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# Liberalising labour markets through migration partnerships? The French perspective

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**ABSTRACT:** The new French bilateral ‘agreements on joint management of immigration flows and partnership development’ (AJMs) reflect the desire for global circulation of skills in accordance with the needs of their labour markets, as well as a growing concern for migration regulation. These comprehensive agreements provide measures regarding labour migration, the fight against irregular migration, and migration-related development issues. Based on the principle of partnership, shared advantages and shared responsibility, they aim at involving countries of origin in the management of migration flows. By discussing a series of indicators, this paper assesses the degree of partnership of AJMs as regards labour migration. Also examined is their impact on human mobility through the implementation of the concept of temporary circular labour migration by offering a ‘regulated liberalisation’ of the French labour market access. The paper thus investigates whether the new AJMs are a catalyst to the mobility of skilled and high-skilled workers, students and trainees by effectively increasing migration opportunities and facilitating mobility, or if they mainly work as correctives to the high-skilled bias of the French unilateral law.

**KEYWORDS:** migration partnerships, bilateral migration agreements, labour mobility.

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# LIBERALISING LABOUR MARKETS THROUGH MIGRATION PARTNERSHIPS?

## THE FRENCH PERSPECTIVE

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(work in progress, comments are welcome)

### Introduction

Like many European countries, France had officially closed its borders to migration since the oil crisis of the early seventies. In 2006, France decided to reform its migration policy<sup>2</sup> by “opening the door and closing the windows”.<sup>3</sup> In fact, this new policy was driven by two main concerns: the desire for skills circulation in accordance with the needs of the labour market, as well as a growing concern for migration regulation. In other words, the aim was to reduce family migration, considered as *endured immigration* (*immigration subie*, author’s translation), and to balance it with labour migration, regarded as *targeted immigration* (*immigration choisie*, author’s translation).<sup>4</sup> Within this new policy of selective migration, France started signing a new generation of comprehensive bilateral migration agreements (BMAs), mainly with sub-Saharan countries, called the *agreements on joint management of migration flows and solidarity development* (*accords de gestion concertée des flux migratoires et de développement solidaire*) (AJMs). The innovative feature of these bilateral agreements is that contrarily to their predecessor schemes, which were one-dimensionally oriented towards a single concern, these pioneer schemes

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<sup>2</sup> The legislative milestones of the new policy being: law n°2006-911 of 24 Jul. 2006 on immigration and integration; the creation of the Ministry of immigration, integration, national identity and co-development by decision of 18 May 2007 [competencies fixed by decree of 1 Jun. 2007 and co-development label replaced by solidarity development by decree of 18 Mar. 2008 (MIINDS)], and law n°2007-1631 of 20 Nov. 2007 on immigration control (*maîtrise*), integration and asylum (author’s translation).

<sup>3</sup> MIINDS representative interview 2008.

<sup>4</sup> Sarkozy 2005.

encompass the three dimensions of the new EU Global Approach to Migration (GAM): legal migration (in particular labour migration), the fight against irregular migration, and migration-related development issues.

From 2006 to 2009, nine agreements<sup>5</sup> were signed, with Senegal, Gabon, Congo, Benin, Tunisia, Mauritius, Cape Verde, Burkina Faso, and Cameroon. Except for the latter, they have all been ratified to date by both countries and have thus fully entered into force.<sup>6</sup> By drawing on the empirical case study of these AJMs, this paper explores how AJMs attempt to operationalise a paradigm shift towards a logic of *partnership*, defined by *shared advantages and responsibilities* in migration flows management between countries of origin and of destination. The particular focus on labour migration of this paper is substantiated by an analysis of the extent to which AJMs effectively offer an opening of the labour market within this partnership perspective, and by the attempt to evaluate the real impact on human mobility. In summary, this paper investigates whether the new AJMs are a catalyst to the mobility of skilled and high-skilled workers, students and trainees – as opposed to family migration – by effectively increasing migration opportunities and facilitating their migration, or if they are above all a deterrent to human mobility by preventing irregular migration and the settling of low-skilled migrants.

In order to understand the principles on which the new AJMs are based, the first part of the paper analyses the context and definition of bilateral migration partnerships. A second part provides for a general overview of labour provisions within the AJMs, which implement *temporary circular labour mobility* by offering a “regulated liberalisation” of the French labour market. Indeed, the two-pronged rationale of these *migration partnerships* includes on

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<sup>5</sup> This paper focuses on the nine AJMs that are clearly comprehensive and reflect the new approach by formally integrating the three dimensions of the GAM. The only agreement which does not include provisions on irregular migration being the one with Mauritius (as it had recently signed a readmission agreement with France on 2 Apr. 2007), it remains however the best example of a genuine *migration partnership*. Finally, this paper will not consider other types of BMAs which are often presented as comprehensive AJMs in the political discourse despite the fact they do not address all three dimensions: Brazil (Administrative agreement on the creation of a bilateral mechanism of cooperation on migration issues) of 7 Sep. 2009; Russia (highly-skilled migration) of 27 Nov. 2009; Macedonia (Youth mobility) of 1 Dec. 2009; Montenegro (youth mobility) of 1 Dec. 2009; Serbia (youth mobility) of 2 Dec. 2009; and Lebanon (youth and professionals mobility) of 26 Jun. 2010.

<sup>6</sup> Annexe 1. The agreement with Cameroun has not be ratified yet but some of its provisions are anticipatory implemented.

the one hand a relaxation of labour migration provisions to optimally compete in the so-called *global hunt for talents*, allowing on the other hand for a stronger regulation that aims at better channelling and controlling migration flows. The third part of the paper provides for a particular focus on the *partnership* dimension of the different tools aiming at facilitating labour mobility (visas and permits, and lists of shortage occupations). This evaluation is based on a series of indicators that have specifically been developed to measure the degree of partnership of the French AJMs.<sup>7</sup> These partnership indicators are based on the analysis of the text of the agreements, preparatory documents, observation of the negotiations, semi-structured qualitative interviews to negotiators and government representatives, as well as a review of the existing literature. Labour-related *partnership indicators* are integrated throughout the paper. First, it includes observations on how lists of occupations are drafted (methodology, involvement of employer unions and countries of origin). Second, it addresses how AJMs provide for more favourable conditions than common law for third-country nationals, as well as to which extent they work as correctives to the high-skilled bias of unilateral migration law (degree of labour market relaxation, numerical ceilings, skill levels, and job categories). Third, the paper discusses the existence of provisions on circular migration and brain-drain prevention.

## **1. Context and definition of migration partnerships**

### *1.1. The new comprehensive approach: the EU Global Approach to Migration (GAM)*

The new French bilateral migration agreements (BMAs) are aligned to the EU Global Approach to migration (GAM) adopted by the European Council in

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<sup>7</sup> The author's doctoral research has established other partnership indicators, such as who is the initiator of the agreement (France or the partner country); selection criteria of the partners (historical ties, political and economic interests), previous and current agreements relating to security and military, trade, development aid, migration-related issues (labour, guest-workers, movement, establishment, readmission); degree of equality and reciprocity of the agreements; development priorities and 'aid conditionality'; references to workers and human rights. Besides, analyses in other fields have established a way to measure how successful a partnership can be (e.g. Weiss et al. 2002 on the health sector; Laakso 2007 on the EU-ACP economic partnership agreement).

December 2005, confirmed and completed in 2006.<sup>8</sup> Coincidentally, both France and Spain, which has also implemented a similar scheme of BMAs, claim to be the initiators of this new comprehensive approach defined as

a balanced, global and coherent approach, covering policies to combat illegal immigration and, in cooperation with third countries, harnessing the benefits of legal migration; [...] strengthen[ing] dialogue and cooperation with countries [of origin and of transit] on migration issues, including return management, in a spirit of **partnership** and having regard to the circumstances of each country concerned [...]; [and] support[ing their] development efforts.<sup>9</sup>

As this definition clearly illustrates, the GAM aims for a balance between labour market needs, economic impacts in the countries of origin and of destination, social consequences, integration policies and the objectives of foreign policy, through a “tangible, active solidarity, hinged on responsibility-sharing between Member States and with third countries”.<sup>10</sup> From this perspective, Member States’ (MS) complementary initiatives are encouraged,<sup>11</sup> especially as bilateralism is still considered the most appropriate way to better match “the needs, specificities and preferences” of the partners<sup>12</sup> and, in particular to allow for a better monitoring of labour migration.<sup>13</sup> Following this new approach, France continued implementing *partnerships for managing migration*, the design of which reflects the EU’s approach involving three dimensions. In fact, AJMs’ provisions are split into three interlinked clusters in order to articulate 1) a relaxation of the rules of movement for certain categories of people such as students and skilled workers with 2) a cooperation reinforcement in terms of fight against irregular migration, and 3) aid for solidarity development actions, mainly in the fields of health, higher-

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<sup>8</sup> CEU 2005 and 2006.

<sup>9</sup> CEU 2006 (emphasis added)

<sup>10</sup> COM 2006

<sup>11</sup> E.g. The AJM between France and Cape Verde was to serve the implementation of the mobility partnership with Cape Verde signed on 5 Jun. 2008 by the EU and selected Member States (BESSON 2010).

<sup>12</sup> Geronimi 2004

<sup>13</sup> Lucas 2008.

education, vocational training, democratic governance, and economic development.

Like many other tools for managing migration, BMAs rely on principles of international soft law and policy.<sup>14</sup> For instance, the French AJMs are built on a logic of *partnership* and *shared responsibility*, initially used in the field of development referring to North-South and aid relations.<sup>15</sup> In the field of migration, the emergence of a *partnership rhetoric* coincides with the *migration and development* dialogue formalised in the political discourse and propagated by different international arenas since the early 2000s.<sup>16</sup> The principle of partnerships and shared responsibility through joint management tools was formulated by the IAMM as far back as 2004:

Migration management is an area for **partnerships** between interested stakeholders and for consideration of **responsibility sharing** between States involved in or affected by particular migratory movements. Continued exploration is required to identify additional ways by which governments, international organisations, non-governmental organisations and other private sector and civil society organisations can work together to develop greater confidence and effective and **joint management tools**, technical cooperation, **cost and other responsibility sharing**.<sup>17</sup>

The rhetoric of the IAMM clearly indicates the stress on *shared responsibility*. This focus was reinforced in the 2005 GCIM, which expressed the idea of introducing innovative policy tools such as migration partnerships in order to find a balance between the interests of source and destination countries within “a spirit of ‘give and take’”.<sup>18</sup> Partnerships for managing migration flows are thus defined as

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<sup>14</sup> Opeskin 2009 referring to Martin 1989 and IOM 2003

<sup>15</sup> Kunz 2011.

<sup>16</sup> E.g. The Berne Initiative’s 2004 International Agenda for Migration Management (IAMM), the 2005 Global Commission on International Migration (GCIM), the above mentioned 2005 EU GAM, the 2006 United Nations High-Level Dialogue on International Migration and Development (UN-HLD), and the IOM’s International Dialogue on Migration (IDM).

<sup>17</sup> IAMM 2004 (emphasis added).

<sup>18</sup> Groff 2005 (original emphasis?).

[s]pecific **partnerships** on migration with third countries [that can] contribute to a coherent migration policy which combines measures aimed at facilitating well-managed **legal migration** opportunities and their benefits -- while respecting Member States' competences and the specific needs of their labour markets - with those fighting **illegal migration**, protecting refugees and tackling the root causes of migration while at the same time impacting positively on **development** in countries of origin.<sup>19</sup>

The new French agreements reflect this approach by integrating three dimensions and interlinked clusters, each dealing with one of the three dimensions of the GAM. Thereby, the possibilities given in terms of free movement and conditions for stay, mainly as regards economic migration, and in terms of solidarity development, are conditioned by a commitment from the third countries regarding cooperation and fight against irregular migration.<sup>20</sup> As underlined by the considerations of the AJM with Tunisia, the aim is “to promote a *strategic partnership* mutually advantageous for development and for the promotion of mutual interests”.<sup>21</sup>

### 1.2. Partnerships for ‘managing’ migration

The new BMAs claim to be a response to their predecessors, which were one-dimensionally focused on the receiving country’s interests, mainly fulfilling labour force needs and ensuring immigration control.<sup>22</sup> Indeed, AJMs are presented as creating a *win-win-win* situation by taking into account the interests of the main stakeholders of international migration (countries of origin, receiving countries, and the migrants themselves), hence maximising benefits and reducing risks. In that sense, they match the common definition of *partnerships*, which is rather positive as it refers to “a mutually beneficial

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<sup>19</sup> CEU 2007 (emphasis added).

<sup>20</sup> COM 2006, Chétail 2009, Carrera and Hernández i Sagrera 2011, Panizzon 2011.

<sup>21</sup> AJM with Tunisia (emphasis added ?)

<sup>22</sup> Panizzon 2011.

arrangement to advance shared purposes”.<sup>23</sup> However, AJMs rather appear to be a tool aiming at involving countries of origin and transit, which tend to have “passive migration policies”,<sup>24</sup> in immigration control. Through the soft principles of shared advantages and shared responsibility, the new BMAs aim at sharing costs.<sup>25</sup> This therefore represents a paradigm shift relying on the concern that many source governments had adopted a *laissez-faire* approach leading to the non-implementation of readmission agreements. This situation coupled with the globalisation of markets, which had led to an increase in economic migration, in turn increased the difficulty of controlling irregular migration. Hence, the notion of *development* was introduced to render cooperation in the fight against irregular migration more attractive for source and transit countries. Additionally, by introducing the notion of *partnership*, the new comprehensive approach “leads to a *depolitisation* and a *technicisation*, not *de facto* but discursive and performative, of international cooperation on migration”<sup>26</sup> in order to obtain countries of origin’s involvement. Indeed, like for most bilateral migration agreements, the fight against irregular migration clearly appears as a primary concern in the AJMs and is even cited as a main objective, before even the promotion of “legal” migration and development concerns, in the agreements with Benin and Senegal.<sup>27</sup>

## **2. A regulated liberalisation of the French labour market access<sup>28</sup>**

### *2.1. Temporary circular labour migration*

Following the EU Global approach, human mobility is considered by the AJMs in terms of circularity, temporariness and *workability*.<sup>29</sup> Indeed, temporary

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<sup>23</sup> Minow 2003.

<sup>24</sup> Fernández-Huertas Moraga 2008.

<sup>25</sup> Fernández-Huertas 2008.

<sup>26</sup> Channac-Nadal 2009 (emphasis added?), see also Kunz 2011.

<sup>27</sup> Add agreements’ reference in the whole text ?

<sup>28</sup> To avoid any ideological preconception, the expression ‘liberalisation’ will be understood in the neutral sense of opening.

<sup>29</sup> Carrera and Hernández i Sagrera 2011 (original emphasis).

circular labour migration is generally presented as mutually beneficial for both the countries of origin and France. For the countries of origin, it allows for more remittances, stronger ties with the country of origin, and an expected return including new skills and ideas,<sup>30</sup> thus providing for *brain gain* as opposed to *brain drain*.<sup>31</sup> As for the host country, some consider that by assuring migrants' return, circularity avoids the settlement of those who could become a burden for the welfare system or of those the economy no longer needs.<sup>32</sup> However, the notion of *circular migration* is often used by receiving countries as a way of solving integration problems.<sup>33</sup> The French AJMs reflect a desire for circular skills flows, in accordance with the needs of the labour market, and refer to circular mobility in the broader sense of migration that is able to

create an opportunity for persons residing in a third country to come to the EU temporarily for work, study, training or a combination of these, on the condition that, at the end of the period for which they were granted entry, they must re-establish their main residence and their main activity in their country of origin.<sup>34</sup>

## 2.2. The “liberal paradox”

Temporary circular migration is thus a way to regulate migration of those needed by the economy of receiving countries, through a *regulated liberalisation* of the labour market, and at the same time to prevent irregular migration.<sup>35</sup> Indeed, in terms of migration regulation, States are confronted to the *liberal paradox* according to which, on the one hand, demographic and economic needs foster openness, and on the other hand, “security concerns and

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<sup>30</sup> Lucas 2007, Skeldon 2010.

<sup>31</sup> Docquier 2006, Badie et al. 2008.

<sup>32</sup> Lucas 2007, Newland et al. 2008.

<sup>33</sup> Badie et al., *op. cit.*

<sup>34</sup> COM 2007.

<sup>35</sup> Zapata-Barrero et al. 2009.

powerful political forces” are ground for more restriction.<sup>36</sup> France openly admits that the liberalisation of the labour market is the counterpart of a stronger cooperation in the fight against irregular migration.<sup>37</sup> The same goes for the aid allocated in terms of solidarity development. Thus, the principle of a *joint management* leads to a new type of conditionality as regards aid and assistance, the so-called *migratory conditionality*.<sup>38</sup> AJMs, which are aimed at responding to the needs of the countries of origin as well as of destination, are in fact mainly aimed at allowing France to regulate migration with complete flexibility.<sup>39</sup> Like many tools of bilateral cooperation on migration, this flexibility allows for “a controlled and organised liberalisation of population movements”.<sup>40</sup> But the ultimate objective of the new migration partnerships is to involve countries of origin in migration management. Thus, relying on the notion of *partnership*, it implies shared advantages but also *shared responsibilities* between the countries of origin and of destination in migration flows’ management. Within this context, “the opening up of legal channels for economic migration [in particular via ‘temporary labour migration schemes’] is increasingly considered as an integral part of the managing migration approach” and is seen as “the most promising but also the most challenging”.<sup>41</sup>

### 2.3. Main Tools for Liberalising Labour Market Access

AJMs’ labour migration provisions are aimed at encouraging temporary labour mobility as opposed to settlement. They provide for some more favourable provisions than common law, in particular as modified by the law of 24 July 2006 on immigration and integration,<sup>42</sup> which i) redefined the

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<sup>36</sup> Hollified 2007.

<sup>37</sup> Schneider 2010.

<sup>38</sup> Salcedo 2008, Channac-Nadal 2009.

<sup>39</sup> Carrère and Duval 2009.

<sup>40</sup> Channac-Nadal 2009.

<sup>41</sup> Chétail 2009.

<sup>42</sup> **Loi n° 2006-911 du 24 juillet 2006 relative à l’immigration et à l’intégration** (JORF, 25 juillet 2006, n°170, p.11047-11066).

conditions of family migration by increasing the requirements of admission for stay, ii) favoured labour migration of foreigners proving particular *skills and talents* (also translated as *competencies and talents*), iii) facilitated the recruitment of foreign workers in occupations experiencing recruitment difficulties in certain sectors and regions, and iv) favoured students' migration and encouraged the stay in the framework of a first professional experience for those holding a Master diploma in France. Thus AJMs integrate clauses on the admission for stay and free movement of persons, mainly as regards visa delivery, as well as measures on economic migration and students. The two latter being the most relevant for this paper, it will not address the provisions facilitating human mobility related to personal and family, humanitarian and medical reasons. It will focus on the labour mobility dimension of the French migration partnerships, which facilitate the free movement of persons and admission for stay for the nationals of the signatory countries, and provide for measures aiming at attracting foreign students and young professionals. Indeed, the agreements include two main tools for liberalising labour market access: measures targeting high-skilled workers and students, and lists of shortage occupations aiming at facilitating the procedure to employ foreign workers. A general overview of AJMs' labour provisions compared to the unilateral migration law<sup>43</sup> allows for a better understanding of the added value of the agreements. They will be analysed in detail in the following section.

**Table 1: Labour migration of third-country nationals to France: common law v.s. AJMs**

	Common Law	Bilateral Agreements (AJMs)
<i>Student</i>	<ul style="list-style-type: none"> <li>- Duration: &lt; 1 year temporary permit</li> <li>-Renewal: after the 1<sup>st</sup> year, renewable for a longer period of max. 4</li> </ul>	<ul style="list-style-type: none"> <li>- Temporary authorisation to stay in order to find a job after graduation: <ul style="list-style-type: none"> <li>• in France or country of origin if joint-degree programme (Burkina Faso, Cameroon, Mauritius, and</li> </ul> </li> </ul>

<sup>43</sup> Table 1.

	<p>years.</p> <ul style="list-style-type: none"> <li>- Temporary authorisation to stay in order to find a job after graduation <ul style="list-style-type: none"> <li>• in France</li> <li>• <math>\geq</math> Master level</li> <li>• 6-month</li> <li>• non-renewable.</li> </ul> </li> </ul>	<p>Tunisia)</p> <ul style="list-style-type: none"> <li>• lowered to vocational bachelor level (i.e. 3 years of studies) (except for Cape Verde and Congo)</li> <li>• 6 to 9-month</li> <li>• once renewable (except for Cape Verde and Congo)</li> </ul> <p>- Common law maintained for Senegal.</p>
<i>Salaried worker</i>	<ul style="list-style-type: none"> <li>- Duration: <math>\geq</math> 12 months temporary permit</li> <li>- Renewable</li> <li>- Regardless of the labour market situation if in the list of 14 occupations open to TCNs at regional level</li> </ul>	<ul style="list-style-type: none"> <li>- Regardless of the labour market situation for all the occupations of the extended lists of occupations at national level</li> <li>- Numerical ceilings: Burkina Faso, Cape-Verde and Mauritius: 500, Cameroon: 750, and Tunisia: 3'500. Senegal: "at least 1'000". No limits for Benin, Congo, and Gabon.</li> </ul>
<i>Temporary worker</i>	<ul style="list-style-type: none"> <li>- Duration: <math>\leq</math> 12 months temporary permit</li> <li>- Renewable</li> <li>- Regardless of the labour market situation if in the list of 14 occupations open to TCNs at regional level</li> <li>- No common law provisions for young professionals</li> </ul>	<ul style="list-style-type: none"> <li>- Regardless of the labour market situation for all the occupations of the extended lists of occupations at national level</li> <li>- Numerical ceilings (included in the salaried worker numbers)</li> <li>- For young professionals (18 to 35-40 y/o): <ul style="list-style-type: none"> <li>• Duration: 3 to 18 months (24 for Tunisia)</li> <li>• Renewable (max. 18 months total)</li> <li>• Regardless of the labour market situation in health, agriculture, social, industrial, commercial, and liberal activities.</li> </ul> </li> </ul>

		<ul style="list-style-type: none"> <li>Numerical limits: Cape Verde, Congo, Gabon, and Senegal: 100, Benin and Mauritius: 200, Cameroon: 250, and Tunisia: 1'500.</li> </ul>
<i>Seasonal worker</i>	<ul style="list-style-type: none"> <li>- Duration: 3 years temporary permit</li> <li>- Renewable</li> </ul>	<ul style="list-style-type: none"> <li>- Only for Senegal and Tunisia</li> <li>- 'Facilitation' but no particular measures</li> <li>- Tunisia: <ul style="list-style-type: none"> <li>• Minimum contract of 3 months</li> <li>• Numerical optimal limit: Tunisia: 2'500.</li> </ul> </li> </ul>
<i>Employee on assignment</i>	<ul style="list-style-type: none"> <li>- Duration: 3 years temporary permit</li> <li>- Renewable</li> </ul>	<ul style="list-style-type: none"> <li>- Only for Senegal</li> <li>- 'Facilitation' but no particular measures</li> </ul>
<i>Migration and Development</i>	<ul style="list-style-type: none"> <li>- No common law provisions</li> </ul>	<ul style="list-style-type: none"> <li>- Only for Mauritius</li> <li>- Duration: ≤ 15 months (long-stay temporary visa)</li> <li>- Regardless of the labour market situation for all the occupations of the extended lists of occupations at national level</li> </ul>
<i>Competencies and talents</i>	<ul style="list-style-type: none"> <li>- Duration: 3 years</li> <li>- Renewable (only once for nationals of the priority solidarity zone)</li> </ul>	<ul style="list-style-type: none"> <li>- Unlimited renewal for Gabon</li> <li>- Numerical ceilings except for Gabon: Cape-Verde: 100, Congo, Benin, Mauritius, and Burkina Faso: 150, Cameroon: 200, and Tunisia: 1'500.</li> </ul>

Source: Author's own with relevant French legislation and AJMs 2011

### 2.3.1. Attracting Foreign Students and young professionals

AJMs provide measures targeting students as they represent a sizeable part of the migration influx to France and are a potential source of high-skilled migration. Indeed, the United-States, the UK, Germany and France receive altogether more than 50% of the foreign students worldwide. In France, the number of entries for study purposes went from 15,000 to slightly more than

55,000 between 1995 and 2005, and exceeded 60,000 in 2007 (NB: 65,840 in 2010), which is more than 40% of the permanent entries. In 2005, the origin of these students was distributed as follows: Africa (47%), other OECD countries (21%) and Asia (15%).<sup>44</sup> However, for the last few years, Algerian and Vietnamese students experience a slight decrease in France while the influx from China, Morocco and Brazil experience a constant growth.<sup>45</sup> Regarding the courses chosen, foreign students enrolled in the non-specialised courses of studies (*filières généralistes*, author's translation) are over-represented to the detriment of courses of studies which are more practice-oriented and which take into account the economic needs of the countries of origin. The competitive logic has lead destination countries to launch attractive measures for foreign students, following Canada, Australia and New-Zealand, which have facilitated students' access to the labour market during their education, and which highly encourage it after graduation.

The French law of July 2006 follows this trend by granting students the full right to have a salaried activity up to 60% of the annual hours of work.<sup>46</sup> Besides, the law makes provision for a status change of certain so-called "high potential" students. Furthermore, students with a diploma equivalent to at least a Master's level and wishing to acquire a first professional experience are granted a non-renewable six-month temporary authorisation of stay allowing them to search for and to occupy a job related to their education. After this period, if they can prove they have the job or at least a confirmation of appointment, they are granted a *temporary residence permit for salaried workers* (*carte de séjour temporaire salarié*), regardless of the labour market situation.<sup>47</sup> AJMs provide in certain ways more favourable conditions than the common law in order to give greater facilities for students' mobility. The duration of the temporary authorisation of stay is extended to nine months for Gabon, Congo, Cape Verde, and Cameroon. With the exception of Congo and Cape

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<sup>44</sup> As for the whole set of migration influx, France has a different trend compared to the aggregate of OECD countries where the students influx are mainly from Asia (45%), other OECD countries (33%) and Africa (12%) (Durand and Lemaître 2007, Bertossi 2008).

<sup>45</sup> Régnaud 2009.

<sup>46</sup> Art. L313-7 CESEDA.

<sup>47</sup> Art. L311-11 CESEDA.

Verde, it is renewable once for the same initial duration. Additionally, the required minimum level of a Master is lowered to a *vocational Bachelor degree (licence professionnelle)* (i.e. three years of university studies) for Gabon, Benin, Tunisia, Cameroon, Mauritius, and Burkina Faso. In addition, for Tunisia, Mauritius, Burkina Faso, and Cameroon, these provisions also apply to the students who have achieved such levels of studies in a national academic institution having joint-degree programmes with France. Furthermore, AJMs try to better take into account the education and training needs in the Southern countries. For that reason, AJMs intend to attach importance to the training of future development executives of these countries and, whether in the countries themselves or by promoting South-South mobility, the economic development technicians and operators. To that end, the agreement with Senegal includes the creation of a Centre for Studies in France, which is a platform of services aiming to bridge visa deliveries for students with their pre-enrolment in a French high-education institution, in particular on the scientific and technological branches as well as on the Master and Doctorate levels. As for the agreements with Congo and Benin, they make provision for the opening of an *Espace Campus France*, which is an agency aiming at informing French education institutions about the education and training needs of the source countries, as well as to give Congolese and Beninese students in France access to job offers in their country of origin. However, this measure, used as an incentive for return, is offset by the possibility for students to apply for a change of status in case they have found a job. If this represents on the one hand an improvement as regards students' conditions, it favours *brain drain*, for which foreign students remaining abroad are one of the most important causes.<sup>48</sup>

Finally, with the exception of Burkina Faso, the agreements refer to or include provisions aiming at facilitating and organising the mobility of young professionals (from 18 to 35 years-old; 40 for Benin) having entered or about to enter the workforce and wishing to have a professional experience in France in order to enhance their career perspectives in the fields of health, social

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<sup>48</sup> Lucas 2008: 10.

activities, agriculture, industrial activities, commercial activities, and liberal activities. As a consequence, the beneficiaries of these programmes are able to have a remunerated activity in a firm, under cover of a work contract and regardless of the labour market situation, for a term of 3 to 18 months depending on the countries, and up to 24 months for Tunisia in the framework of a professional return project conceived with the support of a competent public organism.<sup>49</sup> AJMs establish a certain number of beneficiaries, which can be modified by exchange of letters.<sup>50</sup> It is worth noting that, contrarily to all other measures regarding labour mobility (except circulation visas), young professionals' exchange has an element of total reciprocity as it applies to nationals of the signatory country as well as to French nationals. This adds to the partnership dimension of the AJMs, even though reciprocity, and especially equality, are not considered a *sine qua non* condition for mutually beneficial partnerships.<sup>51</sup>

### 2.3.2. *Attracting the Brightest: the 'Competencies and Talents' Admission Card*

The qualitative selection of migrants is not a new process and goes back to post-second world war reconstruction.<sup>52</sup> However, the innovative feature of AJMs compared to old bilateral labour migration agreements is that the latter very seldom related to workers of the high-technology sector and to high-skilled workforce. Whilst during the previous decades selective labour migration mainly targeted *arms* it now targets *brains*. In fact, besides giving priority to labour migration over family migration, France aims at finding a balance in the skills level as it has currently less skilled workers than the average of OECD countries.<sup>53</sup> However, considering the high-skilled net

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<sup>49</sup> Art. 2.3.1.

<sup>50</sup> For Gabon, the number is set by the Agreement on Young Professionals Exchange of 24 Feb. 2010, scheduled in art. 3.1. of the AJM and for Senegal by the Agreement on Young Professionals Exchange of 20 Jun. 2001 referred to in art. 322 of the AJM.

<sup>51</sup> Laakso 2007.

<sup>52</sup> Bertossi 2008.

<sup>53</sup> Mariani 2006, Durand and Lemaître 2007.

migration rate,<sup>54</sup> France largely benefits from high-skilled worker flows worldwide and within the OECD countries, holding the fourth position after the United States, Canada and Australia and before Spain, Switzerland and Sweden.<sup>55</sup> Within the framework of this world competition for talents,<sup>56</sup> France seeks to maintain and even improve its position by attracting highly skilled workers completely or partly educated and trained in their countries of origin. The privileged tool in this regard, which reflects this paradigm shift of French policy, is the '*competencies and talents*' admission card (*carte compétences et talents*) created by the law of 24 July 2006.<sup>57</sup> This three-year renewable card, similar to other countries' points system, is intended for people who:

given their skills and talents, might contribute in a significant and sustainable way to economic development, territorial planning development, or in particular the intellectual, scientific, cultural, humanitarian or sports outreach of France and, directly or indirectly, of their country of origin.<sup>58</sup>

This admission card allows its beneficiaries to be accompanied by their family and grants the spouse the right to work in France. Even though it is not limited to nationals of the countries having signed an AJM with France, they are presented as one of the main achievements of the AJMs. However, in reality they do not bring any major changes to the common law. For instance, common law establishes that nationals of the *priority solidarity zone* of French aid (*zone de solidarité prioritaire – ZSP*)<sup>59</sup> – to which all the countries having signed an AJM (except Mauritius) belong so far – can benefit from the card

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<sup>54</sup> i.e. the difference between the number of high-skilled entering and those living the territory throughout the year. As a comparison, even though France attracts less skilled workers than the UK or Germany, the number of French-nationals holding a university diploma leaving to work abroad is much lower than the one of the two other countries.

<sup>55</sup> Chassard 2006. E.g. in 2006, third-country technicians, supervisors, managers and executives, and engineers accounted for around 58% of all the permanent foreign workers against 7% for unskilled workers and 35% for skilled workers (Régnard 2007).

<sup>56</sup> Doudeijns and Dumont 2003, Kapur and McHale 2005, Durand and Lemaître 2007, Skeldon 2010.

<sup>57</sup> Panizzon 2011.

<sup>58</sup> Art. L315-1 CESEDA (author's translation).

<sup>59</sup> The actual ZSP includes 55 "least developed countries [or territories] in terms of income, which do not have access to capital markets and with which France intends to develop a strong partnership based relationship with a view to solidarity and sustainable development" ([diplomatie.gouv.fr](http://diplomatie.gouv.fr)).

only if France has signed into a *codevelopment convention* (*accord de partenariat pour le codéveloppement*) (i.e. only Mali and Senegal) or if the migrant commits to return to the country of origin at the end of a maximum term of six years.<sup>60</sup> This measure aims at reducing the risk of *brain drain* from the ZSP contrarily to other third country nationals (TCNs) holding a *competencies and talents card*, for whom it is possible to apply for a long-residence permit after five years of uninterrupted residence in France.<sup>61</sup> The concern of migrants' return is particularly emphasised in the agreements with Senegal<sup>62</sup> and Benin,<sup>63</sup> which append the commitment of France to contribute to the beneficiaries' effective return and their social and professional reintegration in the country of origin at the end of the card's validity period.<sup>64</sup>

The additional relaxations brought on by the AJMs remain very narrow. For instance, the AJM with Gabon allows for an unlimited renewal of the card and, with the exception of Senegal and Gabon, in order to prevent brain drain, the agreements fix numerical limits that can be revised on a yearly basis.<sup>65</sup> Finally, it is interesting to note that whereas this type of admission card is only available for the nationals of the African signatory country, only the agreement with Burkina Faso features reciprocity providing for a similar admission card for French nationals.<sup>66</sup>

### 2.3.3. Fulfilling labour market needs through lists of shortage occupations

The second tool for facilitating temporary labour mobility within the AJMs are the lists of occupations open by France to nationals of the signatory countries, granting them preferential access to the labour market. Indeed, the main

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<sup>60</sup> Art. L315-2 CESEDA.

<sup>61</sup> Art. L314-8 CESEDA.

<sup>62</sup> Art. 323.

<sup>63</sup> Art.11.

<sup>64</sup> Another partnership element initially required by the common law for ZSP-migrants was that they should contribute, during the time of validity of the card, to an action of cooperation or of economic investment defined by France together with their country of origin (Art. L315-6). This obligation was however recently abrogated by law of 16 Jun. 2011 as it was considered too restrictive.

<sup>65</sup> Table 1.

<sup>66</sup> Art.2.2.a.

labour migration hindrance in France comes from the *opposability of the labour market situation* (*opposabilité du marché de l'emploi*, author's translation). To hire a foreign worker, employers have to prove they were not able to find candidates residing in France or, following the principle of *Community preference*, other EU Member States' nationals with the required profile and wishing to work. However, based on the analysis of the labour market, France has resorted to lists of shortage occupations, 30 open to all third-country nationals (L30 TCNs)<sup>67</sup> and 150 to NMS in a transitional period (L150 NMS), for which the recruitment of foreigners is facilitated regardless of the labour market situation if the migrant presents a work contract visaed by the French authorities. Following the same pattern, the AJMs include a complementary list of occupations open to the partner country's nationals. While the L30 TCNs opens occupations on a regional basis, the occupations included in the AJMs apply at the national level. Migrants are granted one of the common law temporary stay cards (*cartes de séjour temporaire*).<sup>68</sup> They are granted a "salaried worker" card if the activity is of 12 or more months and a "temporary worker" card if it is less than 12 months. While the AJMs with Burkina, Cape-Verde, and Cameroon only offer this option for the first figure, the AJMs with Benin, Congo, Senegal, and Gabon provide for both possibilities.<sup>69</sup> Finally, the AJM with Mauritius introduces an innovative scheme that does not exist in the French unilateral law: the "migration and development" temporary long-stay visa, with a maximal (renewable) duration of 15 months.<sup>70</sup> Like for the "competencies and talents" card, numerical ceilings are set in most cases.<sup>71</sup> However, contrarily to the other countries, the number fixed for Senegalese

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<sup>67</sup> The L30 TCNs was reduced to 14 by Order (*Arrêté*) of 11 Aug. 2011. This paper will nevertheless refer to the L30 TCNs as all agreements have been signed under that previous list.

<sup>68</sup> Art. L313-10 CESEDA.

<sup>69</sup> Even though these provisions are not subject to particular occupations named on the lists, it is worth noting that for Senegal and Tunisia, the AJMs also include a three-year renewable temporary stay card for seasonal workers, allowing them to work in France for a maximum of six months per year. And the AJM with Senegal is the only one also extending facilities for employees on assignment (*salariés en mission*) (Art.323).

<sup>70</sup> Art. 2.1.1.

<sup>71</sup> Table 1.

workers does not represent a limit as it is of *at least* 1,000 cards.<sup>72</sup> These yearly limits as well as the list of occupations can be modified every year by a simple exchange of letters between the parties. Only the agreements with Burkina Faso<sup>73</sup> and Cape Verde<sup>74</sup> specify that in case the numeric ceilings of beneficiaries of the “competencies and talents” and “salaried worker” temporary admission cards are exceeded, their nationals can still benefit from the French common law on labour migration (with an element of reciprocity for Burkina Faso). However, this possibility remains possible even without a particular reference in the AJM (tbc).<sup>75</sup>

Whereas these lists aim at facilitating labour mobility in order to fulfil labour shortages, it is worth noting that they take into account the labour market situation at a given point. Considering that AJMs take several years to enter into force,<sup>76</sup> by the time a migrant worker will be granted preferential access regardless of the labour market situation, the occupation might no longer experience shortages or recruitment difficulties. This is all the more important knowing that none of these lists have been revised since the signature, contrarily to the possibility offered by the AJMs. Considering the extremely fast evolution of both the economic situation and the labour shortages depending on the sectors, the actual lists of occupations are thus based on obsolete data and might not effectively match the real needs of the labour market.

### ***3. The partnership dimension of AJMs' labour provisions***

#### *3.1. Preliminary remarks: French lists of occupations open to all foreign workers*

Before addressing the particular case of the lists of occupations liberalised by the AJMs, and especially to understand their implications, it is important to

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<sup>72</sup> Art. 321.

<sup>73</sup> Art. 2.2.d.

<sup>74</sup> Art. 3.2.4.

<sup>75</sup> Unpublished document 2008.

<sup>76</sup> Annexe 1.

consider the common law on the recruitment of foreign workers. As mentioned above, third-country nationals' (TCNs) access to the French labour market is regulated and to some extent limited by different EU and domestic legal provisions aiming at protecting domestic and resident workers.<sup>77</sup> In most cases, the narrowly regulated common law on foreign workers' recruitment<sup>78</sup> provides the possibility of hiring TCNs for specific occupations that could have not been supplied by the labour force already present in the labour market (including foreigners). The employer must initiate the procedure and will have to present the evidence of the searches carried out to recruit other applicants already present on the labour market. These efforts are part of the main criteria<sup>79</sup> taken into account to grant or to refuse work authorisations. Such efforts also take the name of Labour Market Tests/Testing - LMTs (in Canada, Australia, and New Zealand) or Resident Labour Market Tests - RLMT (in the UK), or else Economic Needs Tests - ENTs (at the multilateral level, within the framework of the WTO's GATS Mode 4). In order to simplify the procedure for recruiting foreign workers for occupations suffering from labour shortages in given geographic areas, France has set some mechanisms exempting from LMTs. Indeed, the law of 24 July 2006 formalised the principle of occupational shortage lists at the national level for EU New Member States (NMS) in a transitional period<sup>80</sup> as well as for third-country, EEA (European Economic Area) and Swiss nationals.<sup>81</sup> A first list of 62 occupations for NMS had already been set by bill (*circulaire*) of 29 April 2006 for 8 out the 10 NMS having joined the EU on 1 May 2004 until the end of the transitional period (30 April 2009), applied by France by virtue of the Treaty of accession in order to lead to the concrete implementation of the free movement of workers within the EU area. It was extended to Bulgaria and Romania from 1 July 2008 to 1 January 2012. A broader list of 150 occupations

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<sup>77</sup> EMN 2010.

<sup>78</sup> Art. R.5221s. of the French labour code.

<sup>79</sup> Subsidiary criteria: the adequacy of qualification, experience, diplomas or certificates of the foreign worker to the job requirements; respect of social protection and labour law; and equal conditions of employment and of salary.

<sup>80</sup> Art. 23.

<sup>81</sup> Art. 12.

open to NMS and the list of 30 occupations open to TCNs were set by bill of 20 December 2007 and entered into force by decrees of 18 January 2008. Following the above-mentioned principle of *Community preference*, the 30 occupations open for TCNs were selected within the NSM 150 list. To work in one of the listed occupations, the obligation of a work authorisation remains, but the labour market situation – which had been the main criteria for work authorisation refusals – as well as the obligation for the employer of proving that no other person already present in the labour market could be found, can no longer be raised as an objection.

These lists are based on two main factors regarding the labour market situation. First, they are based on labour shortage indicators (*indicateurs de tension*, author's translation) – i.e. the rate and evolution of unemployment, the number of unfilled job offers in the occupations with shortages, geographic and economic characteristics of the regions (borderland location, tourism, etc.). These indicators set by the French ministerial statistical office for labour and employment of the French Ministry of Labour (DARES) and by the national employment agency (ANPE/Pôle Emploi), are considered in the long term (three or ten years), taking into account the volumes they represented as well as the skills levels. Secondly, the lists consider the opinions of the concerned employers and workers unions (*organisations syndicales d'employeurs et de salariés représentatives*, author's translation).<sup>82</sup> Besides, some occupations have also been included upon direct request of employers as they belonged to some fields of activity that stand for a specific labour market for which there is no intervention of the national employment services (e.g sailors).<sup>83</sup> Based on these two main factors, the selected NMS 150 list represented 40 % of job offers (1.37 million) registered by the national employment agency in 2006, while the TCNs 30 list only accounted for 4% (152,760).<sup>84</sup> This illustrates the very strong political dimension of such lists. Within the TCNs' 30 occupations, 6 experienced recruitment shortages at national level (5 high-skilled and 1

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<sup>82</sup> Art. L341-2. CESEDA.

<sup>83</sup> Unpublished document 2007.

<sup>84</sup> Source ?

skilled) and the rest only at regional level. The common law lists of occupations are given as a maximum of possible occupations *likely* (*susceptibles*, author's translation) to be open by the regions to TCNs. It should be noted that over the 22 regions of the mainland territory only two (Alsace and Rhône-Alpes) included all the 30 possible occupations.<sup>85</sup> In this regard, some consider the fact of opening most of the occupations on a regional basis equals to reintroducing an "obligation of residence according to the needs",<sup>86</sup> thus constituting a barrier to labour mobility.

This review of the common law lists of shortage occupations provides for a better understanding of the bases upon which the complementary lists of occupations are set within the bilateral agreements. In fact, most of the AJMs include occupations mainly from the L30 TCNs and the L150 NMS, and even exclusively for Congo, Cape Verde, and Burkina Faso (tbc).<sup>87</sup> Including occupations from the L30 TCNs allows applying LMTs relaxation (i.e. the *non-opposability of the labour market situation*) to the entire *mainland French territory* (*territoire métropolitain* i.e. excepting overseas departments and territories) and not only at a regional level as provided by the common law. Some AJMs include the whole set of TCNs 30 occupations, such as the ones with Senegal, Cape Verde, Burkina Faso, and Tunisia. For the latter, it is worth noting that, like for Algeria, it was not initially concerned by the L30 TCNs, France being bound by bilateral agreements granting them a privileged status more favourable than the common law in many respects.<sup>88</sup> However, Tunisia having signed an AJM with France including all 30 occupations, its nationals now benefit from the *non-opposability of the labour market situation* at national level.

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<sup>85</sup> Courtois and Buffet 2009.

<sup>86</sup> Brun 2008.

<sup>87</sup> Table 2.

<sup>88</sup> Bill (*circulaire*) of 20 Dec. 2007, Art. 1.3.

**Table 2: Occupations open within the framework of the AJMs by country**

	<b>Total occupations</b>	Within the TCNs list	Within the NMS list	Within the NMS list (except TCNs 30)	Outside NMS 150 & TCNs 30 lists
<b>Total France</b>	<b>466</b>	30	150	120	316
<b>EU (NMS)</b>	150	30	150	120	0
<b>Third-countries (TCNs)</b>	30	30	0	0	0
<b>AJMs</b>					
<b>Senegal</b>	104	30	40	40	34
<b>Gabon</b>	9	5	6	1	3
<b>Congo</b>	15	5	15	10	0
<b>Benin</b>	16	5	7	2	9
<b>Tunisia</b>	74	30	70	40	4
<b>Cap-Verde*</b>	40	30	40	10	0
<b>Mauritius*</b>	61	N/A	N/A	N/A	N/A
<b>Burkina Faso*</b>	40	30	40	10	0
<b>Cameroon*</b>	66	25	52	27	14

Source: Author's own with data from the MIIINDS 2008/2009

\*data from the draft agreements, final data not available.

The French new law and the principle of drafting shortage lists of occupations for TCNs falls within a particular international context. Indeed, the 2006 Rabat Action Plan adopted during the first Euro-African Ministerial Conference on Migration and Development, and the 2006 Joint Declaration of the Ministerial Conference EU - African Union recommended facilitating, on a bilateral and voluntary basis, the procedures of legal migration for skilled and unskilled workers. Moreover, they recommended improving information on the labour market needs in Europe as well as in Africa, mainly with a view to have an efficient management of skills mobility. Along the same lines, the 2006 UN High-level Dialogue on International Migration in Development (UN-HLD) had underlined how essential migrants could be to meeting labour shortages in some countries. Subsequently, they called for reinforcing

partnerships between countries of origin and of destination as well between governments and associations of employers and workers in developing migration policies.

### *3.2. Drafting AJMs' lists of occupations: degree of implication of employers and of countries of origin*

#### *3.2.1. Partner countries' demands*

For labour mobility to be beneficial to all, it must take into account both the needs of the destination country and of the source country.<sup>89</sup> That is why, within the *partnership* logic, the lists of occupations open in the framework of the AJMs are negotiated on the basis of proposals made by the partner countries. France then selects the occupations according to different criteria. Priorities can vary depending on the countries and on their specificities regarding international relations with France as well as political considerations. Generally, the first level of priority concerns the occupations belonging to the L30 open to all TCNs, followed by the L150 NMS. Among the latter, priority is given to skilled and high-skilled occupations. A third level of priority refers to a certain amount of occupations, mainly low-skilled, that have been intentionally left outside the L150 in order to leave some room for negotiation of bilateral agreements and with the highest tension indicators.<sup>90</sup> The occupations open to nationals of the signatory countries must either experience high and unrelieved shortages (*une tension forte et durable*) in the labour market in order to avoid workforce substitution or a downward pressure on salaries, or they must correspond to a demand from the employer unions. Finally, the lists also take into account the needs of the countries of origin. One of the main motivations of countries of origin to sign bilateral agreements is to relieve their labour surplus,<sup>91</sup> but at the same time to avoid too high labour flows and to prevent them from being oriented towards a

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<sup>89</sup> Zapata-Barrero et al. 2009.

<sup>90</sup> Unpublished documents 2007 and 2008.

<sup>91</sup> Fernández-Huertas 2008.

single country or activity sector.<sup>92</sup> AJMs can also serve to fill the skills shortages in the countries of origin. Indeed, in the case of Benin, Burkina Faso, Cape Verde and Senegal, for which data on skills shortages is available,<sup>93</sup> it is noticeable that most of the occupations open by the AJMs belong to the sectors in which the partner countries experience skills shortages. Thus, based on the above-mentioned principle of *circularity*, a temporary stay in France allows for migrant workers to return with the necessary skills and experience. The AJM with Burkina Faso is in that sense the most advanced as, following the country's demand, it explicitly provides for a list of 21 priority occupations within the 64 occupations open to Burkinabe nationals, which require additional and priority skills for Burkina Faso's socio-economic development.<sup>94</sup>

### 3.2.2. Employers' demands

Beside the partnership dimension with the countries of origin, it is important to analyse the implication of the private sector in designing labour migration policy tools. Indeed, for temporary migration to be fully beneficial it appears necessary to build policy tools on a real partnership between the public and the private sectors in order to fulfil labour market needs while reducing unemployment and demographic pressure in the countries of origin.<sup>95</sup> Foreign worker's recruitment in France is still not done through real public-private partnerships in the manner of other countries. However, the unilateral lists of occupations as well as the AJMs complementary lists do take into account employer demands. Among the TCNs 30, only one was included "upon request of employer unions" (*à la demande des federations professionnelles*, author's translation), that is to say regardless of the statistic results. Among the NMS 150, 22 (out of the 48) high skilled, 6 (out of the 63) skilled and 7 (out of the 39) unskilled are included upon request of employer unions. Employers'

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<sup>92</sup> Unpublished document 2008.

<sup>93</sup> Varma 2009.

<sup>94</sup> Luca 2010.

<sup>95</sup> Badie et al., *op. cit.*

demands are crucial<sup>96</sup> as they refer to recruitment difficulties rather than real labour shortages based on statistics. The necessity of taking into account employers' demands comes from the fact that the criteria used to select the occupations can be considered to be questionable, as they remain quite arbitrary and function insufficiently in practice.<sup>97</sup> Hence, it is important to consider complementary information in order to fully depict the reality of the labour market for each occupation. This realisation has even led to a shift in the vocabulary of the French legislation, the expression *labour shortage occupations* (*métiers en tension*, author's translation) used in the first bills having been replaced by *occupations experiencing recruitment difficulties* (*métiers connaissant des difficultés de recrutement*, author's translation).

### 3.3. Skills levels: AJMs as correctives to the high-skilled bias of unilateral law?

#### 3.3.1. Skills levels overview

As mentioned above, most of the occupations open in the AJMs belong to the common law lists of occupations open to all TCNs and NMS. It is therefore interesting to first analyse the skills levels within those lists.<sup>98</sup> Indeed, whilst the L30 TCNs exclusively includes skilled and high-skilled occupations (9 and 21 respectively), the L150 NMS also includes many occupations at the lowest of the skills' scale: 48 high-skilled and 63 skilled (including the L30 TCNs), and 39 unskilled (cleaning person, waiter/waitress, maid, home-to-home salesperson, agricultural worker, window cleaner, etc.).

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<sup>96</sup> Lucas 2008.

<sup>97</sup> Unpublished document 2007.

<sup>98</sup> See table 3.

**Table 3: Skills levels of the occupations open to TCNs and NMS workers**

<b>Lists of occupations</b>	<b>High-skilled</b>	<b>Skilled</b>	<b>Unskilled</b>
30 open to third-country nationals (TCNs)	21	9	0
150 open to NMS nationals (excluding the 30 for TCNs)	27	54	39
150 open to NMS nationals (including the 30 for TCNs)	48	63	39

Source: MIIINDS 2008

Whereas the occupations open to TCNs are all high-technician levels that in some cases require a university diploma, the new agreements allow correcting the high-skilled bias of common law by including low-skilled or unskilled occupations.<sup>99</sup> The absence of detailed information on the skills levels of all AJMs' occupations does not allow for a detailed analysis. However, in broad terms, the possibility for AJMs providing for low skilled occupations varies depending on the countries. Whereas AJMs with Benin, Congo, and Burkina Faso do not include low skilled occupations, the agreement with Senegal<sup>100</sup> and, to a lesser extent, the one with Tunisia<sup>101</sup> and Cameroon allow for a certain amount of unskilled occupations. Including occupations with a lower level of qualifications remains necessary given the fact that the future needs of the labour market also concern other categories of workers, and in particular the *unpopular* ones,<sup>102</sup> mainly in the sectors of construction, catering, and services to individuals and *collectivities*. However, AJMs remain considerably high-skilled oriented, thus putting into question their objective of taking into account countries of origins' needs, and in particular the need to prevent brain

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<sup>99</sup> Panizzon 2011.

<sup>100</sup> Terrot 2009.

<sup>101</sup> Tasca 2008.

<sup>102</sup> Doudeijns and Dumont 2003.

drain.

### 3.3.2. Preventing brain drain through numerical ceilings?

The numerical ceilings established by the AJMs are often considered as *quotas* limiting the access to the labour market.<sup>103</sup> France refuses to refer to such limits in such terms. Indeed, the system of migration quotas, which is the most common tool of migration policy worldwide,<sup>104</sup> contradicts the French Constitution when it refers to origins.<sup>105</sup> Thus France prefers to rely on the second more common method: market-based regulations,<sup>106</sup> similar to the points system used in other countries such as Canada and the UK.<sup>107</sup> Indeed, to regulate labour migration, France resorts to tools such as the ‘competencies and talents’ admission card and bilateral agreements like the AJMs.<sup>108</sup> According to the French *Conseil d’Etat*, AJMs’ ‘quantitative limits’, do not raise any “serious constitutional problem” (*difficulté constitutionnelle sérieuse*, author’s translation) as, on the one hand, they are driven by a general interest objective of limiting high-skilled emigration to France, and on the other hand, nationals of the signatory countries fall within the common law once these limits have been reached.<sup>109</sup> Thus, AJMs’ numerical ceilings can to some extent be analysed in terms of partnership as they are justified by the concern of limiting the exodus of *elites* or of *resources and skills* (Mauritius and Burkina Faso). For instance, in the AJM with Mauritius, they were set on request of the source country itself.<sup>110</sup> However, in other cases, the emphasis is on the concern for facilitating *reception and professional integration* of migrants in France (e.g. Cameroon). Only the agreement with Cape Verde highlights both parties’ concerns within the aim of a fully balanced partnership. Finally, it is

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<sup>103</sup> Bertossi 2008, Carrère and Duval 2009, Panizzon 2011.

<sup>104</sup> Fernández-Huertas Moraga 2008.

<sup>105</sup> Bertossi 2008.

<sup>106</sup> Doudeijns and Dumont 2003.

<sup>107</sup> Bertossi 2008.

<sup>108</sup> Mazeaud 2008.

<sup>109</sup> Unpublished document 2008.

<sup>110</sup> Terrot 2010.

worth noting that even if these figures appear as limits, to give an example, the number of 'competencies and talents' cards granted being so insignificant so far, numerical ceilings appear to be more objectives than real limitations to labour mobility.

Other AJMs' measures appear to be more effective in combating brain drain than numerical ceilings, like the clauses aimed at facilitating the return of high-skilled migrant workers to their country of origin to favour development. For instance, the agreement with Benin provides several measures to encourage the return of health-care and IT skilled young professionals, that is to say the two main sectors affected by *brain drain*. Regarding solidarity development, it mainly consists in reintegration strategies, financial aid for equipment and installation, additional training in the home country, a long-term tutelage system by the medical workers living in France and financial aid to the maintenance of technical medical equipment which is essential for the health-care professionals.

### **Concluding remarks: What is the real impact on human mobility?**

Between 2006 and early 2009, bilateral agreements were presented as the priority tool of international relations with migrant-sending countries<sup>111</sup> and a way of measuring the efficiency of the ministerial work on migration in the French Draft Finance Act (*projet de loi de finances*, author's translation). A very ambitious objective of 21 agreements for 2009-2011 was set, following a sequencing of seven agreements per year.<sup>112</sup> However, with only two AJMs signed in 2009 (Burkina Faso and Cameroon) and negotiations suspended with Mali and Egypt, the objective was reappraised to at least twenty agreements until 2012.<sup>113</sup> Despite this declaration of intent, not a single comprehensive agreement in the manner of the AJMs was signed. The main explanation given, which became already apparent in 2008, is the current

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<sup>111</sup> Mazeaud 2008.

<sup>112</sup> Hortefeux 2007.

<sup>113</sup> Besson 2009.

economic crisis.<sup>114</sup> Indeed, in 2009, France faced the most severe recession since 1945, leading to the adoption of a restrictive policy of labour migration.<sup>115</sup> Without putting into question this economic concern, it is important to note that France continued signing other types of bilateral agreements facilitating high-skilled and youth mobility with Russia, Macedonia, Montenegro, Serbia and Lebanon, but not with African countries. This situation adds weight to the existing AJMs, as they secure mobility for nationals of the signatory countries in an increasingly restrictive context.

Even though AJMs exist, their real impact on human mobility remains hard to prove. Indeed, like for other innovative schemes of temporary circular migration, which are expected to be better than their predecessors and aim at increasing the benefits for all the stakeholders, this has not been effectively verified to date.<sup>116</sup> In the particular case of the French AJMs, several reasons can explain the difficulties in verifying the real impact of the AJMs on human mobility. First, for the AJMs to enter into force and be fully implemented they need to have been ratified by both countries. However, the ratification process is long, and the time elapsed between the signature and the entry into force averages around two years (from 14 months for Gabon to 35 for Senegal).<sup>117</sup>

Many provisions can nevertheless be implemented before the AJMs' entry into force, mainly those related to solidarity development. However, the administrative services in charge of implementing the provisions, in particular those regarding facilitation of labour migration, do not receive clear instructions through circular letters before the end of the ratification process. Once this final step is achieved, the discretionary power of administrative agents remains an important barrier to mobility.<sup>118</sup> This power is even more important as regards 'competencies and talents', for which the criteria remain vague and call upon a subjective appreciation by administrative agents.

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<sup>114</sup> Tasca 2008.

<sup>115</sup> E.g. the recent bills of 31 May 2011 on labour migration 'mastery' and of 11 Aug. 2011 on the reduction of the list of shortage occupations open to third-country nationals (author's translation).

<sup>116</sup> Zapata-Barrero et al. 2009.

<sup>117</sup> Annexe 1.

<sup>118</sup> Spire 2008.

Moreover, AJMs being a complete new tool, information about the new facilities to mobility are essential for potential candidates. It is only very recently that AJMs have gained a public audience. And even with existing information, it is not proven that migrants will resort to AJMs provisions to migrate.<sup>119</sup>

Most of the agreements having very recently entered into force, there are still no probative results of the broad impact of the new AJMs on labour mobility. All AJMs provide for the creation of a follow-up committee with representatives of both parties, as well as experts, expected to meet (at least) once a year. It aims in particular at i) observing migration flows between the two partner countries, ii) evaluating the results of the AJM, and iii) formulating proposals to improve the effects of the AJM. The reluctance of the French government to communicate statistics and information related to the meetings and the possible conclusions of the follow-up committees does not allow insight into the AJMs' progress and implementation results. This can be explained by the fact that, as confirmed by government representatives, AJMs have had an extremely limited impact so far and do not appear to have the same priority as at the time of their signature (personal communication 2011).

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<sup>119</sup> E.g. this was the case during the switchover to the year 2000 and the transition to the Euro, when France adopted measures to facilitate the recruitment of a few thousands of computer specialists from all over the world. However, it appears that a large part of these specialists were recruited in Morocco regardless of the French-Moroccan labour agreement.

### Annexe 1: Elapsed time from AJMs signature to entry into force

Partner country	Signature	Ratification by the partner country	Ratification by France	Entry into force
Senegal	23 Sept. 2006 (+ covenant 25 Feb. 2008)	10 Sept. 2009	25 May 2009	1 <sup>st</sup> Aug. 2009
Gabon	5 July 2007	(?) Dec. 2007	19 June 2008	1 <sup>st</sup> Sept. 2008
Congo	25 Oct. 2007	29 Apr. 2008 (?)	25 May 2009	1 <sup>st</sup> Aug. 2009
Benin	28 Nov. 2007	26 Jan. 2010	25 May 2009	1 <sup>st</sup> Mar. 2010
Tunisia	28 Apr. 2008	21 July 2008	25 May 2009	1 <sup>st</sup> July 2009
Mauritius	23 Sept. 2008	8 Apr. 2010	16 Apr. 2010	1 <sup>st</sup> Sept. 2010
Cape Verde	24 Nov. 2008	May 2009 (?)	3 Jan. 2011	1 <sup>st</sup> June 2011 (?)
Burkina Faso	10 Jan. 2009	15 Dec. 2009 (?)	3 Jan. 2011	1 <sup>st</sup> June 2011
Cameroon	21 May 2009	3 Dec. 2009 (?)	In progress	

Source: Author's own with MIIINDS data 2011

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- *Accord entre le Gouvernement de la République française et le Gouvernement de la République du Congo relatif à la gestion concertée des flux migratoires et au codéveloppement*, signé à Brazzaville le 25 octobre 2007.
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