

Economic Community of West African States, African Regional Bodies

## A/SP2/7/85 Supplementary Protocol on the Code of Conduct for the Implementation of the Protocol on the Free Movement of Persons, the Right of Residence and Establishment

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Economic Community of West African States

# A/SP2/7/85 Supplementary Protocol on the Code of Conduct for the Implementation of the Protocol on the Free Movement of Persons, the Right of Residence and Establishment

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**Commenced in full**

*[This is the version of this document at 6 July 1985.]*

## **The High Contracting Parties,**

- **MINDFUL** of the Treaty establishing ECOWAS, particularly its Article 2 paragraph (d) and Article 27, as amended by Decision A/DEC.8/5/82 of the Authority of Heads of State and Government dated 29 May, 1982;
- **CONSIDERING** the Protocol on Free Movement of Persons, the Right of Residence and Establishment;
- **CONVINCED** that the implementation by all Member States of the provisions of the texts on free movement of persons, goods, services and capital shall constitute the fundamental basis for building up ECOWAS and influencing the harmonious development of all economic, social and cultural activities within the sub-region, for the well-being of the peoples of Member States of the Community;
- **CONSCIOUS** of the urgent need to establish an effective and adequate cooperation between the administrations of Member States in view of the need for mutual administrative assistance between them on the free movement of persons, goods, services and capital;

**HEREBY AGREE AS FOLLOWS:**

## **Chapter 1 Definitions**

### **Article 1**

In this Protocol, and in the other Protocols relating to the implementation of the different phases of the Protocol on Free Movement of Persons, the Right of Residence and Establishment,

"**Treaty**" means the Treaty of the Economic Community of West African States;

"**Community**" means the Economic Community of West African States;

"**Member State or Member States**" means the Member State or Member States of the Community;

"**Member State or Member States of origin**" means the Member State or Member States of which the migrant is a national or an indigene;

"**Host Member State or Member States**" means the Member State or Member States in which the migrant is staying or residing;

"**Authority**" means the Authority of Heads of State and Government created by Article 5 of the Treaty;

"**Executive Secretary and Executive Secretariat**" means the Executive Secretary and the Executive Secretariat of the Community as defined in Article 8 of the Treaty;

"**Community citizen or citizens**" means any national or nationals of a Member State who fulfill the conditions stipulated in the Protocol A/P.3/5/82 establishing the Community Citizenship Code;

"**Right of residence**" means the right granted to a citizen who is a national of one Member State to reside in a Member State other than his State of origin which issues him with a Residence Card or Permit, enabling him to hold employment or otherwise;

"**Resident**" means any citizen who is a national of a Member State to whom the right of residence is granted;

"**Right of establishment**" means the right granted to a citizen who is a national of one Member State to settle or establish in another Member State other than his State of origin, and to have access to economic activities, to carry out these activities as well as to set up and manage enterprises, and in particular companies, under conditions defined by the legislation of the host Member State for its own nationals;

"**Companies**" means any company, including co-operative societies or any other legal entity governed by public or company law, with the exception of companies or societies which have no lucrative objective;

"**Migrant**" means a national of one Member State of the Community who has travelled from his country of origin to the territory of another Member State;

"**Illegal immigrant**" means any immigrant citizen of the Community who does not fulfill the conditions stipulated in the different Protocols relating to the free movement of persons, the right of residence and establishment;

"**Competent Administrations**" means the national administrations of Member States responsible for matters relating to the free movement of persons, services and capital;

"**Fundamental human rights**" means the right of any individual recognised by the International Declaration of Human Rights adopted on 10 December, 1948 by the United Nations General Assembly.

## **Chapter II**

### **Role and obligations of Member States of origin and host Member States of immigrants and the form of co-operation required between competent administrations of Member States**

#### **Article 2**

1. Member States shall ensure that their nationals who travel to the territory of another Member State possess valid travel documents recognised within the Community.
2. Member States shall establish or strengthen appropriate administrative services in order to furnish migrants with all necessary information likely to permit legal entry into their territory.
3. In order to avoid illegal recruitment and its negative effects, Member States shall take all necessary measures to exercise stricter control on employers in their territories,
4. With a view to ensuring close cooperation between national administrations of Member States responsible for matters relating to the free movement of persons, goods, services and capital, and to ensure the harmonisation of techniques and methods of actions to be undertaken, Member States shall authorize the convening of regular meetings of the appropriate national officials for the exchange of all forms of information and experiences.

### **Chapter III**

## **Rights and obligations of migrants in host Member States and conditions and procedures for expulsion**

### **Article 3**

1. In the event of clandestine or illegal immigration, both at national as well as Community level, measures shall be taken to guarantee that illegal immigrants enjoy and exercise their fundamental human rights.
2. The fundamental human rights of expelled immigrants or of the immigrant subject to such a measure by virtue of the laws and regulations of the host Member State, as well as the benefits accruing from his employment, shall be respected. Any expulsion orders shall be enforced in a humane manner without injury to the person, rights or properties of the immigrant.
3. Any person under an expulsion order shall be given a reasonable period of time to return to his country of origin.
4. Any expulsion order which may lead to the violation of fundamental human rights is prohibited.
5. By virtue of the fundamental human rights enjoyed by clandestine immigrants, host Member States shall ensure that repatriation takes place under legal and properly controlled procedures.
6. Where it is absolutely necessary, expulsion shall be contemplated solely on strictly legal grounds, in any case, it shall be effected with due respect for the human dignity of the expelled immigrant.
7. Any immigrant citizen of the Community travelling to a Member State other than his State of origin or desiring to reside or establish in such a Member State shall fulfill the conditions stipulated under the different Protocols on the free movement of persons, right of residence and establishment.

### **Chapter IV**

## **Provisions covering the treatment of illegal immigrants**

### **Article 5**

1. Member States shall take all possible steps to ensure or facilitate the obtaining of the correct documents by illegal immigrants, if desired and possible.
2. The regularisation of the status of illegal immigrants shall be effected under the conditions stipulated in the different Protocols relating to the free movement of persons, the right of residence and establishment and on the basis of the following factors;
  - the existence of an ample political consensus making regularisation of stay desirable or necessary;
  - the acceptability of the immigrants by a large section of society;
  - deadline of admissibility;
  - a well-conceived information campaign directed at the entire population and designed to ensure their support and understanding;
  - the absence of legal punitive measures against persons wishing to regularise their stay.

**Chapter V**  
**Sub-regional cooperation for the purpose of  
preventing or reducing the flow of illegal immigrants**

**Article 6**

1. With a view to reducing both the attractions as well as the phenomenon of illegal immigrants, measures taken on a national, sub-regional or regional scale must be initiated through bilateral or multilateral cooperation.
2. Member States undertake to work together to reduce and eliminate the incidence of clandestine immigration as well as the smuggling of illegal workers

**Chapter VI**  
**Protection of properties legally acquired by  
immigrants who are citizens of the Community**

**Article 7**

1. The host Member State shall protect properties legally acquired on her territory by immigrants who are Community citizens, and shall respect their rights deriving therefrom.
2. Member States shall not apply any measures detrimental to the properties, rights and benefits legally acquired on their territory by citizens and nationals of other Member States which would not be applicable to their own nationals under the same conditions.
3. Any measure taken by a Member State which is detrimental to goods, movable properties or fixed assets legally acquired by Community citizens who are nationals of another Member State shall be liable to payment of a fair and equitable compensation.
4. Host Member States shall not enact any tax laws of a kind that may result in a less favourable treatment of immigrant Community citizens residing or established in their territories. This provision applies to both natural and legal persons.
5. Community citizens who are nationals of a Member State shall have on the territories of other Member States, under the same conditions as their nationals, freedom to prosecute and defend their rights under any jurisdiction.

**Chapter VII**  
**Obligations of Member States in respect of furnishing the executive secretariat and  
other Member States with information in the event of border closure by one of them**

**Article 8**

1. Whenever a problem of internal security shall lead to the imposition of measures restricting the implementation of the provisions of the Protocol on free movement of persons, the right of residence and establishment, the Member State concerned shall inform the Executive Secretariat and other Member States within a reasonable period of time.



2. Whenever, for reasons of internal security, a Member State shall deem it necessary to close its borders, the Member State concerned shall inform the Executive Secretariat, and the other Member States, if necessary even after the act, regardless of the reasons justifying such measures.

## **Chapter VIII**

### **Miscellaneous provisions**

#### **Article 9**

Any dispute which may arise between Member State regarding the interpretation or application of this Protocol shall be settled in conformity with the procedure for the settlement or disputes stipulated in Article 56 of the Treaty.

#### **Article 10**

1. Any Member State may submit proposals for amendment or revision of this Protocol.
2. Any such proposals shall be submitted to the Executive Secretary who shall communicate them to other Member States within (30) thirty days of the receipt of such proposals. The amendments or revisions shall be examined by the Authority at the expiration of the thirty (30) days notice period given to Member States.

## **Chapter IX**

### **Deposit and entry into force**

#### **Article 11**

1. This Protocol shall enter into force provisionally upon signature by the Heads of State and Government of Member States and definitively upon ratification by at least seven (7) signatory States in accordance with the constitutional procedures applicable for each signatory Member State.
2. This Protocol and all the instruments of ratification shall be deposited with the Executive Secretariat which shall transmit certified true copies to all Member States and notify them of the dates of deposits of the instruments of ratification and shall register this Protocol with the Organisation of African Unity, the United Nations Organisation and all other Organisations.
3. This Protocol shall be annexed to and shall be an integral part of the Treaty.
4. In faith whereof, we the Heads of State and Government of the Economic Community of West African States have signed this Protocol.

Done in Lomé on this 6th day of July 1985 in single original in the English and French languages, both texts being equally authentic.