



**Sixty Second Ordinary Session of the
Council of Ministers**

ABUJA 26 – 27 MAY 2009

**DIRECTIVE C/DIR.3/05/09 ON THE HARMONIZATION OF
GUIDING PRINCIPLES AND POLICIES IN THE MINING
SECTOR**

THE COUNCIL OF MINISTERS,

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

MINDFUL of the Protocol A/P.1/7/91 on the Community Court of Justice;

MINDFUL of the Protocol A/P.1/5/79 of May 1979 on free movement of people and goods;

MINDFUL of Article 31 of the ECOWAS Treaty relating to natural resources which prescribe the need to harmonize and co-ordinate policies and programmes of Member States,

MINDFUL of the need to improve economic and social justice within the communities in decision making processes relating to the exploitation of natural resources for as part of an efficient conflict prevention policy , as stated in the ECOWAS Conflict Prevention Strategy Framework adopted in November 2007

MINDFUL of Article 21 of the African Charter on Human and Peoples Rights,

RECALLING the ECOWAS Supplemenatary Protocol AP/SP1/12/01 of 21st December 2001 on Democracy and Good Governance which prescribes the principles of good political, economic and social governance;

RECOGNIZING that governments investors and business enterprises have the primary responsibility to promote and protect human rights in the Mining Sector in West Africa,

AWARE of the United Nations Global Compact initiative which challenges business leaders to 'embrace and enact' nine basic principles with respect to human rights, including labour rights and the environment; and the ILO Declaration on Fundamental Principles and Rights of Work,

ACKNOWLEDGING the universality, indivisibility, interdependence, and interrelatedness of human rights, including the right to development as recognised in the International Covenant on Economic, Social and Cultural Rights, that entitles every person and all peoples to participate in, contribute to, and enjoy economic, social, cultural, and political development in which all human rights and fundamental freedoms can be fully realized,

CONSCIOUS of the fact that mining affects the ecosystems and is not limited to the immediate area of the mine site and also impacts on communities in the environmental, social, and economic zone surrounding the mine; and that certain 'communities of interest' require special consideration by mining companies, governments, and investors; and such groups include local peoples, artisanal miners, mine workers and people within the communities who are marginalized.

RECOGNIZING the need to develop widely accepted criteria by which, governments, communities, industries and other stakeholders can measure environmental performance and acceptability of mining operations; using such criteria to develop appropriate standards as condition for permits required for mine development,

RECOGNIZING the need to protect and maintain the macroeconomic stability of Member States in terms of revenues derived from mining as well as providing a conducive economic environment to attract investors into the mining industry; and the need to maintain a balance between the interests of Member States and the investor community,

CONSCIOUS that exploitation and transformation of the Mining Product is essential for the socio-economic development of the Member States and that benefits from these activities should be equitably shared among present and future generations.

RECOGNISING that governments of member States should play the lead role in creating a framework for policies and regulations for the mining industry and contribute to sustainable development.

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RECOGNIZING the significant contribution of Civil Society Organisations, the Media and various stakeholders in the protection and promotion of human rights and the right of local communities in the mining areas to citizen participation in their development;

CONVINCED of the need to develop a common mining policy in the ECOWAS Sub-region taking into account other international, regional and sub-regional initiatives, such as the adoption by UEMOA Member States of a common mining policy and the Community Mining Code ;

AFTER the opinion of Community Parliament.

PRESCRIBES AS FOLLOWS

CHAPTER I

DEFINITIONS AND OBJECTIVES

ARTICLE 1: Definitions

For the purpose of this Directive:

‘Artisanal and Small-scale mining operations’ means mining operations over an area of land in accordance with criteria of size, production, area, capital investment, depth of operation limitation, equipment allowed and/or local participation prescribed by legislation in member states.

‘Civil Society Organization’ means any organized non-public sector organization or grouping

‘Geological Activities’ means all scientific studies carried out on the ground either directly or remotely for the purpose of identifying among others, mineral resources

‘Localization’ means all activities that aim to increase local procurement of goods and services, training, technology transfer and development of local entrepreneurship, designed towards the eventual replacement of expatriate personnel with personnel of a Member State.

‘Mine’ when used as a noun, means a place, excavation or workings, where an operation connected with mining is carried on together with all buildings, premises, erections and appliances belonging or appertaining to it above and below the ground for



purposes of winning, treating or preparing minerals, obtaining or extracting a mineral or metal by a mode or method or for the purpose of dressing mineral ore, and includes a quarry where building minerals are mined.

'Mine' when used as a verb, means intentionally to win minerals, and includes an operation including prospecting directly or indirectly necessary for mining or incidental to mining and 'mining' shall be construed accordingly.

'Mineral' means a substance in liquid or solid form that occurs naturally in or on earth, including on or under the seabed, formed by or subject to geological processes including but not limited to industrial minerals and petroleum.

'Mineral Operations' means reconnaissance, prospecting, mining, or related activities, including reclamation and post-mine monitoring, for or of minerals.

'Mineral right' means licenses, permits, leases and other authorizations granted by member states to individuals or corporate bodies including their agents or subcontractors for the purpose of exploring for, processing or mining of minerals.

'Mining operations' means all operations carried out in the exercise of rights conferred by a license or authorisation to exploit mineral.

'Prospect' means to search for a mineral and include reconnaissance and operations to determine the extent of economic value of a mineral deposit.

'Reconnaissance' means the search for minerals by geophysical, geochemical and photo-geological surveys or other remote sensing techniques and surface geology in connection with it including collection of necessary environmental data.

'State Agencies' means bodies or institutions set up by Members States with a specific mandate and includes quasi or parastatal bodies

'Water bodies or Water Resources' means all water flowing over the surface of the ground or contained in or flowing from any river, spring, stream or natural lake or part of a swamp, in or beneath a watercourse and includes all underground water contained in an aquifer.

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ARTICLE 2: Objectives

The objectives of this Directive are:

1. To provide harmonization of guiding principles and policies in the mining sector of Member States to ensure high standards of accountability for mining companies and governments, promoting human rights, transparency and social equity as well as providing protection for local communities and the environment in mining areas within the sub-region
2. To provide a mining environment that is responsive to macroeconomic sustainable development and balances the need to provide appropriate incentives to attract investors and to protect the revenue base and resources of Member States
3. To improve transparency in mineral policy formulation and implementation processes in mining within the sub region to promote the participation and enhance the capacity of mining communities.
4. To provide for a harmonized mineral policy and legal framework for Member States
5. To ensure that Harmonization takes into consideration the different stages each Member State is at in relation to mining and how different policies could be enacted and or developed for different strategies to address the specific needs of each Member State.

CHAPTER II:

MINERALS AS STATE RESOURCES

ARTICLE 3: Vesting of Mineral Resources in the State

1. Every mineral in its natural state in, under or upon land of a Member State, rivers, streams, water-courses throughout the sub-region, exclusive economic zones and an area covered by the territorial seas or continental shelves is the property of the respective Member State.
2. Holders of mining rights or titles acquire ownership of the mineral substances they extract in accordance with legal and contractual provisions in force
3. The mineral is vested in the State to be held and managed in trust for the people of the Member States. Member States are enjoined to take all the necessary steps including but not limited to appropriate legal and administrative regimes to protect their mineral resources.



ARTICLE 4: Acquisition or Occupation of Land for Mining

1. Where land is required for the development of a mineral resource the land must be acquired or occupied in accordance with the existing laws of Member States.
2. Where land has been acquired for the development of a mineral resource, the owner or lawful occupier shall be paid adequate and prompt compensation.
3. The computation of any compensation for the acquisition of land to develop a mineral resource should take into consideration the loss to be suffered by the user of the land area, the inconveniences which can be assessed according to legal principles in monetary terms caused to the land owner or lawful occupier, the losses and damages suffered by the immovable assets and their appurtenances, the loss of revenue, including expected losses of agricultural income; and other reasonably proven losses, by providing compensation in accordance with the best international practices.
4. Member States shall designate some lands as 'no go zones' for mining activities if such lands have peculiar risks to the preservation of security including areas which have environmental, social and cultural sensitivity to mining operations.

ARTICLE 5: Acquiring Mineral Rights

1. Notwithstanding a title or right to land upon which minerals are situated, a search, reconnaissance, prospecting, exploration, mining or any such similar activity shall only be undertaken by any person after the grant of a valid mineral right by a competent authority.
2. In the granting or withdrawal of mining rights, procedures laid down in Member States shall be followed and there shall be transparency at each stage of the decision making process.
3. Notwithstanding clause (1) of this article, State Agencies of Member States shall not be prevented from conducting geological activities in accordance with existing law in areas where a mining right has been acquired.

Qualifications for acquiring a mining right in Member States must meet international best practices in the mining industry and shall include but not limited to respect for the environment; the rights of mining communities, a plan approved by the competent authority for the mining company to utilise local goods, services and manpower;

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4. The competent authority of a Member State may revoke a mining right granted under this article if it is satisfied after formal investigation and audit that the right holder has contravened any provision of this Directive or any law of a Member State, has been convicted of an offence relating to smuggling or illegal sale or dealing in minerals..

CHAPTER III:

PROTECTION OF THE ENVIRONMENT

ARTICLE 6: Environmental Protection Obligations

1. Before undertaking any mining activity, a holder of a mineral right shall obtain the necessary permits and approvals from the competent authorities of a Member State to protect forests, water resources, the environment, other natural resources and public health in its mining activities.
2. Member States shall adopt appropriate legislation (where none exist) to provide for complaint mechanisms and audits for the observance of obligations arising from this Directive on environmental performance and protection.
3. Mining investors shall carry out their activities in accordance with national laws, Regulations, administrative practices, and Policies relating to the preservation of the environment of Member States in which they operate and with due regard to relevant international Agreements, principles, objectives, and standards with regard to the environment, public health, and safety; and shall generally conduct their activities in a manner contributing to the wider goal of sustainable development.
4. Mining Companies shall develop and make adequate provision to implement reclamation, closure and post closure plans before operations begin. This plan shall be submitted to the competent authority for approval and shall be subject to periodic reviews.
5. There shall be periodic audits to ascertain the operational and environmental performance of mines.
6. Member States shall ensure that holders of mineral rights shall prevent and manage spillage of cyanide, mercury and other similar substances as well as other hazards related to mining activities;
7. Member States shall set up a Reclamation Fund for the purpose of reclaiming and rehabilitating mined out areas.

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CHAPTER IV:

PROTECTION OF NATIONAL INTEREST

ARTICLE 7: Stability Agreement

1. The competent authority of Member States as part of the granting of a mining right may enter into a Stability Agreement based on negotiations with an investor in mining.
2. A Stability Agreement shall reflect the national interest of the Member State and that of the Investor.
3. The negotiations pursuant to the said Agreement shall address issues on adverse effects of changes in existing law, level of and payment of royalties, taxes, and duties on the importation of inputs.
4. The Stability Agreement shall be subject to ratification by the National Parliament or any other body approved by a Member State.

ARTICLE 8: Fiscal Framework

1. Member States shall enact appropriate legislation to optimize and protect revenues due and accruing to them from mining activities.
2. Exemptions to the payment of customs import duty in respect of plant, machinery, equipment and accessories imported specifically and exclusively for mining operations shall be subject to a mineral right holder, respecting its social environment and other obligations to mining communities as specified in guidelines or legislations of Member States.
3. Staff of a holder of a mineral right shall pay taxes on all their incomes at the same rate as citizens of a Member State except where a Double Taxation Agreement exist between the Member State and the home State of the mineral right holder to the contrary.
4. Personal remittance for expatriate personnel shall not be free from tax imposed by existing law except where a Double Taxation Agreement exist between the home country of the said personnel and a Member State to that effect.
5. Member States shall ensure the equitable and effective distribution and transfer of portion of mining incomes, provided for in the guidelines or legislation of Member States for the benefit of local communities and encourage strengthening of their capacities. Member States shall review, update and harmonize their fiscal regimes every three years.



ARTICLE 9: Transferability of Capital

1. A holder of a mining right who earns foreign exchange from mining operations may be permitted by the competent authority in a Member State to retain in an account opened in the said State a portion of the foreign exchange earned for use in acquiring spare parts and other inputs required for mining provided that evidence exist to the effect that no such funds are readily available without the use of a mechanism of such an account.
2. Any foreign exchange earned and authorized to be retained in an account under this article shall be used specifically and exclusively for:
 - (a) the purchase of spare parts, plant, consumables, machinery and equipment;
 - (b) debt servicing and dividend payment;
 - (c) remittance in respect of quotas for expatriate personnel; and
 - (d) the transfer of capital in the event of a sale or liquidation of mining operations.
3. A Holder of a mining right shall be guaranteed free transferability of convertible currency per annum at a rate to be mutually agreed with Member States;
4. Any transfer of convertible currency by a mining right holder provided in this article shall be made in accordance with the relevant foreign exchange regime of Member States. Member States shall put in place measures to prevent capital flight or in the case of net foreign exchange holder, through the account opened under clause (1) of this article

ARTICLE 10: State Participation in Mining Operations

1. A competent authority in a Member State may by notice in writing require a mining right holder which is a corporate body to issue to that Member State a special share, by whatever name called in the company for no consideration.
2. The special shares shall constitute a separate class of shares and shall have rights agreed on between the competent authority of the Member State and the Mining Right Holder;
3. A Member State may also participate in the equity of mining operation within their territorial area on terms to be mutually agreed.

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ARTICLE 11: Localization Policy of Mining Operations

1. In pursuance of a localization policy, a holder of a mining right in a Member State shall submit and comply with the competent authority a detailed programme for recruitment, technology transfer, and training of local personnel.
2. Member States shall ensure that Corporate Social Responsibility (CSR) and Alternative Livelihoods Programmes (ALP) to be submitted under this article shall be part of the conditions for granting a mining right. Such CSR and ALP shall enhance the livelihoods of the mining communities and shall be drawn up with the active participation and agreement with the local communities.
3. Where the programmes mentioned in sub-clause (2) of this article have not been adhered to by a mining right holder, it shall form the basis for the revocation of that such right.
4. A Holder of a mining right shall in all phases of its operations give preference in employment to citizens of Member States especially affected communities to the maximum extent possible and consistent with safety, efficiency and economy.
5. A Holder of a mining right shall in conduct of mining operations and in purchase, construction and installation of facilities have a procurement policy which gives preference to:
 - (a) materials and products of a Member State;
 - (b) service agencies located in a Member State and owned by a citizen (corporate or otherwise) of such Member State and/or public corporation, to the maximum extent possible and consistent with safety, efficiency and economy.
6. Member States shall take step to enact appropriate legislation to provide for artisanal and small scale mining rights to citizen and ensure safe, efficient and environmentally sustainable artisanal and small scale mining. Member States shall take measures to establish adequate legal, economic and technical oversight to improve the working and living standards as well as the yield of artisanal mine activities. Furthermore, Member States are to ensure peaceful cohabitation between large scale and artisanal and small scale mining.
7. Member States shall adopt appropriate legislation to provide for a decentralized institution of mining activities and to harmonize mining related legislation on land rights, environment, forestry and water rights.



CHAPTER V:

ACCESS TO INFORMATION

ARTICLE 12: Duty to maintain records

1. A holder of a mining right shall maintain, at an address in the relevant Member State with notice to the competent authority of that State, the documents and records that are prescribed by law relating to mining activities.
2. A holder of a mining right shall permit an authorized officer of the relevant Member State at a reasonable time to inspect the documents and records and take copies of them.
3. A holder of a mining right shall furnish the appropriate and competent authorities of a Member State annually with such reports on its mineral operations or as requested from time to time.
4. Member states shall establish and enforce laws and regulations that penalize companies that provide false, misleading, incomplete, or otherwise knowingly misrepresentative information to the public or government.

ARTICLE 13: Transparency, Good Governance and Public access to information

Records, documents and information furnished or attained

1. under article 12 of this Directive which relate to a mining right granted should be considered public and shared with the public.
2. ECOWAS member States that do not have laws on the free flow of information are encouraged to develop them to promote public and media access to information regarding mining.
3. Member States will take measures to ensure that good governance principles as stated in the ECOWAS Supplementary Protocol on Democracy and Good Governance are fully implemented and to combat illicit trafficking related to mining resources and activities.
4. The States undertake to promote transparency of information concerning mining revenue especially by fostering subscription to the Extractive Industries Transparency Initiative (EITI) and by providing support to them.
5. Member States are encouraged to pass the Freedom of Information Law (where none exist).
6. Notwithstanding any provision in this article to the contrary, records, documents and information furnished or obtained in relation to mining



activities shall be divulged if it is declared by a competent authority of a Member State in the public interest to do so.

7. No data shall be considered confidential if it relates to degradation or claimed degradation of human health, the environment, or worker safety.

ARTICLE 14: Investigations and Auditing

1. Member States shall ensure the proper functioning of mining activities. To that effect, they shall take all measures that they may deem fit, notably to appoint one or more competent persons to investigate, to conduct audit and report on the activity and or ownership of the mining company.
2. Any person or entity working with or for a company being investigated under this article or any such person connected with the subject matter of the investigation or audit shall cooperate with the investigator or auditor.
3. Procedures requested relating to the lifting of the obligation to professional secret will be respected.

CHAPTER VI:

HUMAN RIGHTS OBLIGATIONS AND MINING ACTIVITIES

ARTICLE 15: Human Rights Obligations

1. Member States, Holders of mining rights and other mining related business entities have a primary obligation to respect and promote recognized human rights including the rights of women, children and workers arising from mining activities.
2. Member States and Holders of mining rights shall ensure that the rights of the local communities are respected at all times. Where such Human rights legislations do not exist Member States shall enact appropriate legislation to ensure respect for Human rights.
3. Member States shall make adequate provision for the progressive realization of economic, social and cultural rights as they relate to mining activities and empowerment of women.
4. Mining companies shall comply strictly with Member States laws on the prohibition of carrying and use of arms.



5. Companies operating in conflict zones shall abide by all major international human rights agreements and international humanitarian law.

ARTICLE 16: Sustainable Development and Local Community Interests

1. Mining Rights holders in Member States shall conduct their mining activities in a manner that respects the right to development in which peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural, and political development in a sustainable manner.
2. Mining Rights holders in Member Countries shall respect the rights of local communities. They shall particularly respect the rights of local people and similar communities to own, occupy, develop, control, protect, and use their lands, other natural resources, and cultural and intellectual property.
3. Companies shall obtain free, prior, and informed consent of local communities before exploration begins and prior to each subsequent phase of mining and post-mining operations.
4. Companies shall maintain consultations and negotiations on important decisions affecting local communities throughout the mining cycle.
5. Member States, holders of mining rights, Civil Society Organisations, other stakeholders and institutions experienced in the field of mining activity, shall establish participatory framework including all the actors to ensure fruitful collaboration and peaceful cohabitation during and post- mine operations.
6. Member States shall ensure the cooperation with other stakeholders while taking decision on mining activities.
7. Member States shall set up a Socio-Economic Development Funds to which mining rights holders and other stakeholders shall contribute to, by law for the development of post mine conversion activities in the affected local communities.

**CHAPTER VII
DISPUTE RESOLUTION**

ARTICLE 17: Complaints Procedure

1. All concerns relating to the violation of this Directive shall be brought to the attention of the Member State for resolution. In the event of non-resolution of the conflict or violation, the matter shall be brought to the attention of President of the ECOWAS Commission who shall submit such



complaint to the ECOWAS Court of Justice in accordance with its Protocols.

2. The review procedure of complaints under this article does not preclude a State, an individual, or any stakeholder from taking the case before the ECOWAS Court of Justice or invoking arbitration procedure or the jurisdiction of any other international justice system, such as the African Court of Justice or the African Human Rights Court of Justice.

ARTICLE 18: Settlement Procedures

1. Member States shall provide the necessary capacity to local communities in their engagement with mining rights holders in negotiations and in settling mining disputes.
2. Any dispute arising out of the interpretation and/or the implementation of the Directive shall be settled having recourse to negotiation, arbitration or other Alternative Dispute Resolution Mechanisms, notwithstanding the provisions of article 17 stated above.
3. Where the parties to a dispute fail to reach a settlement as provided under clause (2) of this article recourse has to be made to the ECOWAS Court of Justice.

CHAPTER VIII **INSTITUTIONAL AND IMPLEMENTATION ARRANGEMENTS**

ARTICLE 19: Member States

1. Within the framework of the implementation of this Directive, the States Parties which have not done so shall establish by legislation and regulations a competent Authority to regulate mining activities.
2. Member States shall provide annual budget lines of expenditure for the implementation of this Directive.
3. Member States shall develop National Action Plans for the implementation of the obligations under this Directive and to establish an annual report to the President of the ECOWAS Commission on the implementation of this Directive and of the mining sector successes and failures. This report should be released to the public by the President as soon as it is received.
4. Member States shall make available to the President of the ECOWAS Commission their experience of appropriate best practices in mining regulation to assist in the discharge of the responsibilities contained in this Directive



Article 20: **The President of ECOWAS COMMISSION**

1. ECOWAS shall harmonize guidelines and mining manuals to guide the operations of national mining or minerals commissions of States Parties.
2. The President of the ECOWAS Commission is responsible for supporting and supervising the application of the provisions of this Directive. To this end, the President of the ECOWAS Commission shall:
 - a) Take all necessary measures to mobilize the resources for the monitoring and implementation of this Directive.
 - b) provide Member States with the necessary financial and technical support for the realization of their activities.
 - c) present an annual Report to the Council of Ministers on the status of the implementation of this Directive.

ARTICLE 21: **Cooperation Within and Among Member States**

1. Member States undertake to promote intra and inter- State cooperation in the implementation of this Directive. To this effect:
 - a) The President of the ECOWAS Commission shall prepare procedures for interstate cooperation between national mining commissions and other stakeholders in the mining industry.
 - b) The President of the ECOWAS Commission shall facilitate and seek assistance for the training of officials of national mining commissions and mining related agencies to further inter-state cooperation.
 - c) The President of the ECOWAS Commission shall facilitate and seek assistance for training of and otherwise securing technical expertise within, between, or for each Member States.

ARTICLE 22: **Implementation**

1. The Member States and the ECOWAS Commission shall adopt all the necessary measures in order to comply with this Directive by 1st July 2014.
2. Where the Member States adopt this Directive, the texts shall contain a reference to this Directive, or shall have such a reference attached to them when they are officially published.
3. The Member States shall notify ECOWAS Commission on the measures or arrangements they adopt in order to comply with the provisions of this Directive.

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4. The President of ECOWAS Commission shall appoint an ad-hoc committee to monitor the implementation of this Directive by Member States.

ARTICLE 23: Difficulties of Implementation

1. The Member States shall notify the President of the ECOWAS Commission on the difficulties encountered in the process of implementing this Directive.
2. The President of the ECOWAS Commission shall then report to the next session of the Council of Ministers

CHAPTER IX

GENERAL AND FINAL PROVISIONS

ARTICLE 24: General provisions

1. The undertakings ensuing from the provisions of this Directive shall not be interpreted as being a contradiction to the spirit and the letter of the Conventions or Accords linking a Member State with a Third State as long as these Conventions and Accords are not in contradiction with the spirit and the letter of this Directive.
2. In interpreting or implementing this Directive, recourse may be made to the various International, Guidelines, Principles and Conventions for regulating Business Enterprises.

ARTICLE 25: Publication

1. This Directive shall be published by the ECOWAS Commission in the Official Journal of the Economic Community of West African States within thirty (30) days of its signature by the Chairman of the Council of Ministers.
2. It shall also be published by each Member State in its National Gazette within thirty (30) days after notification by the Commission.

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ARTICLE 25: Publication

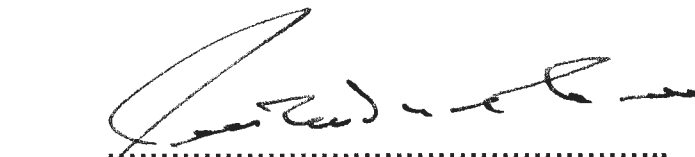
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ARTICLE 26: Entry into Force

1. This Directive shall enter into force after publication in the National Gazette of the Community.

DONE AT ABUJA, THIS 27TH DAY OF MAY 2009



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H. E. Chief Ojo MADUEKWE (CFR)

The Chairman

For Council

