issue, the answer is constant. Annex 6 fits into a dense normative environment — regional, conventional, national — without ever saying how it is to be coordinated within it. It builds a body of substantive law; it omits the rule that would let it coexist in orderly fashion with the surrounding orders. This systematic silence exposes the consumer to an overlap of regimes that no provision resolves.

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[85] On the deliberate exclusion of denied boarding and cancellation by the travaux préparatoires of Warsaw and Montreal, see Adejoke O Adediran, "The Need for an International Legal Regime for Flight Cancellation and Denied Boarding" (2015) 40 Annals Air & Space L 863.

[86] On the primacy of the Yamoussoukro Decision being limited to air services agreements between States Parties, to the exclusion of any primacy over national law, see Charles E Schlumberger, *Open Skies for Africa: Implementing the Yamoussoukro Decision* (Washington, DC: World Bank, 2010) at 31; Adejoke O Adediran, "Implementation of the SAATM Legal Regime" (2018) 43 Annals Air & Space L 23 [pinpoint to be supplied]. Article 2 of the Decision makes its provisions prevail over the air services agreements concluded between States Parties; it establishes no primacy vis-à-vis domestic law.

2. The Consequence: Overlapping Regimes without a Priority Rule

67. The absence of a coordination clause has a direct consequence: for a single incident, several regimes may claim application without any provision designating the one that governs. This overlap operates at two levels — between instruments and within the text itself.

68. Overlap between instruments: a CEMAC–UEMOA carriage. - Take, as a test case (and not as a matter of course), carriage linking a CEMAC State to a UEMOA State. At least four regimes may have a claim to it: the Montreal Convention, which grasps this journey as international carriage;[87] the 2003 UEMOA regulation; the 2007 CEMAC regulation; and Annex 6 — to which the applicable national law must be added. Determining which governs requires verifying, for each, a series of conditions that this study flags without prejudging: the territorial and personal criterion of application, the carrier's place of establishment, the international character of the journey, the effective participation of the two States in the four instruments, the nature of the incident, and the identity of the object of the claims. None of these checks is here taken as settled; they mark out the programme of an analysis that only examination of the applicable texts can close.

69. One finding, however, is established on the documents and stands on its own: the scales of these regimes are structurally incommensurable. The UEMOA and CEMAC regulations express compensation in CFA francs, on a criterion of class and distance turning on a threshold of 2,500 kilometres;[88] Annex 6 expresses it in US dollars, on a criterion of duration turning on thresholds of three and six hours.[89] These grids do not convert into one another: they rest on heterogeneous units, currencies and criteria, with no rule to fix their order. The thesis of this sub-section then holds in a single proposition: for a single incident, several regimes may claim application, and none designates the one that prevails.

70. Overlap within the text: a plurality of versions without a common interpreter - The overlap does not operate only between instruments; it runs through Annex 6 itself. The text exists in three documentary states — the Lomé version of thirty-one articles, the so-called realigned version, and the heuristic use of the latter[90] — and in two equally authentic language versions, with no plurilingual rule of interpretation to arbitrate between them. The divergences between versions are not translation errors: they are the traces of a clash of legal traditions. The ceiling "no more than" becomes a floor, "au moins" (Article 17(3)(b)-(c)); the collective action present in English disappears in French (Article 24(7)).[91] The most revealing divergence concerns the carrier's exoneration.

71. Article 17(4) exonerates the carrier where the cancellation results from circumstances it could not have avoided. The English version uses the expression "extraordinary circumstances";

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[87] Montreal Convention, art 1.

[88] UEMOA Regulation, art 4(2) (CFA 100,000 in economy class and 200,000 in business class up to 2,500 km; 400,000 and 800,000 beyond); CEMAC Regulation, art 5(2).

[89] Annex 6, art 16 (USD 250 for flights of three hours or less, USD 400 for three to six hours, USD 600 beyond).

[90] The working version is the Lomé version (31 articles); the so-called realigned version (Doc 1004/14R1, 25 articles) is a distinct documentary state, of heuristic and non-normative use.

[91] Annex 6, arts 17(3)(b)-(c) and 24(7) (English and French versions).

the French renders this phrase as “cas de force majeur”.[92] The divergence appears at first to be a matter of translation style. It in fact carries a substitution of legal categories whose effects are felt at the level of the regime as a whole, because the two notions differ not in their trigger threshold but in the extent of the exoneration they produce.

72. The expression “extraordinary circumstances” does not belong to the common vocabulary of the law of obligations. In EU law it is an autonomous notion, whose content is not borrowed from national laws but built by a dedicated case law: it covers neither technical failures arising in the ordinary maintenance of the aircraft,[93] nor incidents inherent in the normal exercise of the carrier’s activity. This construction is not incidental to the standard: it is the standard. An autonomous notion deprived of the body that renders it autonomous is not an impoverished notion; it is an empty shell available for any national interpretation that comes to fill it.

73. The French version does not leave that shell empty: it fills it in advance. *Force majeure* is a full category, endowed in the civil-law traditions of the francophone Member States with settled conditions — externality, unforeseeability, irresistibility — and, above all, with a regime of its own. That regime is not the one of “extraordinary circumstances”. *Force majeure* does not modulate the obligation: it extinguishes it. The European standard, by contrast, works a strictly sectoral exoneration: it removes the standardised compensation without affecting the obligations of assistance and care, which remain owed precisely because the passenger remains, whatever the cause, stranded and vulnerable.[94]

74. The consequence is structural. Under the English version, the consumer faced with an extraordinary cancellation loses his compensation and keeps his assistance. Under the French version, the characterisation as *force majeure* entails — if the national court applies the civil-law regime the term summons — extinction of the obligation itself, and hence the disappearance of care. Two equally authentic texts of one and the same instrument thus produce, for a single triggering event, two different extents of protection. The linguistic divergence does not affect the margin of the regime: it reaches its very scheme.

75. This reading finds confirmation in the earlier regional acquis, and it is this that forbids seeing in it a drafting accident. The 2003 UEMOA regulation adopted “circonstances exceptionnelles”; the 2007 CEMAC regulation, which shares with it extensive textual continuities, substituted “cas de force majeure”.[95] The oscillation is thus documented in Africa four years before the adoption of Annex 6, between two closely concordant texts. It is not an isolated translator who hesitates: it is a legal area spontaneously repatriating an exogenous standard towards the nearest civil-law category, for want of any body charged with preventing it.

76. What is at stake here is more than one further divergence in a catalogue. The phenomenon recalls what Chen-Wishart calls a *working misunderstanding*: a rule presented as common may

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[92] Annex 6, art 17(4); Annex 6, French version, art 17(4) [Annex 6 (Fr)]. Divergence verified against the Laws.Africa PDFs, eng@2017-03-17 and fra@2017-03-17.

[93] *Wallentin-Hermann v Alitalia – Linee Aeree Italiane SpA*, C-549/07, [2008] ECR I-11061, ECLI:EU:C:2008:771 at paras 22–26, 34–37.

[94] *McDonagh v Ryanair Ltd*, C-12/11, ECLI:EU:C:2013:43 at paras 47–50, 58–64; Vincent Correia, “Air Passengers’ Rights, ‘Extraordinary Circumstances,’ and General Principles of EU Law: Some Comments After the McDonagh Case” (2014) 13:2 Issues Aviation L & Pol’y 245.

[95] UEMOA Regulation, art 6 (“circonstances exceptionnelles”); CEMAC Regulation, art 7 (“cas de force majeure”).

take on, in the receiving order, a meaning and effects different from those it produces in its order of origin. She does not necessarily posit, as a general condition, that a court then absorbs the divergence.[96] But the comparatist demonstration presupposes a condition it does not always state: that the misunderstanding be absorbed by a court which neutralises its divergent effects. Remove that condition, and the misunderstanding ceases to be a working one and becomes a disintegrating one. This is exactly the situation of Annex 6: Article 17(4) is to be read not as a weakness of translation, but as the textual trace of a deficit that the developments to follow will establish.

77. An objection must be set aside. It will be said that the African court, seised of both versions, will retain the one that favours the consumer. The objection presupposes what must be proved: the existence, in Annex 6, of a *pro consumatore* rule of interpretation, and of a body empowered to impose it on the twenty-four other legal orders concerned. The text contains neither.[97] The argument therefore does not refute the demonstration: it states its conclusion in the form of a wish.

78. The overlap of regimes — between instruments as within the text — thus remains open: no provision resolves it, because no body has jurisdiction to settle it. This absence of a common rule of resolution leads now to the concrete avenues open to the consumer for asserting the rights the regime confers on him.

B. A Defective Procedural Guarantee

79. A right that its holder cannot assert when it is infringed is not yet a right. This branch descends to the level of the litigant: faced with the infringement of his right, can the consumer obtain its sanction? Three obstacles stand in the way. The complaint, which the text organises, is not a remedy (1). Litigation, when it is brought, disarms the consumer rather than serving him (2). And collective action, which would overcome the weakness of individual action, is wanting (3).

1. A Complaint Is Not a Remedy

80. The Regulation provides administrative procedures for handling complaints, without instituting any unified continental mechanism for managing claims. No provision of Annex 6 requires the online handling of complaints. The Regulation provides that service providers maintain a customer-relations desk at each airport where they operate (Article 12); that the civil aviation authorities, the regional authorities and the Executing Agency receive complaints under administrative procedures (Article 24); and that consumer units make their contact details and procedures known, notably on a dedicated website — but not that complaints be lodged or handled online (Article 24(2)). The mechanism is real, and its digital dimension is among the commitments the text ought to honour. But it is administrative, not judicial: the agency sanctions the professional; it does not award the consumer his compensation. The complaint polices the market; it does not indemnify the complainant. Between the administrative complaint and

[96] Chen-Wishart uses the working misunderstanding to describe a transplant that appears common in form but produces divergent solutions on account of the legal and social context of the receiving law; see Mindy Chen-Wishart, "Legal Transplant and Undue Influence: Lost in Translation or a Working Misunderstanding?" (2013) 62:1 Intl & Comp LQ 1 at 2–5, 27–30.

[97] Annex 6 contains neither a general rule of plurilingual interpretation, nor a clause of preference between its authentic versions, nor a *pro consumatore* interpretive principle. See in particular arts 1–4 and 28–31.

individual redress, the consumer must still go to court — and there the regime offers nothing: no dedicated procedure, no facilitated standing, no adjustment of the burden of proof. The text, so generous on rights, is silent on the path that would allow them to be obtained.

2. Litigation That Disarms the Consumer

81. When the complaint fails, the consumer sues. There, ordinary procedural law governs, and it disarms him. The judgment of the Libreville Commercial Court of 12 August 2025 offers the demonstration.[98] A passenger on a Douala–Libreville flight, faced with a delay, the temporary loss of her baggage and an undisclosed stopover at Yaoundé, sought reparation for her moral and financial harm.

82. Her claim was dismissed — not on the merits of consumer protection, but on procedure: for failing to prove the long delay she alleged, for failing to quantify her heads of damage separately, for failing to produce her boarding pass and the baggage-return report.[99] The substantive law evaporated in the procedural filter. The court did not say that protection did not exist; it said that the claimant had not adduced the proof that procedure required.

83. Three lessons emerge. First, Annex 6 was absent from the proceedings: the claimant invoked Regulation 261/2004 (wrongly presented as the "standard" of ECOWAS and CEMAC[100]) and the Montreal Convention, never the continental text. Empirically, the instrument meant to govern this dispute is invisible, and it is a European regulation — foreign and untransposed — that serves as the de facto reference. Second, the logic of the package did not operate: under a logic of standardised compensation, the passenger would have had no harm to prove, the fixed sum being triggered by the mere occurrence of the event; the francophone court treated the claim as damages conditional on proof of harm (the Montreal logic), disarming the passenger and confirming, in practice, the slippage that the "compensation"/"indemnisation" divergence gave cause to fear. Third, cross-border jurisdiction, the burden of proof and enforcement remain abandoned to national procedural law, which varies from State to State and offers the consumer no facilitation.

3. Absent Collective Action and a Guarantee in Retreat

84. Individual disarmament would matter less if collective action made up for it. But the collective action opened by the English version of Article 24(7) disappears from the French:[101] in the francophone orders, the very version that would confer standing on associations falls away. The full regime of that action — associational standing, cease-and-desist injunctions, coordination with the secondary market in compensation claims — presupposes a comparative literature yet to be built and is here only sketched. More serious still, the continental regime regresses on certain points by comparison with the regional acquis it inherits.[102] The UEMOA

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[98] *Teya née Mbouoko v Compagnie aérienne Camair-Co*, Libreville Commercial Court, 12 August 2025, Rép No 396/2024-2025.
[99] Ibid (art 16 of the Gabonese Code of Civil Procedure, burden of proof; art 12, object of the claim; art 382, costs).
[100] Ibid: the characterisation of Regulation 261/2004 as the "standard in the ECOWAS and CEMAC area" comes from counsel for the claimant; it is legally inaccurate and is not endorsed by the court.
[101] Annex 6, art 24(7) (collective action, English version; absent from the French version).
[102] Compare Annex 6, art 23(4) (unconditional 50% reduction) with UEMOA Regulation, art 4(3), and CEMAC Regulation, art 5(3) (reduction conditional on re-routing); see also Regulation (EC) No 261/2004, art 7(2).

and CEMAC regulations both preserved, by an express savings clause, the passenger's action before the courts of competent jurisdiction; Annex 6 has let that guarantee lapse.[103] Likewise, the halving of compensation — conditional on re-routing in the regional and European models — becomes here unconditional.[104] On these two precise points (without making them the governing thesis), the continental text protects the consumer less well than the acquis it carries forward: a truncated graft.

85. The consumer thus holds substantive rights whose effectiveness neither normative coordination nor procedure fully guarantees. This procedural weakness is, however, only one manifestation of a deeper deficit: that of the institutions called to administer the regime, to secure its supervision and to unify its interpretation.

C. An Institutional Deficit: When Substantive Ambition Outstrips Capacity

86. The foregoing developments converge on a single diagnosis: the substantive ambition of Annex 6 — a reformulated beneficiary, a chain of duty-bearers, a dense content of rights, a market-constituting purpose — exceeds the institutional capacities of the African system meant to carry it. This gap shows itself on three levels. The very authority of the norm is uncertain: nothing guarantees its uniform invocability before the courts of the States Parties (1). Its administration is fragmented, no body meeting the "strong and independent" character that Articles 9.4 to 9.6 of the Yamoussoukro Decision required of the executing agency (2). Lastly, no holder exercises the interpretive-unification function that the regime's multilingualism and its relationship to the uniform law call for (3).

1. Uncertain Normative Authority

87. Annex 6 is an annex to the Yamoussoukro Decision, drafted by a technical committee and adopted in Lomé. Its normative authority is itself uncertain: what is the binding force of such an instrument? The primacy the Decision establishes holds over air services agreements alone, never over national law,[105] and the automatic-applicability clause of the Abuja Treaty was not carried over into the Constitutive Act of the African Union.[106] Validity, binding force, domestic applicability, invocability and justiciability thus all remain in question.

88. And the answer varies with the constitutional tradition. As a general matter, most francophone States are monist and most Commonwealth States dualist. In the present case, this means that the monist francophone States admit direct invocability, whereas the dualist Commonwealth States require transposition. The same instrument therefore produces different

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[103] UEMOA, Regulation No 03/2003/CM/UEMOA of 20 March 2003, Ouagadougou, art 10; CEMAC, Regulation No 06/07-UEAC-082-CM-15, N'Djamena, 19 March 2007, art 10 (savings clause preserving the action before the courts of competent jurisdiction, with no equivalent in Annex 6).
[104] Annex 6, art 23(4) (unconditional reduction); compare UEMOA Regulation No 03/2003/CM/UEMOA, art 4(3), and CEMAC Regulation No 06/07-UEAC-082-CM-15, art 5(3) (reduction conditional on re-routing).
[105] Decision Relating to the Implementation of the Yamoussoukro Declaration, 14 November 1999, art 2 [Yamoussoukro Decision] (primacy over air services agreements alone); Charles E Schlumberger, *Open Skies for Africa* (Washington, DC: World Bank, 2010) at 31.
[106] Schlumberger at 22 (the automatic-applicability clause of Article 10 of the Abuja Treaty was not carried over into the Constitutive Act of the African Union).

effects according to the order seised[107] — an institutional fracture that redoubles the philological fracture examined above. A right whose very invocability depends on the court seised is not yet uniform law.

2. Fragmented Administration

89. Administration of the regime was entrusted to an executing body. But the founding text wanted that body "strong and independent", and AFCAC, designated as the executing agency, does not meet that character.[108] The defect is also structural: only 46 States, out of 55, are members of AFCAC, and eight African Union States remain outside it.[109] An agency to which a fraction of the States does not belong cannot uniformly administer a continental regime.

90. More deeply, the functions that Annex 6 presupposes — supervision, investigation, injunction, sanction — are conferred without a clear holder, or on bodies lacking the powers to exercise them. A function-by-function assessment of these orphaned competences calls for a framework that this study reserves.[110] An internal counter-model none the less reveals what is at stake: where the CEMAC regime is furnished with sanctions and a Court of Justice, Annex 6 has neither. These orphaned competences are not a drafting oversight: they are the mark of the gap — the text conceived obligations richer than the administration able to enforce them.

3. An Interpretive-Unification Function without a Holder

91. The deepest deficit concerns interpretation. It was shown above that the plurality of versions (force majeure, collective action, the characterisation of the remedy) is resolved by no rule; the reason is now clear: no body has jurisdiction to unify the meaning of the text across the twenty-four orders concerned.

92. The emblematic case is Montreal. Intra-African flights fall within international carriage under Article 1 of the Convention, which claims exclusivity, in its Article 29, for the damage it governs.[111] The compatibility question — do the fixed sums of Annex 6 escape that exclusivity? — is the one EU law settled in *Sturgeon* and *Nelson*, where the Court held that standardised compensation is not reparation of "damage" within the meaning of Article 29.[112] But the Court could do so because Montreal is, in EU law, a mixed agreement binding the Union itself, which founds its interpretive jurisdiction. In Africa, neither the African Union nor AFCAC is a party to

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[107] Adejoke O Adediran, "Implementation of the Single African Air Transport Market Legal Regime: Challenges of the Interface Between the Yamoussoukro Decision and Domestic Regimes" [2018] 43 Annals Air & Space L 23 at 45–47.

[108] Yamoussoukro Decision, art 9 (executing body); Schlumberger, ibid, at 36 (AFCAC does not meet the "strong and independent" character required by arts 9.4 to 9.6).

[109] Schlumberger, ibid, at 36–37.

[110] [Note to self — to read.] On the functional assessment of regulatory systems, see Robert Baldwin, Martin Cave & Martin Lodge, *Understanding Regulation: Theory, Strategy, and Practice*, 2nd ed (Oxford: Oxford University Press, 2012), in particular the developments on regulatory strategies, rule-production and enforcement; Robert Baldwin, Martin Cave & Martin Lodge, eds, *The Oxford Handbook of Regulation* (Oxford: Oxford University Press, 2010).

[111] Convention for the Unification of Certain Rules for International Carriage by Air, 28 May 1999, 2242 UNTS 309, arts 1 and 29 [Montreal Convention].

[112] *Sturgeon v Condor Flugdienst GmbH*, C-402/07 and C-432/07 (ECJ, 19 November 2009); *Nelson v Deutsche Lufthansa AG*, C-581/10 and C-629/10 (CJEU, 23 October 2012).

Montreal; only the States are.[113] The analogy stops there: Africa cannot reproduce the mechanism by which the CJEU interprets Montreal. The question of compatibility with the Montreal Convention does not merely remain unresolved. In the absence of a continental mechanism to secure its uniform interpretation, it is left without any common body to decide it, so that the national courts determine its solution for themselves.

93. A qualification sharpens this conclusion rather than weakening it. As established above, cancellation and denied boarding — excluded from the field of the Conventions — escape any overlap with the uniform law.[114] Yet it is precisely there, where the uniform law does not apply, that the want of a unifier produces its clearest effects: with no body to fix the boundary, the national courts mistake it. A Nigerian court of appeal thus applied Montreal to a denied boarding that the Convention excludes.[115] The absence of a unifier produces not one error, but divergent errors.

94. Code-sharing extends the same deficit: where the contractual carrier and the actual carrier differ, which owes the consumer's rights? Identifying the effective carrier provides a starting point, but the text does not determine how the obligations are apportioned between the effective carrier and the contractual carrier in code-sharing operations.[116]

95. The right correction is not, however, to lament the "absence of a court": the SAATM is not devoid of an adjudicating body. Annex 3 establishes an Appeals Committee, with a right of appeal to the African Court of Justice or to a Regional Economic Community court; but standing belongs to the States and the airlines, not to the consumer.[117] The body exists; the consumer is excluded from it. The deficit is therefore not the absence of a court, but the absence of an interpretive-unification function open to the consumer.

96. This precise diagnosis calls for a graduated remedy, in three degrees of increasing cost. First, the least costly: to recognise the invocability of Annex 6 before the national court, so that the consumer may at least rely on it. Next, a contentious role for AFCAC in supervising compliance, every breach of a convention becoming an unfair practice administratively sanctioned. Finally, the textual anchor already exists: to open to the consumer the appeal route of Annex 3, whose regional appeal mechanism is drafted. The solution is not to invent an institution, but to open to the consumer the one the text already sketches.

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[113] Olena Bokareva, "Air Passengers' Rights in the EU: International Uniformity versus Regional Harmonization" (2016) 41:1 Air & Space L 3 at 4–6.

[114] Adejoke O Adediran, "The Need for an International Legal Regime for Flight Cancellation and Denied Boarding" (2015) 40 Annals Air & Space L 863; *Wolgel v Mexicana Airlines*, 821 F 2d 442 (7th Cir 1987); *Re: Nigeria Charter Flight Contract Litigation*, 520 F Supp 2d 447 (EDNY 2007).

[115] *Emirate Airline v Mekwunye* (2014) LPELR-22685(CA) (a Nigerian court of appeal applies Montreal to a denied boarding that the Convention excludes).

[116] Annex 6 does not expressly regulate code-sharing and does not determine, in that case, the apportionment of obligations between the contractual carrier and the effective carrier. It does, however, require that the consumer be informed of the identity of the effective carrier, and organises, in Articles 28 and 29, the channelling of certain claims and the recourse among providers.

[117] Adejoke O Adediran, "Implementation of the Single African Air Transport Market Legal Regime: Challenges of the Interface Between the Yamoussoukro Decision and Domestic Regimes" [2018] 43 Annals Air & Space L 23 at 35–36.

Conclusion

97. The Regulation on the Protection of Consumers of Air Transport Services in Africa has laid down the substantive law of a consumer market — a beneficiary, duty-bearers, rights, a purpose — but not the institutional law that would make it effective. Its ambition, real as it is, today outstrips the capacities of the system meant to carry it. This is not the failure of an original regime: it is the incompleteness of a regime that built its substance before its institutions.

98. Three pillars could close this gap. Normative clarification, first: to lift, by an interpretive protocol or a revision, the conceptual indeterminacies and the divergences between versions, and to settle expressly the coordination with Montreal and with the regional acquis. Administrative integration, next: to endow the executing body with the powers of supervision and sanction that the obligations presuppose. A graduated judicial guarantee, finally: from invocability before the national court to the opening, to the consumer, of the appeal route that Annex 3 today reserves to the States. Annex 6 is the consumer-law dimension of the economic constitution of the Single African Air Transport Market; it remains for it to acquire the institutional dimension.