

Chapter 6



ECOWAS, an Area of Free Movement and First Border Post for the Schengen Area

by Nelly ROBIN

West Africa is the primary destination region for migrants in Africa and has a very high rate of intra-regional mobility. At the same time, the EU is the main destination outside Africa for West African migrants.

For more than two decades, both Europe and West Africa have tried to establish an area of free movement of persons between the signatory states through, respectively, the *Schengen Agreement (1985)*¹ and the *Economic Community of West African States (ECOWAS)² Protocol on the Free Movement of Persons and the Right of Residence and Establishment (1979)*³. However, the convention implementing the Schengen Agreement also provides for *increased protection of the area's external borders*, a dimension that is not part of the ECOWAS Protocol. This subtle difference is fundamental and contributed to the development of migratory patterns between West Africa and Europe throughout the 1990s. At the start of the 21st century, these changes were still underway.

In this context, it is clear that immigration management can no longer be based solely on bilateral relations between countries of destination and origin, but requires initiatives integrated into a scale of wider geopolitical areas. The Schengen “rules” now apply to everyone. Initially applied to the countries of southern Europe, today their influence goes beyond Europe, establishing rules of “co-operation” with third countries.

On this basis, it is important to understand the spirit that prevailed when the two systems of free movement of persons were established and to appreciate the impact of their development on the management of West African migration to Europe.

Niger and Senegal are examples that can provide a way of illustrating this analysis. These two ECOWAS Member States have gone through similar changes and are today key transit areas between Sub-Saharan Africa and the Maghreb on routes to Europe.

Europe: free internal movement, increased protection of external borders, “externalised” management of international migration

In the early 1990s, countries in Europe expressed a desire for greater co-operation on migration issues, and intense legislative and regulatory

activity began. Since then, it can be said that the process has continued at the internal, bilateral and community levels. All aspects of immigration duly became subject to new restrictions: conditions for issuing visas were revised and made stricter, access to the right of asylum was increasingly limited, border controls were strengthened and new systems to combat illegal immigration were developed.

In 1995, the convention implementing the Schengen agreements established “an area of free movement of persons between signatory and associate states while guaranteeing increased protection of the area’s external borders.”⁴ From this point, nationals of third countries, including West Africa, needed a visa referred to as a “Schengen visa” to cross borders of the Schengen area. It is a single visa issued by one of the member states that is valid for the whole Schengen zone.

Faced with this political will not only to monitor but, above all, to limit the entry of non-EU citizens to “Schengen territory”, potential migrants, notably those from West Africa, devised new strategies and explored new routes. West African migrants to the EU replaced the initial dual relationship between origin and destination country with a variety of routes and destinations, the actors diversified and different types of movement became necessary.

“In return, European countries adopted new, even more restrictive, measures particularly with regard to third country nationals” (Robin, 1997) such as the airport transit visa (ATV) and safe countries of origin. Furthermore, these new legislative measures could be reinforced locally by a military “partner”, “to monitor illegal migratory flows” on road or sea routes.

The ATV, an exception principle reserved for third country nationals

“Whereas the air route, particularly when it involves applications for entry or de facto entry, in the course of airport transit, represents a significant way in with a view in particular to illegally taking up residence within the territory of the Member States; whereas improvements should be sought in controlling that route”,⁵ in 1996 the

EU member states established the airport transit visa (ATV):⁶ this system allowed them to disregard the principle of “free transit passage through the international areas of airports”



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established by Annex 9 of the Chicago Convention (Robin, 2006). Only nationals of third countries were subject to the exception to this principle and airport transit visas were issued by the consular services of the member states (Audebert et Robin, 2008), at a time when West African migration to Europe was mainly by air.

In 1996, an initial list of countries was published,⁷ including two member states of ECOWAS, Ghana and Nigeria, whose nationals were

now *“subject to the airport visa requirement for all Schengen States”*.⁸

Between 2002 and 2008, in accordance with Article 5 of this joint action, which states that *“each Member State shall decide whether an airport transit visa should be required of nationals of countries not included on the joint list”*, some European states added further countries.

France is the Schengen State with the longest list for West Africa, with nationals of eleven ECOWAS Member States requiring an ATV: Burkina Faso,⁹ Côte d’Ivoire, The Gambia,¹⁰ Guinea, Guinea Bissau, Liberia, Mali, Senegal, Sierra Leone¹¹ and Togo. In 2008, these measures became even more drastic for nationals of Guinea, Liberia and Sierra Leone, whose *“holders of a diplomatic, service or official passport”*¹² or *“holders of a visa valid for a member state of the European Union or European Economic Area, Canada, United States of America or Switzerland”*¹³ were no longer exempt from the ATV requirement, unlike nationals of other countries. (→ Table 6.1)

As a result, when departing from international airports in all ECOWAS Member States, with the exception of Cape Verde, operators, i.e. air carriers, are required to *“take precautions at the point of embarkation to ensure that passengers are in possession of the documents prescribed by the States of transit and destination for control purposes”*.¹⁴ By granting themselves the right to disregard fundamental principles of the International Civil Aviation Organization (ICAO) for the first time, European countries declared their desire to externalise the management and control of their borders to the borders of developing countries.

Table 6.1

List of West African third countries whose nationals are subject to the airport transit visa requirement for only certain Schengen states. The holders of travel documents issued by these third countries are also subject to this requirement.

	Benin	Burkina Faso	Côte d'Ivoire	The Gambia	Ghana	Guinea	Guinea-Bissau	Liberia	Mali	Mauritania	Niger	Nigeria	Senegal	Sierra Leone	Togo
BNL ^②			●		●	●							●		
CZ ^④		●			●	●	●	●	●	●		●	●		
DK															
DE ^⑦			●												
EE ^④		●					●	●				●	●	●	
EL															
ES ^③		●				●	●	●					●	●	
FR ^④	●	●	●		●	●	●	●				●	●	●	
IT ^⑤												●			
CY															
LV															
LT ^⑥															
HU					●		●					●	●		
MT															
AT ^①							●								
PL ^③		●			●	●	●	●		●		●	●		
PT							●					●			
SI															
SK															
FI															
SE															
IS															
NO															

① Foreign nationals subject to the airport transit visa (ATV) requirement do not need this visa to transit an Austrian airport if they are in possession of the following documents for the duration of the stay necessary for the transit: a) a residence permit for Andorra, Japan, Canada, Monaco, San Marino, Switzerland, the Holy See or the United States guaranteeing absolute right of return; b) a visa or residence permit for a Schengen state where the accession agreement has come into force; c) a residence permit for a member state of the EEA.

② Only when these nationals do not hold a residence permit valid for one of the countries of the EEA, Andorra, Canada, the United States, Japan, Monaco, San Marino or Switzerland. Holders of a diplomatic, service or special passport, as well as members of an aircraft crew who hold a "Flight crew Member's Licence" or a "Crew Member Certificate" issued in accordance with the Chicago Convention, are also exempt from the ATV.



- ③ *Holders of diplomatic, official or service passports are not subject to the ATV requirement. The same applies to holders of an ordinary passport who are resident in a member state of the EEA, the United States or Canada, or who are in possession of an entry visa valid for one of these countries.*
- ④ *The following are exempt from the ATV: holders of diplomatic and service passports, holders of one of the residence permits listed in part III, members of an aircraft crew who are nationals of a state that is party to the Chicago Convention.*
- ⑤ *Only when these nationals do not hold a residence permit valid for a member state of the EEA, Canada or the United States.*
- ⑥ *The ATV requirement does not apply to holders of diplomatic and service passports.*
- ⑦ *The following are exempt from the ATV: a) holders of a visa or residence permit issued by a member state of the EU or by a state that is party to the Agreement on the European Economic Area, as well as; b) holders of a residence permit or any other document listed in part III, list B. An ATV does not constitute a visa in the sense of point a).*
- ⑧ *The following are exempt from the ATV: a) holders of diplomatic and service passports; b) members of an aircraft crew who are nationals of a state that is party to the Chicago Convention; c) holders of residence permits issued by a member state of the EEA or Switzerland.*

Safe countries of origin, a concept with all the appearances of non-persecution

This system is reinforced by the notion of a *safe country of origin*. A country is considered safe “if it ensures respect for the principles of freedom, democracy and rule of law, as well as human rights and fundamental liberties”.¹⁵ The stated intention is to combat diverting the right to asylum by implementing new concepts. However, the aim is to restrict opportunities for asylum from third countries as much as possible.

The concept of safe country of origin (SCO) is applied differently by each European countries:

- In France, Law 2003-1176 of 10 December 2003 was introduced modifying law No. 52-893 of 25 July 1952 on the right to asylum. The current list includes fifteen States¹⁶ of which five are ECOWAS members: Benin, Cape Verde, Ghana, Mali and Senegal. This greatly modifies the conditions for exercising the right to asylum in France. Its compliance with Article 3¹⁷ of the Geneva Convention, related to the status of refugees (1951) sets out that “*the Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin*” raises intense debate. This regards a very complex issue: the law which refuses nationals of some third countries, the idea of a safe country of origin can seem discriminatory and incongruous to Article 3 of the Geneva Convention; but at the same time, the text defines the application procedures of this approach setting out that *the taking into account of the nature of safe countries of origin cannot hinder the individual review of each request*. This provision pairs with one of the essential demands of the Geneva Convention: that of the individual examination of a demand for asylum. The Council of State’s Decision of 13 February 2008, based on a request by the *Forum des réfugiés* association, acknowledges that Niger should be removed

from the list of safe countries of origin¹⁸, as the Decision does not call into question the principle of SCO. Consequently, the real issue is not the principle, but rather the practice: Should not all nationals of third countries concerned be provided the same conditions to compile the necessary documents for their defence?

- The United Kingdom has a longer SCO list, but at first there were no West African countries included. However, in 2007 The Gambia, Liberia, Mali, Mauritania and Sierra Leone were added.¹⁹
- In Germany, Ghana and Senegal are considered SCOs.²⁰
- Belgium, Spain, Italy and Sweden do not apply this concept.

Other countries such as Poland, the Czech Republic, Hungary and the Netherlands have adopted the concept without publishing an official list of the countries concerned.

The generalisation of the ATV and the concept of safe countries of origin highlight the EU states' concern in implementing an effective policy of distancing potential migrants and, in a wider context, as a way of managing international migration.

It is this logic that is behind the "partnership" now being proposed to third countries, which encourages them to carry out stricter checks on foreigners in transit in their territory; West African countries are thus being asked to form a sort of first line of screening of migrants travelling to the EU.

Through these "co-operation" agreements, signatory third countries force themselves *de facto* to align their legislation (visas, entry, readmission, fight against illegal immigration, asylum) with the rules and principles established in the EU.

Military partnership for "co-operation on illegal migratory flows"

Furthermore, this "co-operation" is often accompanied by a military partnership, such as the 12 August 2004 "agreement of co-operation on illegal migratory flows" signed between Italy and Libya, which is seen as a "sieve zone". In December 2007²¹, the process was reinforced by a new Italian-Libyan agreement of co-operation that provided for mixed patrols, made up of Libyan soldiers and Italian police officers, intervening in Libyan as well as international waters. The aim was to search the sea for boats of potential migrants to Europe and above all, as a first step, to intercept boats who take on board migrants on the Libyan beaches of Zuwarah, Zaniyah and Miswatah, among others. The sea, as far as the Italian coast, is monitored by radar and satellite from an operations centre located in Tripoli.

At the same time, the European Union has a Mediterranean border patrol agency called FRONTEX (European Agency for the Management of Operational Co-operation at the External Borders of the Member States of

the European Union).²² The aim of this agency is “to coordinate the operational co-operation between Member States in the field of management of external borders, assisting them in the training of national border guards and providing technical assistance and necessary support in organising joint return operations.”²³

In June 2006, at the request of Spain, FRONTEX extended its “*illegal migration control system*” to the North Atlantic, first to the Mauritanian, then the Senegalese coasts.²⁴ The aim was to “*intercept illegal migrants’ pirogues*” suspected of travelling towards the Spanish Canary Islands.²⁵ The identification of potential migrants to Europe and responsibility for the outcome are delegated to the Mauritanian or Senegalese authorities.²⁶ These agreements extend the agreement signed by Spain and Morocco

Spain has signed three agreements with The Gambia, Guinea-Bissau and Guinea to extend the FRONTEX surveillance zone.



in February 2005; they all provide for the “*reinforcement of the links between the security forces of the two countries in the fight against illegal immigration, human trafficking networks, maritime surveillance of fishing activities and*

even in the detection of drug trafficking”. In 2008, three new agreements were signed by Spain on one side and The Gambia, Guinea-Bissau and Guinea on the other, to extend the FRONTEX surveillance zone.

The issue of the involvement of third countries in the regulation of international migration and the fight against people trafficking remains at the heart of the EU’s thinking, whether it is finding the means to keep asylum-seekers in “protection zones” at least near countries in crisis,²⁷ encouraging transit countries to readmit those found to be in the EU illegally²⁸ and taking responsibility for sending them back to their country of origin or helping transit countries transform themselves into advance border posts.

In this context, the term “co-operation” has sometimes seemed little suited to the reality of negotiations. The presentation of the European Pact on Immigration and Asylum²⁹ to the European Council³⁰ on 7 and 8 July 2008, before the Preparatory Meeting for the Second Euro-African Ministerial Conference on Migration and Development for the implementation of the Rabat Action Plan³¹ (10–11 July 2008), therefore caused some doubt amongst West African third countries. Outside the conference, the Foreign Affairs Minister of Senegal expressed his “*surprise regarding the European initiative of a pact while the Rabat Process was taking us down another path...*”, adding “*if all that is confirmed, it will become urgent for the African parties to confer with one another and clearly distance themselves from their European partners and firmly promote our vision of collective rather than selective migration and a global, non-targeted approach*”. To this end, he recommended that Africa put into place a draft pact in response to the European Pact on migration to lead one day to a collective Euro-African Pact.

ECOWAS: the free movement of persons, a founding principle

In its beginnings, the 30th Ordinary Summit of Heads of Government of ECOWAS³² has from 2006 mandated the Commission to specify a common approach on migration by the member states. In the same year,³³ the ECOWAS Mediation and Security Council reaffirmed this priority, asking the President of the Commission to *pursue thinking with a view to outlining a common approach on the management of intra-regional and European migration in all its aspects*. At the start of 2008, the ECOWAS Heads of State and Government adopted a Common Approach on Migration.³⁴

The application of the Protocol on the Free Movement of Persons, limited by the administrative practicalities

This political will is a continuation of the spirit of the founding Treaty of ECOWAS which since 1975 has asserted the freedom of movement as one of its general principles:³⁵

“Citizens of Member States are considered to be citizens of the Community and consequently the Member States commit to the abolition of all obstacles to freedom of movement and residence within the Community”, Chapter 4, Article 27, paragraph 1.

In 1979, the Protocol on the Free Movement of Persons and the Right of Residence and Establishment established the legal rules and terms of application, which was foreseen in three steps:³⁶

1. right of entry and abolition of visas,³⁷
2. right of residence,³⁸
3. right of establishment.³⁹

Thus, according to the terms of the implementation of the first step, *“all citizens of the Community wishing to enter the territory of any one of the member states”* are authorised to do so *“at an official point of entry, without having to present a visa”*, if they are in possession of *“a travel document and valid international vaccination certificates”*. In addition, if they wish *“to stay in a member state for a maximum stay of ninety (90) days, [they must] obtain authorisation to do so issued by the appropriate authorities”*.

These legal measures, intended to encourage the free movement of persons, materialised with the introduction of a travel certificate (1985),⁴⁰ a residence card (1990)⁴¹ and a passport (2000)⁴² for Member States. Burkina Faso, The Gambia, Ghana, Guinea, Niger, Nigeria and Sierra Leone have issued the travel certificate, but for now only Senegal and Mali have issued the ECOWAS passport to their nationals. Holding either one of these documents exempts a Community citizen from completing the immigration and emigration form of the ECOWAS Member States. Eventually, the passport is expected to replace the travel certificate.

However, migrants' journeys are still lined with several checkpoints; the ECOWAS Executive Secretariat identified 69 checkpoints on the 992 km-long Lagos to Abidjan route, that is 7 checkpoints every 100 km.⁴³ A Senegalese trader who says he has travelled to several countries in the sub-region recognises that *the hassles have decreased with ECOWAS passports [...] but crossing some borders like Togo or Côte d'Ivoire is still a real headache. Foreigners have to pay between 30,000 and 50,000 CFA at numerous checkpoints.*⁴⁴ This opinion is shared by a woman from Burkina Faso, an immigrant in Dakar who regularly travels on the Dakar-Bamako train and then by car to Bobo Dioulasso.⁴⁵ The practices of border-control agents are therefore still obstructing the application of the ECOWAS Protocol on the Free Movement of Persons, a situation heightened by migrants' lack of information on the measures implemented since the adoption of the Protocol. Conscious of these difficulties, the Heads of State have adopted a decision relating to the formation of national committees to monitor the application of decisions and protocols on the free movement of persons,⁴⁶ which should *"ensure the effective application of community documents relating to transport, with a view to facilitating the free movement of persons and goods in the sub-region"*.⁴⁷

However, despite all these difficulties, the legal standardisation of conditions of entry throughout the ECOWAS states constitutes undeniable progress for the free movement of persons and a key factor in regional integration.

Regional law prevails in accordance with the history of migration

In line with the principle according to which regional law prevails over national law and may be applied directly,⁴⁸ Niger and Senegal, which have become the two main West African countries of transit between Sub-Saharan Africa and the Maghreb on routes to Europe, today offer ECOWAS nationals the same conditions of entry and transit in their territory. Previously, application of their respective national laws, specifically Niger's decree no. 87-076 of 18 June 1987⁴⁹ and Senegal's decree no. 71-860 of 28 July 1971,⁵⁰ did not allow this equal treatment. These two texts stipulate that *to enter national territory, all aliens must hold a national passport or corresponding travel document, a [Senegalese/Nigerien] visa and an international vaccination certificate.*⁵¹ An alien is considered to be *any person who does not have [Senegalese/Nigerien] nationality, whether they are of foreign nationality or no nationality.*⁵² Travellers in transit, however, are considered to be non-immigrant aliens;⁵³ specific clauses are applied to them in the two countries, but under different terms:

- In Senegal, *travellers in transit may stay no longer than 10 days. If it is not possible for them to continue their journey, they must, within this timeframe, request authorisation to stay from the Minister of the Interior, which may be granted for a maximum stay of 4 months;*⁵⁴

- In Niger, an entry visa is not required for travellers in transit;⁵⁵ in addition, to stay in the country, they are exempt from the residence permit requirement: *they are issued with an [ordinary] visa, in place of a residence permit, the validity of which should not exceed two years.*⁵⁶

In accordance with these national measures, a traveller in transit may legally stay for two years in Niger, but for no more than 4 months in Senegal.

The ECOWAS Protocol on Free Movement standardises these conditions of entry and residence of nationals of a Member State in another Member State. Since the adoption of the Protocol, for any citizen of the Community wishing to enter the territory of any one of the Member States, all that is required is *“a valid travel document that shows the identity of its holder and a photograph and that is issued by or on behalf of the member state of which the holder is a citizen and on which immigration and emigration*



The legal standardisation of conditions of entry throughout the ECOWAS states constitutes undeniable progress.

control stamps may be made”; in addition, for anyone wishing to stay in a Member State for a maximum period of ninety days, authorisation must be issued by the appropriate authorities. In practice, for West African nationals at the border, an ordinary valid identity card is the minimum travel document required, even though it cannot hold the immigration and emigration services’ stamps and if they are questioned for an *“illegal stay”*⁵⁷ once in the country, no proceedings are taken against them within the 90 days, even if they do not have the necessary authorisation.

The ECOWAS Protocol on the Free Movement of Persons has implicitly conferred a particular status on West African nationals who emigrate to other countries in the Community and consequently the practical details of checks on West African migrants are more flexible. This “adjusted” application of legal provisions is a response to the nature of the migratory exchanges that are behind the history of the region, divided by national borders regardless of the sociological and economic practices of its communities.

Transit countries, a complex double affiliation

As a result, West African countries, at the crossroads of routes linking Sub-Saharan Africa and the EU, are today confronted by the contradictory demands of two areas of free movement: ECOWAS, which places intra-regional mobility at the heart of the process of regional integration, and the EU, whose states intend to transfer control of their own borders to those of third countries.

Niger and Senegal are thus, on the one hand, required to let any ECOWAS citizen with, at the minimum, a valid identity card enter their

territory. On the other hand they are forced by a growing number of European countries not only to monitor the departure to Europe of these same migrants, but above all to retain them if they do not have the travel document needed to transit or enter the Schengen area, even readmit them if they are turned away or deported.⁵⁸

At the same time, the effects of sub-regional conflicts and environmental crises⁵⁹ combine to increase the dependence of developing countries on international migration. In this context, as a result of not reaching their intended destination, due to the increased stringency of checks to enter Europe and, perhaps even more so, due to the transfer of border controls to the departure country, migrants are settling increasingly permanently in transit countries.

Consequently, West African countries are now faced with the problem of migrants in transit who are “stuck”. This new situation is likely to cause a change in the perception of foreigners, which eventually runs the risk of creating a desire for national border controls, which could weaken the free movement of persons in the ECOWAS area.

The Community of Member States is therefore faced with new questions: how to manage the transit of populations who cannot continue their journey? How to make sure that the rights of the people involved are respected? How to prevent the negative reactions of nationals who themselves are faced with increasing economic difficulties and feel in competition with these migrants in transit, including those bound for Europe? How to discuss these issues with neighbouring countries without compromising established relations or adding to the destabilisation of some countries?

All these questions highlight the complexity of the realities that must be taken into account in order to define a common approach on migration

West African countries are today confronted by the contradictory demands of two areas of free movement: ECOWAS and the UE.



within, as well as outside, the borders of the ECOWAS zone. The aim is to avoid bilateral agreements signed with European countries, or new control measures undertaken unilaterally by European countries

towards third countries, from weakening a relatively successful model of free movement of persons, reconciling contrasting national realities. The evolution of these intra-regional migratory exchanges is a key issue for the region; on which its economic development and political stability depend heavily.

Conclusion

It is obvious, that responding only to required checks imposed by countries in the north is not ECOWAS Member States’ best political response to the complexity of migratory dynamics at play in West Africa today.

Real co-operation or positive regulation of migration will not be possible if only the richest countries take all the advantages while leaving the countries of origin with the bulk of the disadvantages. If this unequal division is to be balanced even partially, it is the philosophy of co-operation itself that needs to be rethought. In this respect, it seems useful to help open up a new path: that of concerted action between the ECOWAS States, to then discuss either collectively or individually with the EU. This means drawing the outlines of a real partnership for development that can focus on populations in their region of origin by increasing their prospects for participation in the benefits of globalisation, including in the form of positive regulation on labour migration.

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NOTES //

- 1 *The Schengen area today comprises twenty-two out of the twenty-seven members of the European Union (EU). Ireland and the United Kingdom are able to participate in all or part of the Schengen acquis. Cyprus is currently not part of the area, nor are Bulgaria and Romania. In 2009, Cyprus might fully join the Schengen acquis, while Bulgaria and Romania are not expected to participate fully until 2011. Norway and Iceland, which are outside the EU, have an associate status to which all provisions apply except that of participating in decision making. Switzerland has signed an agreement of association with the EU that has not yet come into effect. At the end of 2008, it should become a full member of the Schengen area, like Liechtenstein.*
- 2 *Community of West African States, formed in 1975. Treaty of the Economic Community of West African States signed in Lagos on 28 May 1975.*
- 3 *ECOWAS Protocol on the free movement of persons and the right of residence and establishment, finalised in Dakar on 29 May 1979. Entered into force in 1984.*
- 4 *Convention implementing the Schengen Agreement of 14 June 1985 between the governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders.*
- 5 *96/197/JHA: Joint action of 4 March 1996, adopted by the Council on the basis of Article K.3 of the Treaty on European Union on airport transit arrangements. Official Journal L63 of 13/03/1996 pp. 8–9.*
- 6 *The airport transit visa is issued by the consular services of the member states.*
- 7 *Afghanistan, Ethiopia, Eritrea, Ghana, Iraq, Iran, Nigeria, Somalia, Sri Lanka, Zaire. 96/197/JHA: Joint action of 4 March 1996, adopted by the Council on the basis of Article K.3 of the Treaty on European Union on airport transit arrangements.*
- 8 *Holders of a travel document issued by these third countries are also subject to this requirement.*
- 9 *Nationals of Burkina Faso, Côte d'Ivoire, The Gambia, Guinea, Guinea-Bissau and Mali are subject to the ATV for France only if they do not hold a visa or residence permit valid for a member state of the EU or a state which is party to the Agreement of 2 May 1992 on the European Economic Area, Canada, Switzerland or the United States of America.*
- 10 *For the Benelux countries, nationals of The Gambia, Guinea and Sierra Leone who hold a visa valid for one of the member states of the EEA, Andorra, Canada, the United States, Japan, Monaco, San Marino or Switzerland are exempt from the airport transit visa for Belgium.*

- 11 *Official Journal of the French Republic No. 20 of 24 January 2008, text 24. Decree of 15 January 2008 establishing the list of states whose nationals are subject to the airport transit visa and the exceptions to this requirement, Article 3. Official Journal of the French Republic No. 28 of 2 February 2008, text 25. Decree of 1 February 2008 establishing the list of states whose nationals are subject to the airport transit visa and the exceptions to this requirement, Article 1.*
- 12 *Decree of 15 January 2008 establishing the list of states whose nationals are subject to the airport transit visa and the exceptions to this requirement, Article 4, paragraph 1.*
- 13 *Decree of 15 January 2008 establishing the list of states whose nationals are subject to the airport transit visa and the exceptions to this requirement, Article 4, paragraph 3.*
- 14 *Paragraph 3.53, Chapter 3, Annex 9 of the Chicago Convention.*
- 15 *According to article L.741-4, 2nd clause, of the Code of entry and residence of foreigners and of right of asylum.*
- 16 *Decision of 30 June 2005 establishing the list of safe countries of origin supplemented by the Decision of 16 May 2008 of the board of directors of OFPRA: Albania, Benin, Bosnia-Herzegovina, Cape Verde, Croatia, Georgia, Ghana, India, Macedonia, Madagascar, Mali, Mauritius, Mongolia, Senegal, Tanzania, Ukraine.*
- 17 *"Non discrimination".*
- 18 *Council of State Decision in litigating, N° 295443, decided, Article 1: The Decision of 16 May 2006 of the board of directors of the Office français de protection des réfugiés et apatrides supplementing its Decision of 30 June 2005 establishing the list of safe countries of origin is annulled as it includes on this list the Republic of Albania and the Republic of Niger.*
- 19 *SCO list drawn up in 2003: Albania, Bangladesh, Bolivia, Brazil, Bulgaria, Cyprus, Czech Republic, Ecuador, Estonia, Hungary, Jamaica, Latvia, Lithuania, Macedonia, Malta, Moldavia, Poland, Serbia and Montenegro, Romania, Slovakia, Sri Lanka, South Africa and Ukraine. In 2007, Bosnia and Herzegovina, The Gambia, Kenya, Liberia, Malawi, Mali, Mauritius, Montenegro, Peru, Sierra Leone and Serbia were added.*
- 20 *The SCO list in Germany: Bulgaria, Ghana, Poland, Romania, Senegal, Slovakia, Czech Republic and Hungary.*
- 21 *29 December 2007.*
- 22 *Created in October 2004 and operational from October 2005. Regulation (EC) No. 2007/2004 of the Council of 26 October 2004 OJ L 349 of 25.11.2004.*
- 23 *Frontex site: www.frontex.europa.eu/*
- 24 *In June 2007 the Spanish and Senegalese authorities signed a new agreement that extended FRONTEX for one year. It was renewed for another year by an agreement signed by the Senegalese interior minister and his Spanish counterpart in May 2008.*
- 25 *To carry out its operations, FRONTEX combines Senegalese, Italian and Spanish skills and logistical means. Lieutenant Colonel Mouhamadou Moustapha Sylla, at Ouakam air base in Dakar explains, a Senegalese helicopter alternates patrols with a Spanish helicopter; when they need to go out to the open sea, an Italian aeroplane needs to go out, l'Express, 8 March 2007.*
- 26 *The crews on board the patrol boats are made up of four members: a Spanish or Italian commander and three representatives of the Senegalese services (army, police and gendarmerie). Only the latter are authorised to carry weapons and to fire with warning.*
- 27 *The idea of a "regionalisation of asylum policy" began to appear at the start of the 1990s.*
- 28 *Thus in 2006 and 2007, The Gambia, Guinea and Guinea Bissau, among others, signed agreements with Spain for the readmission of mostly Sub-Saharan migrants who, having reached the coast of the Canary Islands, were repatriated after a period of detention in camps. For its part, Senegal accepted these forced readmissions while the text providing for them was still being negotiated. These agreements are more often than not added to an aid programme for development that is intended as an incentive.*
- 29 *The European Pact on Immigration and Asylum proposes "to organise legal immigration to take account of the priorities, needs and reception capacities determined by each Member State, and to encourage integration; to control irregular immigration by ensuring the return of irregular aliens to their country of origin or a country of transit; to make border controls more effective; to construct a Europe of asylum; to create a comprehensive partnership with the countries of origin and transit to encourage the synergy between migration and development." This pact was adopted in September 2008 by the 27 states of the Schengen area.*
- 30 *Presented 7-8 July 2008 in Cannes and adopted 15-16 October 2008 at a European Council meeting.*
- 31 *This Action Plan was drawn up at the Euro-African Ministerial Conference on Migration and Development in Rabat, 10-11 July 2006.*

- 32 *Who met in Abuja in June 2006.*
- 33 *Meeting in Ouagadougou 20 December 2006.*
- 34 *33rd ordinary session of the Heads of State and Government Conference, Ouagadougou, 18 January 2008.*
- 35 *Treaty of the Economic Community of West African States, signed in Lagos, 28 May 1975.*
- 36 *ECOWAS Protocol on the free movement of persons and the right of residence and establishment, finalised in Dakar, 29 May 1979.*
- 37 *Supplementary Protocol A/SP.1/7/85*
- 38 *Supplementary Protocol A/SP.1/6/89*
- 39 *Supplementary Protocol A/SP.2/2/5/90.*
- 40 *Decision 2/7/85 relating to the introduction of the ECOWAS travel certificate for member states.*
- 41 *Decision 2/5/90 relating to the introduction of a residence card in ECOWAS member states.*
- 42 *Decision A/DEC.1/5/2000 relating to the introduction of the ECOWAS passport for member states.*
- 43 *Table entitled "Checkpoints identified along certain trans-West African routes". Source: ECOWAS Executive Secretariat.*
- 44 *Account gathered by the SYFIA Grands Lacs press agency, 3 May 2005.*
- 45 *As above, SYFIA Grands Lacs press agency.*
- 46 *Decision A/DEC/3/8/94. The following member states established committees: Benin, Burkina Faso, Ghana, Guinea, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo. Source: ECOWAS Commission.*
- 47 *Art. 3, decision A/DEC/3/8/94.*
- 48 *In spite of the different provisions of the national laws of the countries concerned.*
- 49 *In accordance with ordinance no. 81–40 of 29 October 1981 relating to the entry and residence of foreigners in Niger. Just after independence, Niger and Senegal were both governed by the French decree of 12 January 1932 setting the conditions of entry of French nationals and foreigners into French West Africa; this was repealed by the above-cited 1981 ordinance in Niger and 1971 law in Senegal. These two texts setting out the entry and residence of foreigners are still in effect. However, it should be added that the ordinance of 1981 came about during an exceptional period when the Republic of Niger did not have a national assembly to vote on laws. It was therefore the President of the Republic, the President of the Supreme Military Council, who legislated in the form of an ordinance enforced without consultation, see Mission Report by M. Boluvi, I. Chassard and M. Sene, OMAE Programme, IRD, July 2008.*
- 50 *In accordance with law no. 71–10 of 25 January 1971 relating to the conditions of admission, residence and settlement of foreigners.*
- 51 *Art. 1, Nigerien decree no. 87-076 of 18 June 1987 and Senegalese decree no. 71-860 of 28 July 1971.*
- 52 *Art. 1, ordinance no. 81-40 of 29 October 1981 and law no. 71-10 of 25 January 1971.*
- 53 *Art. 8, ordinance no. 81-40 of 29 October 1981 (Niger) and Art. 3, law no. 71-10 of 25 January 1971 (Senegal).*
- 54 *Art. 4, decree no. 71-860 of 28 July 1971.*
- 55 *Art. 7, decree no. 87-076/PCMS/MI/MAE/C of 18 June 1987, controlling the conditions of entry and residence of foreigners in Niger: "Non-immigrant aliens as defined in article 9 of ordinance no. 81-40 of 29 October 1981 are exempt from the requirement provided for by article 6, in fine, above (visa); non-immigrant aliens includes "travellers in transit".*
- 56 *Art. 11, chapter III, decree no. 87-076/PCMS/MI/MAE/C of 18 June 1987.*
- 57 *In Senegal an illegal stay is considered a criminal offence.*
- 58 *While identifying immigrants likely to be turned back, deported or readmitted, some declare for various reasons, economic or political, a nationality other than their own. An example can be cited from recently signed readmission agreements with West African countries such as: the co-operation agreement framework regarding immigration between the Republic of Mali and Spain of 23 January 2007, envisaging in paragraph h), Article 8, Chapter VI: the return of anyone who has not or has ceased to have the right to remain or reside on the territory of the contracting party required. Furthermore, a repatriation agreement for minors was signed between Spanish and Senegalese authorities on 5 December 2006 and entered into force on 1 July 2008. (Boletín Oficial del Estado du 18 July 2008, No. 173, pages 31413–31415).*
- 59 *In particular droughts in the Sahel.*

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Glossary¹

Alien: A person who is not a citizen of the country in which he/she lives. A “legal alien” is someone who lives in a foreign country with the legal approval of that country. An “illegal alien” (or undocumented alien) is someone who lives in a foreign country without having legal status in that country. A distinction is made between illegal immigrants and illegal aliens; the former being someone who wishes to settle permanently in the new country. A distinction is made between illegal immigrants and illegal aliens – the former being someone who wishes to settle permanently in the new country.

Arrest Warrant: An order give by the examining judge to the police to seek and arrest someone for indictment then take them to a correction centre.

Circular migrant: One who moves regularly between his/her home country and a foreign country for employment-related reasons. Typically, though not exclusively, circular migrants do agricultural or construction work, returning home when employment opportunities wane, or when they have saved a bit of money. The term “circular migrant” is not entirely synonymous with guest worker, because the latter term implies that the individual fits into a specific employment-visa category of the host country; a circular migrant can be in a host country illegally or legally. Further, a guest worker may come to a host country for a set period of time and only return home when the visa expires – in other words, there is no back-and-forth and hence no circularity

Economic migrant: *Sometimes used as an equivalent to the term labour migrant or migrant worker. However, the two concepts may cover different categories. The term “labour migrant” can be used restrictively to only cover movement for the purpose of employment while “economic migrant” can be used either in a narrow sense, which includes only movement for the purpose of employment, or in a broader sense that includes persons entering a State to perform other types of economic activities such as investors or business travellers.*

Expulsion: A measure undertaken by the police by which an alien is ordered to leave the country. There is a tendency to systematically use the word “expulsion” every time an alien is forced to leave a country. There are several expulsion measures:

- Arrested and sent to the border: on the basis that the alien is in an irregular situation.
- Deportation order: ordered if the alien constitutes a threat to public order (sentenced to a long prison term, for example).
- Legal exclusion from the country: often goes along with a prison term whereas at the end of the term, the alien is deported from the country as a result of a judge-ruled exclusion. It can be used in cases of irregular situations, for certain offences or crimes.
- Surrendered to another country: can only take place in application of an agreement between two countries to which the alien is surrendered.

There are cases of protection from expulsion measures following the individual situation and the alien’s country of origin: protection from being led to the border, protection from expulsion, protection and guarantee from judicial banning from the country

Flagrante delicto: Delicto or offence in process of being committed or which was just committed and registered by the police. When the crime is punishable by a prison term, the Prosecution can quickly present the suspect before the judge for a hearing called an immediate appearance for a decision to be made.

Flow: The term used for the unstable and changing portion of an overall population figure

Forced departure: So as to avoid using the word “expulsion” (a legal-technical term in State immigration law), we speak of “forced departure” of an alien in cases in which authorities enforcing the decision of expulsion have used physical or other pressure to force an alien to leave his former country of residence.

Illegal migrant: A person who comes to settle in a country without the correct legal documentation, or who lives there using false identification or no documentation at all (“sans papiers” – without papers), or who otherwise resides in a country without formal permission. E.g., a person who enters a country on a tourist or student visa and then overstays his or her visa becomes an illegal immigrant.

Intergovernmental method: Negotiation sessions between representatives of national governments

Irregular migration: As defined by the Global Commission on International Migration, it is a complex and diverse phenomenon in which the main focus is irregular flows and entries, rather, for example, than the various challenges posed by stocks or irregular migrants such as undocumented work.

Immediate appearance²: A procedure which makes it possible to make judge quickly somebody following the police custody.

Labour migration: Movement of persons from their home State to another State for the purpose of employment.

Migrant smuggling; smuggling of migrants: Defined in the relevant Protocol as follows: “Smuggling of migrants” shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident. Trafficking victims can be, at least in the beginning, consenting and candidates for emigration, unlike those described by the expression “human trade.”

Naturalization: In law, refers to an act whereby a person acquires a citizenship different from that person’s citizenship at birth. Naturalization is most commonly associated with economic migrants or refugees who have immigrated to a country and resided there as aliens, and who have voluntarily and actively chosen to become citizens of that country after meeting specific requirements. However, naturalization that is at least passive and often not voluntary, can take place upon annexation or border adjustments between countries. Unless resolved by denaturalization or renunciation of citizenship, naturalization can lead to multiple citizenship.

Non-refoulement: *A core principle of refugee law that prohibits States from returning refugees in any manner whatsoever to countries or territories in which their lives or freedom may be threatened. This principle is usually considered a part of customary international law and is therefore binding on all States, whether or not they are parties to the 1951 Convention relating to the Status of Refugees.*

Refugee: Defined under Article 1 of the Geneva Convention (28 July 1951) relating to the Status of Refugees as “any person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the

country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country”.

Return migration: I.e., migrants returning to their country of origin – going home.

Statutory Refugee: In France, refugee status is a legal status recognised by the Office français de protection des réfugiés et apatrides (OFPRA), in accordance with the Geneva Convention of 28 July 1951 as well as the law of 25 July 1952 (in its draft of the law of 11 May 1998) referring to two categories of persons: - anyone meeting the definitions set out in Article 1 of the Geneva Convention of 28 July 1951 related to the status of refugees; – “any person persecuted due to his/ her actions on behalf of freedom” (L. 11.5.1998, Article 29).

Stock: In migration statistics, used to describe the stable portion of an overall population figure.

Total population (Contribution by J.-M. Cour): as set out in the WALTPS women, the aged and children, “inactive” and “unemployed” included is comprised of three strata:

- The primary strata corresponds to the total population of urban and rural households who depend on most of their total revenue (including non-monetary) from a primary activity;
- The formal non primary strata corresponds to households having a formal private or public salaried employment and households involved in formal (officially registered businesses) non agricultural businesses (non primary); and
- The informal non primary strata corresponds to the total population of households not classified in the two other strata. The non-primary population is that of two non-primary strata, formal and informal.

This breakdown of the total population into three strata, which abolishes in fact the household entity and ignores the notions of activity and unemployment, can evidently be disputed, but it enables the aggregates and ratios to be calculated taking into account the totality of the population which is often the only known data and prevents disputes over the definition of active (over 7 or 15 years of age? Less than 60 or 90 years of age?) and the unemployed (concept which has no sense except in the formal and modern sector).

Primary value added (Contribution by J.-M. Cour): is that of the primary sector of the economy, agriculture, livestock rearing, fisheries and forestry.

Warrant of Committal: An order given by a magistrate or judge to enforce a judgment or order to receive and maintain an indicted person in detention pending trial.

NOTE //

- 1 *The text in italics has been translated based on the official source text. www.iom.int and United Nations Multilingual Terminology Database <http://157.150.197.21/dgaacs/unterm.nsf>*
- 2 *www.speedylook.com/Immediate_appearance.html*

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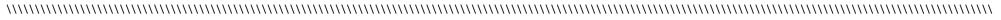
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