



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

Abuja, 16th February 2010

**SUPPLEMENTARY ACT A/SA.1/01/10 ON PERSONAL DATA
PROTECTION WITHIN ECOWAS**

THE HIGH CONTRACTING PARTIES,

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

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

MINDFUL of Article 4 paragraph g of the said Treaty relating to the Member States' adherence to the promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights;

MINDFUL of Article 27, 32 and 33 of the said Treaty relating to Science and Technology, and on the areas of Communication and Telecommunications;

MINDFUL of Article 57 of the said Treaty on judicial and legal cooperation, which prescribes that the Member States undertake to promote judicial cooperation with a view to harmonizing judicial and legal systems;

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

CONSIDERING the important progress made in the area of Information and Communication Technologies (ICT) as well as the Internet which increasingly raises the problem of personal data protection;

CONSCIOUS that a technology such as the Internet, with its facilities of profiling and tracing of individuals, constitutes a favourable vector for gathering and processing personal data;



CONSCIOUS also that the increasing use of Information and Communication Technology (ICT) may be prejudicial to the private and professional life of the users;

NOTING that, notwithstanding the existence of the national legislations relating to the protection of privacy of the citizens in their private and professional life and relating to the guarantee of the free movement of information, it becomes a matter of urgency to fill the legal vacuum generated by the use of internet which is a new instrument of communication;

CONSCIOUS of the necessity to fill this legal vacuum and establish a harmonised legal framework in the process of personal data;

DESIROUS of adopting this Supplementary Act on the protection of personal data;

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

ON THE RECOMMENDATION of the Sixty-third Ordinary Session of the Council of Ministers held at Abuja from from 20 to 21 November 2009;

HEREBY AGREE AS FOLLOWS:

CHAPTER I

GENERAL PROVISIONS

Article 1: Definitions

For the purposes of this Supplementary Act:

Authority of Protection

The data protection authority shall be an independent administrative authority responsible for ensuring that personal data is processed in compliance with the provisions of this Supplementary Act;

Code of conduct refers to the data-use charters drafted by the data controller in order to institute the rightful use of IT resources, the Internet, and electronic communications of the structure concerned, and which have been approved by the data protection Authority;

Consent of the data subject is any manifestation of specific, unequivocal, free, informed and express will by which the data subject or his legal, judicial or agreed representative accepts that his personal data be processed either manually or electronically;



The recipient of personal data processing is any individual to whom the data may be disclosed, and who is not the data subject, the data controller, the data processor, or persons who by virtue of their functions are responsible for processing such data;

Personal data means any information relating to an identified individual or who may be directly or indirectly identifiable by reference to an identification number or one or several elements related to their physical, physiological, genetic, psychological, cultural, social, or economic identity;

Sensitive data means personal data relating to an individual's religious, philosophical, political, trade union opinions or activities, to his sexual life, racial origin or health, relating to social measures, proceedings, and criminal or administrative sanctions;

Health data means any information about the physical and mental health of the data subject, including the above-mentioned genetic data;

Personal data file means any structured set of data that is accessible according to defined criteria, whether the set is centralised, decentralised, or distributed functionally or geographically;

Combining personal data refers to any connection mechanism that consists of linking data processed for a given purpose with other data processed for a purpose that may or may not be identical, or that are linked by one or several data controllers;

Data subject means an individual who is the subject of personal data processing;

Direct prospecting means any message sent, on whatever medium and of whatever nature, in particular a commercial, political or charitable message, aimed at promoting, directly or indirectly, goods, services or the image of a person selling goods or providing services;

Data controller means any public or private individual or legal entity, body or association who, alone or jointly with others, decides to collect and process personal data and determines the purposes for which such data are processed;

Data processor means any public or private individual or legal entity, body or association who processes data on behalf of the data controller;

Third party means any public or private individual or legal entity, body or association other than the data subject, the data controller, the data processor and any other persons placed under the direct authority of the data controller or the data processor, who is authorised to process data;



Personal data processing refers to any operation or set of operations carried out or not, with the assistance of processes that may or may not be automated, and applied to data, such as obtaining, using, recording, organisation, preservation, adaptation, alteration, retrieval, saving, copying, consultation, utilisation, disclosure by transmission, dissemination or otherwise making available, alignment or combination, as well as blocking, encryption, erasure or destruction of personal data.

CHAPTER II

LEGAL FRAMEWORK FOR PERSONAL DATA PROTECTION

Article 2: Aims

Each Member State shall establish a legal framework of protection for privacy of data relating to the collection, processing, transmission, storage, and use of personal data without prejudice to the general interest of the State.

Article 3: Scope

The following shall be subject to this Supplementary Act:

- 1) Collection, processing, transmission, storage, and use of personal data by any individual, by government, local authorities, and public or private legal entities;
- 2) Any automated or un-automated processing of data that is contained or may be included in a file, with the exception of those processes mentioned under Article 4 of this Supplementary Act;
- 3) Any processing carried out in an UEMOA or ECOWAS Member State;
- 4) Any processing of data related to public security, defence, investigation and prosecution of criminal offences or State security, subject to such exemptions as are defined by specific provisions stipulated in other legal texts in force.

Article 4: Exclusions

This Supplementary Act shall not apply to data processing carried out by an individual in the exclusive framework of his personal or domestic activities.



CHAPTER III

REQUIRED FORMALITIES FOR EXECUTING PERSONAL DATA PROCESSING

Article 5: Formality for declaration

With the exception of the cases set out under Articles 6, 11 and 12 of this Supplementary Act, processing of personal data shall be subject to a declaration to be made to the data protection Authority.

Article 6: Personal processing for the public service

Personal data processing that is carried out on behalf of the State, a public establishment or local authority, or a body incorporated under private law and running a public service, shall be decided upon by a legislative or regulatory Act passed subsequent to the reasoned opinion of the data protection Authority.

Such processing shall concern:

- 1) National security, defence or public security;
- 2) The prevention, investigation, detection or prosecution of criminal offences or the application of criminal sentences or security measures;
- 3) Population census;
- 4) Personal data that reveal directly or indirectly an individual's racial, ethnic or regional origins, parentage, political, philosophical or religious opinions, membership of a trade union, or which relate to his health or sexual life;
- 5) Management of salaries, pensions, taxes, duties, and other assessments.

Article 7: Formalities of requests for opinions and authorizations

Requests for opinions, notifications, and other requests for authorisation must specify:

- 1) the identity and address of the data controller or, if the latter is not established on the territory of an ECOWAS or UEMOA Member State, those of his duly mandated representative;
- 2) the purpose(s) for which the data is intended to be processed, as well as general description of its functions;
- 3) the expected combinations or other forms of linkage with other processes;
- 4) the type of personal data processed, its origin, and the categories of data subjects covered by the processing;



- 5) the period of preservation of the processed data;
- 6) the office(s) responsible for executing the processing, as well as the categories of persons who, by virtue of their functions or for service requirements, have direct access to the recorded data.;
- 7) the recipients to whom such data may be disclosed;
- 8) the function of the person or department to whom application shall be made for right of access;
- 9) the steps taken to ensure the security of the processing and of the data;
- 10) an indication that the data is processed by a data processor;
- 11) where personal data is expected to be transferred to third countries that are not members of ECOWAS or UEMOA, subject to reciprocity.

Article 8: Deadline

The data protection Authority shall give its opinion within a set period of time starting from the date of receipt of the request for opinion or authorisation. Nevertheless, this period of time may or may not be extended, on the basis of a reasoned decision of the data protection Authority.

Article 9: Medium for the opinion or request for notification

The opinion or notification or request for authorisation may be sent to the data protection Authority by postal or electronic medium.

Article 10: Exemption from declaration

For the most common categories of personal data processing that are not likely to violate privacy or liberties, the protection Authority may draw up and publish standards aimed at simplifying or waiving the notification obligation.

Article 11: Exemption from formalities

The following shall not be subject to the preconditions indicated in the Articles below:

- 1) Processing mentioned under Article 4 of this Supplementary Act;
- 2) Processing with the sole objective of keeping an exclusively private register;



- 3) Data processing by an association or any non-profit and faith-based, philosophical or trade union body, where such data correspond to the object of the association or body, and only concern their members and are not to be disclosed to third parties.

Article 12: Types of processing to be executed after authorization

The following shall be subject to authorisation from the data protection authority:

- 1) Processing of personal data relating to genetic data and health research;
- 2) Processing of personal data relating to offences, sentences, or security measures;
- 3) Processing of personal data for the purpose of combining files, as defined under Article 37 of this Supplementary Act;
- 4) Processing relating to a national identification number or any such other identification;
- 5) Processing of personal data that includes biometric data;
- 6) Processing of personal data for reasons of public interest, in particular for historical, statistical or scientific purposes.

Article 13: Referral to the protection Authority

Application may be submitted to the data protection Authority by any individual acting on his own behalf, through his lawyer or by any other duly-authorized individual or legal entity.

CHAPTER IV

**INSTITUTIONAL FRAMEWORK FOR THE PROTECTION
OF PERSONAL DATA**

Article 14: Establishment

- 1) Within the ECOWAS space, each Member State shall establish its own data protection Authority. Any State that does not have shall be encouraged to establish one.
- 2) The data protection Authority shall be an independent administrative Authority responsible for ensuring that personal data is processed in compliance with the provisions of this Supplementary Act.



Article 15: Composition

Each Member State shall take necessary measures to determine the membership of the data protection Authority. This Authority must be composed of qualified persons in the field of law, information communication technology and any other field of knowledge to achieve the objectives defined in Article 2 of this Supplementary Act.

Article 16: Incompatibility

Membership of the data protection Authority shall be incompatible with membership of government, the exercise of business executives, and ownership of shares in businesses in the information or telecommunications sectors.

Article 17: Immunity

- 1) Members of the data protection Authority shall enjoy full immunity in respect of opinions expressed in the exercise of, or during the tenure of their function.
- 2) They shall receive no instructions from any Authority in discharging their duties.

Article 18: Professional Secrecy and Rules of Procedure

- 1) Members of the data protection Authority shall be subject to professional secrecy, in line with texts in force in each Member State.
- 2) Each data protection Authority shall draft its rules of procedure, which shall stipulate in particular, the rules governing deliberations, appraisal and presentation of applications.

Article 19: Responsibilities

- 1) The Data Protection Authority shall ensure that ICTs do not constitute a threat to public liberties and privacy. To this end, it shall:
 - a) inform data subjects and data controllers of their rights and obligations;
 - b) respond to all requests for an opinion relating to processing of personal data;
 - c) inform data subjects and data controllers of their rights and obligations;
 - d) authorize the processing of files in a certain number of cases, in particular sensitive files;
 - e) examine the prerequisite conditions for implementing personal data processing;



- f) receive claims, petitions, and complaints relating to processing of personal data and inform plaintiffs of action taken on such matters;
 - g) immediately inform the judicial authority of certain types of offences of which it may gain knowledge;
 - h) carry out verifications of any processing of personal data, using sworn officials;
 - i) impose administrative and financial sanctions on data controllers;
 - j) update a register of personal data processing and make it available to the public;
 - k) advise individuals and bodies who process personal data or who carry out trials and experiments;
 - l) authorize transborder transfers of personal data;
 - m) make suggestions as to the simplification and improvement of the legislative and regulatory framework governing data processing;
 - n) set up mechanisms for cooperation with personal data protection authorities of third countries;
 - o) participate in international negotiations concerning the protection of personal data;
 - p) draft an activity report according to a well defined schedule, for submission to the President of the Republic or the Speaker of the National Assembly, the Prime Minister, or the Minister of Justice;
 - q) In compliance with the provisions in force in the ECOWAS Member States, sworn agents may be called upon to participate in carrying out verification missions.
- 2) The data protection Authority may issue the following notices:
- a) a warning to a data controller who does not comply with the obligations enshrined in this Supplementary Act;
 - b) A formal demand to desist from the violations within a time stipulated by the Authority.
- 3) In case of emergency, when processing and use of personal data leads to:
- a violation of rights and liberties, the Data Protection Authority, after a hearing *inter partes*, may decide:



- a) To suspend the processing;
- b) To block certain personal data processed;
- c) To temporarily or permanently prohibit any processing that is contrary to the provisions of this Supplementary Act.

Article 20: Sanctions

Where the data processor does not conform with the formal notice addressed to him, the protection Authority may, after procedures *inter partes*, take the following sanctions against him:

- 1) provisional withdrawal of the authorization granted;
- 2) definitive withdrawal of the authorization; and
- 3) a fine.

Article 21: Appeal

The sanctions and decisions of the Data Protection Authority may be subject to appeal.

Article 22: Budget

The data protection Authority shall receive a budget allocation from government to enable it carry out its missions.

CHAPTER V:

PRINCIPLES GUIDING THE PROCESSING OF PERSONAL DATA

Article 23: Principle of consent and legitimacy

- 1) Processing of personal data shall be considered legitimate where the data subject has given his consent.
- 2) Nonetheless, the requirement for consent may be waived when the processing is necessary:
 - a) in order to comply with a legal obligation that is binding upon the data controller;
 - b) for the implementation of a public interest mission or relevant to the exercise of public authority that is vested in the data controller or the third party to whom the data is disclosed;



- c) for the performance of a contract to which the data subject is a party or for the application of pre-contractual measures adopted at his request;
- d) for safeguarding the interests or rights and fundamental liberties of the data subject.

Article 24: Principle of legality and fairness

The collection, recording, processing, storage, and transmission of personal data must be carried out in a legal, fair, and non-fraudulent manner.

Article 25: Principle of purpose, relevance and preservation

- 1) Personal data shall be obtained for specified, explicit, and lawful purposes and shall not be further processed in any manner incompatible with such purposes.
- 2) It shall be adequate and relevant in relation to the purposes for which it is collected and further processed.
- 3) It shall be kept for a period which shall not exceed the period required for the purposes for which they were obtained or processed.
- 4) Beyond the required period, data may only be kept with a view to responding specifically to processing for historical, statistical, and research purposes, in line with existing legal provisions.

Article 26: Principle of accuracy

Personal data obtained shall be accurate and, where necessary, kept up to date. All reasonable measures shall be undertaken to ensure that data that is inaccurate and incomplete in relation to the purposes for which it is obtained and further processed shall be erased or rectified.

Article 27: Principle of transparency

The principle of transparency implies that the data controller is obliged to provide information about the processing of personal data.

Article 28: Principle of confidentiality and security

Personal data shall be processed confidentially and shall be protected, in particular when processing includes transmission of data on a network.



Article 29: Principle of choice of data processor

Where processing is carried out on behalf of a data controller, the latter must choose a data processor providing sufficient guarantees. It is the responsibility of the data controller as well as the data processor to ensure compliance with the security measures defined in this Supplementary Act.

Article 30: Specific principles

Within the ECOWAS space, it is prohibited to obtain and process data that reveals the racial, ethnic or regional origin, parentage, political opinions, religious or philosophical beliefs, trade union membership, sexual life, genetic data or more generally data on the state of health of a data subject.

Article 31: Exceptions

The prohibition stipulated under (Article 30) shall not apply in the following instances:

- 1) processing of personal data relating to data manifestly made public by the data subject;
- 2) the data subject has given his written consent, on whatever medium, to such processing, and in line with texts in force;
- 3) processing of personal data is necessary to protect the vital interests of the data subject or another person where the data subject is physically or legally incapable of giving consent;
- 4) processing, in particular of genetic data, is necessary for establishing, exercising or defending a legal right;
- 5) where legal proceedings or a criminal investigation is underway;
- 6) processing of personal data is necessary for reasons of public interest, in particular for historical, statistical or scientific purposes;
- 7) for the performance of a contract to which the data subject is a party or for the application of pre-contractual measures adopted at the request of the data subject prior to entering into a contract;
- 8) the processing is necessary for compliance with any legal or regulatory obligation to which the data controller is subject;
- 9) the processing is necessary for the implementation of a public interest mission or is carried out by a public authority or is assigned by a public authority to the data controller or to a third party to whom the data is disclosed;



- 10) the processing is carried out in the course of its legitimate activities by a foundation, an association or any other non-profit making body that exists for political, philosophical, religious, mutual benefit or trade union purposes. Nevertheless, such processing shall relate only to members of such a body or individuals who have regular contact with it in connection with its purpose and shall not involve disclosure of personal data to third parties without the consent of the persons concerned.

Article 32: Case of personal data processing carried out for purposes of journalism, research, artistic or literary expression

Processing of personal data that is carried out for the purposes of journalism, research, artistic or literary expression shall be allowed when such processing is executed solely for the purposes of literary and artistic expression; or in the exercise of the professional activity of journalist or researcher, in compliance with the ethical rules of these professions.

Article 33: Application of the provisions of the law relating to the print media or the audiovisual and criminal law sector

The provisions of this Supplementary Act shall not preclude the enforcement of legal provisions relating to the written or audiovisual press and the criminal code, which stipulate the conditions for exercising the right to response and prevent, limit, redress and, where necessary, punish infringements of privacy and the reputation of individuals.

Article 34: Prohibition of direct prospecting

Within the ECOWAS space, direct prospecting by whatever means of communication, using personal data in any form of an individual who has not stated his prior consent to receiving such prospecting shall be prohibited.

Article 35: Basis of a Court decision

- 1) No court decision implying an assessment of the behaviour of an individual shall be based on the processing by automatic means of personal data for the purpose of evaluating certain aspects of their personality.
- 2) No decision that has legal effect on an individual shall be based solely on processing by automatic means of personal data for the purpose of defining the profile of the subject or evaluating certain aspects of their personality.



Article 36: Transfer of personal data to a non-member ECOWAS country

- 1) The data controller shall transfer personal data to a non-member ECOWAS country only where such a country provides an adequate level of protection for privacy, freedoms and the fundamental rights of individuals in relation to the processing or possible processing of such data.
- 2) The data controller shall inform the Data Protection Authority prior to any transfer of personal data to such a third country.

Article 37: Networking files containing personal data

Networking of files as described under Article 12 of this Supplementary Act shall enable attainment of legal or statutory objectives that hold a legitimate interest for data controllers. It shall not lead to discrimination nor prejudice the rights, liberties and guarantees of data subjects, nor be accompanied by appropriate security measures, and must take into account the relevance of the data being combined.

CHAPTER VI

**RIGHTS OF THE INDIVIDUAL WHOSE PERSONAL DATA ARE THE
SUBJECT OF PROCESSING**

Article 38: Right to information

The data controller shall provide the individual whose personal data is being processed with the following information, no later than at the time of collection of the data and irrespective of the means and media:

- 1) his identity and, where applicable, the identity of his representative;
- 2) the defined purpose(s) for which the data is to be processed;



- 3) the categories of data involved;
- 4) the recipient or recipients to whom the data is likely to be disclosed;
- 5) the ability to request removal from the file;
- 6) the existence of a right of access to data concerning him, and to rectification of such data;
- 7) the period of preservation of the processed data;
- 8) the possibility of any transfer of data to a third country.

Article 39: Right of access

Any individual whose personal data is the subject of processing may request from the data controller by way of questions:

- 1) information enabling them to be informed of and contest such processing;
- 2) confirmation of the fact that the personal data of which that individual is the data subject is or is not being processed;
- 3) disclosure of personal data of which that individual is the data subject, as well as any available information about the origin of such data;
- 4) information relating to the purposes of the processes, the categories of personal data processed and the recipients or classes of recipients to whom they are disclosed.

Article 40: Right to object

1) An individual is entitled, for legitimate reasons, to object to processing of personal data of which he is the data subject.

2) Such an individual is entitled, on the one hand, to be informed prior to personal data of which that individual is the data subject being disclosed for the first time to a third party or used on behalf of a third party for purposes of prospecting, and on the other hand, to be given expressly the right to object, free of charge, to such disclosure or use.

Article 41: Right to rectification and destruction

If personal data of which an individual is the data subject are inaccurate, incomplete, questionable, outdated or prohibited from collection, use, disclosure or preservation, he is entitled to ask the data controller to have such data rectified, supplemented, updated, blocked or destroyed, as appropriate.



CHAPTER VII

OBLIGATIONS OF THE PERSONAL DATA CONTROLLER

Article 42: Obligations of confidentiality

Processing of personal data shall be confidential. It shall be carried out exclusively by persons acting under the authority of the data controller and solely upon his instructions.

Article 43: Obligations of Security

The data controller shall take all necessary precautions in relation to the nature of data, and in particular to ensure that it is not deformed, damaged or accessible to unauthorised third parties.

Article 44: Obligations of Preservation

Personal data shall be kept for a period of time set by a regulatory text and only for the purposes for which they were obtained.

Article 45: Obligations of Durability

- 1) The data controller shall take all the necessary measures to ensure that the personal data processed can be utilised, no matter the technical medium.
- 2) He shall particularly ensure that technological development does not constitute an obstacle to such utilisation.

CHAPTER VIII

FINAL PROVISIONS

Article 46: Amendment and review

- 1) Any Member State, the Council of Ministers and the ECOWAS Commission may submit proposals for the amendment and review of this Supplementary Act.
- 2) All amendment and revision proposals shall be submitted to the ECOWAS Commission for onward communication to the Member States no more than thirty (30) days after reception. The Council of Ministers shall examine the amendment



and revision proposals on expiry of a period of three (3) months granted the Member States to enter their observations.

3) The amendments and revisions shall be adopted by the Council of Ministers and shall be submitted to the Authority of Heads of State and Government for approval and signature. The said amendments and revisions shall come into force in conformity with the provisions of Article 48 of this Supplementary Act.

Article 47: Publication

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

Article 48: Entry into force

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

Article 49: Depository authority

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

**IN WITNESS WHEREOF WE, THE HEADS OF STATE AND GOVERNMENT
OF THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES HAVE
SIGNED THIS SUPPLEMENTARY ACT**

DONE AT ABUJA ON 16TH DAY OF FEBRUARY 2010

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



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

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

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

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

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

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

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

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Minister of Malians in the Diaspora and
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For and on behalf of the President
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Acting President,
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H. E. Ernest Bai KOROMA
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H. E. M. Abdoulaye WADE
President of the Republic of Senegal

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