REPORT
on the Free Movement of Workers in France in 2002-2003

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General Remarks

With respect to the application of rules concerning the free circulation of workers, the year 2002-2003 was characterised in French law by the particular attention devoted by the French national authorities to the question of opening up the French civil service to European Union nationals and their access to employment. The formal tone of the decision handed down by the Supreme Administrative Court, the Council of State, on 31 January 2002, coupled with the high stakes of access to employment in a State where the public sector represents the highest volume of jobs anywhere in the Union, explains this specific interest in accordance with the jurisprudence of the CJEC. This was followed by a significant regulatory movement, both within the context of State civil service and within the field of the territorial civil service, in order to implement these obligations.

In addition, the various amendments to the laws applicable to foreigners in France during the period under study and, in particular, the law 2003-1119 of 26 November 2003 have taken into account the specific situation of Community nationals. It will also be observed that the law applicable to police measures regarding Community nationals has been the subject of major jurisprudence by the CJEC regarding barriers to free circulation on national territory and that the Council of State immediately applied it.

Regarding the issue of the enlargement of the European Union, the French authorities have adopted a transition system with respect to salaried workers originating in this State, applying the "2+3" formula and taking effect on 1 May 2004; the possibility of an additional 2-year period is not currently envisaged.

For the other fields during the period covered, it will be seen that French delays in the adaptation of directives also produce detrimental effects in this respect in terms of freedom of establishment, even if the principle of non-discrimination has been the subject of specific application.

Chapter I
Entry, Residence and Departure and Remedies

A. Entry and residence of Community nationals

1. Texts adopted

French legislation relating to foreigners was modified during 2003 and represents progress for the free circulation of workers.

Article 14 of the law 2003-119 of 26 November 2003[1] regarding immigration control abolishes the obligation that Community nationals and nationals of the EEA must hold a residence permit.

Article 9-1 of ordinance no. 45-2658 of 2 November 1945 regarding the entry and residence conditions for foreigners in France henceforth stipulates that

> "nationals of Member States of the European Union, of another State party to the European Economic Area or of the Swiss Confederation wishing to establish their usual residence in France are not obliged to hold a residence permit. If they submit an application, a residence permit is issued to them under the conditions stipulated by Council of State decree, provided they do not pose a threat to law and order.
> However, nationals of Member States of the European Union wishing to perform an economic activity in France are still obliged to hold a residence permit for the term of application of the transition measures which may be envisaged in this matter by the treaty of accession of the country of which they are nationals and unless this treaty stipulates otherwise. A Council of State decree specifies the conditions of application of the present article".

The application of the law 2003-119 was specified in circular NOR/INT/D/04/ 00006/C of 20 January 2004:

> "the abolition of this obligation applies to all categories of Community nationals and Swiss citizens, whether these persons are working or not. Henceforth, these persons may reside in France without having to apply for a residence permit and can therefore reside there solely on the basis of their passport or current national identity card. This abolition does not retrospectively affect family members who are nationals of a third-party State who remain, for their part, obliged to hold a residence permit under the conditions laid down by decree of 11 March 1994 as amended".

With respect to the possibility of applying for a residence permit "for personal convenience", the circular stipulates that

> "the criteria …. for issuing the residence permit applied for remain those fixed by the decree of 11 March 1994 as amended, regulating the conditions of entry and residence for nationals of Member States of the European Community".

Decree 94-211 of 11 March 1994 regulating the conditions for entry into and residence in France for nationals of Member States of the European Community benefiting from the free circulation of people, amended by decree 98-864 of 23 September 1998, has not

1 OJ no. 274 of 27 November 2003, p. 20136.

yet been amended following the law of 2003. It seems however that "the specific methods for issuing residence permits … could be relaxed: the Government plans to generalise the permanently valid residence card with effect from the first application from workers and former workers, as well as for members of their families".[2]

An employer who recruits a Community national does not have to worry about the legality of his residence or his work permit: a simple identity document is sufficient. He must simply state the employee's nationality on the personnel register.

2. Jurisprudence: restrictions on the right of residence of Community nationals

Community jurisprudence

CJEC, 26 November 2002, *Olazabal* (case C-100/01). The Council of State asked a prejudicial question which led the Court of Justice to examine the legality of the restriction on the freedom of circulation on the territory of a different Member State. The Court of Justice recalled that

> "the reservation envisaged in Article 39, § 3 of the treaty gives Member States the possibility, when faced with a genuine and sufficiently serious threat affecting the basic interests of society, of imposing restrictions on the free circulation of workers… neither the Article [39] nor the provisions of derived law which implement the freedom of circulation of workers prevents a Member State from imposing administrative police measures with respect to an immigrant worker who is a national of another Member State, restricting the right of residence of this worker to part of the national territory on condition:
> - that the grounds of law and order or public security based on his individual conduct justify this;
> - that, in the absence of this possibility, these grounds may only lead, by virtue of their seriousness, to a residence ban or removal measure relating to the entire national territory;
> - that the conduct which the Member State in question intends to avert gives rise, where its own nationals are involved, to repressive measures or to other genuine or effective measures intended to combat it".

French administrative jurisprudence

Council of State, 23 April 2003, *Oteiza Olazabal* (petition no. 206913). The Council of State rejects the means drawn from violation of Article 39 EC invoked against the decrees pronouncing a partial ban from the territory against the petitioner, strictly applying the conditions stipulated by the Community judge. This Community jurisprudence was applied by the administrative judge to other cases: Administrative Court of Appeal (CAA) Bordeaux, 4 March 2003, *Miguel Ezquerra* (petition no. 00BX02282); CAA Paris 21 March 2003, *Mr. Castellon Alvarez* (petition no. 99PA02638); CAA Bordeaux 4 March 2003, *Mr. Castellon Alvarez* (petition no. 00BX00614): the petitioner requested cancellation of the implicit rejection of his request for repeal of the Prefectoral decree of 1991, assigning him residence in the town of Cahors, arguing that this had become illegal since the entry into force on 1 November 1993 of the Treaty of the European Union, having added an article which became Article 18 EC, which acknowledged that all citizens of the Union had the right to circulate and reside freely on the territory

2 National Assembly Report, M. Mariani.

of Member States. The CAA, in agreeing to examine the justification of this means, implicitly acknowledged the direct effect of Article 18 EC in accordance with recent Community jurisprudence.[3]
CAA Marseille, 17 June 2003, (petition no. 00MA01250); CAA Nantes, 20 June 2003, (petition no. 00NT00415)

3. Doctrine

J-P Lhernould, French legislation, La suppression du titre de séjour en France: chroniques d'un mort annoncée (Abolition of the residence permit in France: chronicles of an imminent death), *Liaisons sociales Europe*, no. 98, 19 February to 3 March 2004, p. 2.

D. Ritleng, Jurisprudence administrative française intéressant le droit communautaire (French administrative jurisprudence concerning Community law), *RTDE* (Quarterly Review of European Law), October-December 2003, p. 686 ff.

B. Removal of Community nationals

1. Texts adopted

The circular NOR/INT/D/04/00006/C of 20 January 2004 by the Minister of the Interior regarding the application of law no. 2003-1119 of 26 November 2003 regarding immigration control, alien residence in France and nationality states the methods of the removal measures taken by another Member State of the European Union.

> "Article 39 of the law of 26 November 2003 supplements Article 26 bis of the ordinance of 2 November 1945 amended by a 3rd new paragraph relating to the removal measures taken by another Member State of the European Union. This refers to the adaptation into municipal law of Council Directive no. 2001/40/EC of 28 May 2001, regarding the mutual recognition of decisions to remove nationals of third-party countries, allowing the process of removal of a national of a third-party country based on a decision taken by the competent authorities in another Member State, without having to take a new administrative decision, as is currently the case. In application of these provisions, it will be up to you, after having confirmed that the national of the third-party country is the subject of a reference to the Schengen information system (SIS), detailing a removal decision made by another Member State:
> - on the one hand, to check – by consulting the SIRENE system – the enforceable nature of the removal measure in question;
> - on the other hand, to examine the foreigner's personal situation so as to make sure that there are no barriers to his removal.
> The entry into force of these provisions is subject to publication of a decree in the Council of State".

2. French jurisprudence relating to removal measures taken against Community nationals

A series of decisions attempts to reconcile the principle of free circulation with the requirements of law and order by highlighting, in each case, the requirements of Community law: Council of State, 10 April 2002, *Lopez de la Calle Guana* (petition no.

3 CJEC, 17 September 2002, *Baumbast*, case C-413/99, Rec. p. I-7136.

234005) : In this case, a Spanish national has been the subject of a (deportation measure for a Spanish national regarded as legal); CAA Bordeaux, 29 April 2003, *Daniel X* (petition no. 01BX02059) (deportation measure for a Portuguese national) CAA Marseille, 28 May 2003, *Cincunegui Iruretagoyena* (petition 99MA02010); CAA Marseilles, 17 June 2003, (petition no. 00MA02455). The petition has been the subject of a deportation order from French territory. The Court of Appeal recalls that the party in question has committed serious offences and stipulates that the decree is not contrary to the provisions of the treaty creating the EEC nor, since the single petitioner has no children and since his partner – also Italian – could join him in his country, contrary to Article 8 of the ECHR.

Chapter II
Equal Treatment

A. Combating discrimination

1. Application of Directives 2000/43 and 2000/78

Texts adopted
The social modernisation law no. 2002-73 of 17 January 2002[4] adapts two Community directives: Directive 2000/43 against racial or ethnic origin discrimination and Directive 2000/78 on non-discrimination in the workplace.[5] This law extends the scope of the ban on discrimination to the area of housing and envisages making moral harassment a crime, regarded by the directives as constituting a form of discrimination.

Jurisprudence
Court of Cassation, Criminal Division, 11 June 2002, *SOS racisme* (appeal 01-85559).
This judgement broaches a widely debated question within the context of the adaptation of Directives 2000/43 and 2000/78 – that of the admissibility of appeal to "situation tests" in order to prove the discrimination of which a person may have been guilty. The Court of Cassation quashes a judgement passed on 5 June 2001 by the Court of Appeal of Montpellier, in which the judge had regarded that proof of discrimination had not been established using a fair procedure. According to the Court of Appeal, by virtue of the intent to bring to light a form of discrimination which they suspected and had wanted to prove, the authors of these situation tests could – in particular through their conduct or their clothing – have created the conditions for being refused access to the establishments in question which were opposed to them. The quashing is based on the principle of freedom of criminal proof which does now allow subordination of the acceptability of the "testing" as a method of proving the alleged offence.

2. Ban on discrimination based on nationality

Jurisprudence of judicial jurisdictions
Court of Cassation, Social Division, 10 December 2002, *Goethe Institute Association for promotion of the German language abroad v. Ms. Suzanne Bataille* (appeal Z 00-42158). The Court of Cassation rejects an appeal against the judgement of the Court of Appeal of Douai dated 18 February 2000 which finds that, in application of Community law, the Goethe Institute of Lille cannot adopt a different salary system in France depending on the nationality of its staff and that the operation of a salary system in favour of German employees recruited before 31 March 1001 which is more beneficial than that envisaged for French employees recruited before the same date constitutes the perpetuation of a banned form of discrimination against the latter.

4 OJ 18 January 2002.
5 The adaptation was essentially achieved by law no. 2001-1066 regarding combating discrimination, OJ 17 November 2001.

Court of Cassation, Social Division, 17 June 2003, *Mr. J-P Mayen v. Société Alitalia* (appeal 01-41522): rejection of appeal against a decision by the Court of Appeal stating that the granting of an option right on newly issued shares only to employees whose contracts were governed by Italian law compensated for the sacrifices accepted by the latter when the company was restructured in Italy. The difference in treatment compared to other employees was based on objective and reasonable justification, irrespective of the nationality of the workers in question and in proportion to the legitimately pursued objective.

Doctrinal comment: *Revue Travail et Protection sociale*, August-September 2003, p. 28, Comments 309.

Administrative jurisprudence

Council of State, 3 April 2002, *Bouvet and others* (petition no. 238237): the decree of 31 March 1981 does not represent an illegal attack on the freedom of enterprise and the freedom to carry out a professional activity.

Council of State, 30 December 2002, *French Basketball Federation* (petition no. 219646): based on a recent judgement by the CJEC,[6] the Council of State confirms the judgement of the Administrative Court of Appeal of Nancy with respect to the direct effect of Article 37, paragraph 1, first dash of the association agreement between the European Community and Poland.

It should be remembered that Article 337, § 1 of the general rules of the French Basketball Federation states that employment contracts reached between a sports organisation and a sportsman must imperatively be ratified by the Federation in order to exist legally and to exercise their effects validly. The Council of State considered that the object or effect of this Article could not legally be to regulate entry and residence as well as access to the national labour market by foreign sportsmen and that a sportsman holding a legitimate residence permit in his capacity as salaried employee must be regarded as "legally employed", even without ratification of his contract. The principle of non-discrimination based on nationality, stated particularly in Article 37, § 1 of the association agreement is in conflict with the application to Polish players of Article 8-1 of the sports regulations specific to the female basketball league championships, which restricts to two the number of players who do not hold the nationality of one of the States party to the European Economic Area agreement authorised to take part in the championships.

Previous jurisprudence of the CJEC, with a judgement dated 8 May 2003, *Kolpak*,[7] confirms this choice made by the French administrative judge.

6 CJEC, 29 January 2002, *Land of North Rhine-Westphalia v. Beata Pokrzeptowicz-Meyer*, case C-162/00, Rec. I-1049.

7 CJEC, 8 May 2003, *Deutscher Handballbund* and *Kolpak*, case C-438/00.

B. Equal treatment for men and women

1. Applicable texts

Law no. 2001-397 regarding professional equality between men and women[8] of 9 May 2001, enabled national law to be aligned with Community law, in particular regarding night work.

Law 2003-775 of 21 August 2003 regarding retirement reforms,[9] concerns the three forms of civil service: the legislator attempted to remove male/female discrimination from the civil and military pensions code which had been raised by the jurisprudence of the CJEC and the Council of State. Thus reversion pensions will from now on benefit – without deferred effect until the beneficiary's 60th birthday – both female and male civil servants; the same will be true for the insurance term bonus per child raised.

2. Jurisprudence

Community jurisprudence

CJEC, 13 December 2001, *Mouflin vs. Rector of the Academy of Rheims*:[10] the Community judge states that "the principle of equal payment for male and female workers stated in Article 119 of the Treaty is overlooked by a national provision such as Article L. 24-I-3, under b) of the Civil and Military Retirement Pensions Code", which excludes male civil servants from a right granted to female workers.

French administrative jurisprudence

- Regarding the right to receive a pension immediately

Council of State, 5 June 2002, *Choukroun* (petition no. 202667): the principle of male/female equality in matters of payment is contravened by Articles L. 30 to L. 38 regarding the reversion pension, which state the rights to receive a reversion pension are deferred, most often until he reaches the age of sixty, when the surviving spouse is a man: confirming the judgement of the Administrative Court of Appeal of Paris of 8 June 2002, the Council of State, in the *Beraudo* judgments of 29 January 2003 (petition no. 245601) and *Llorca* of 26 February 2003 (petition no. 187401), deemed that the exclusion of male civil servants from the benefit of immediately receiving a retirement pension granted to people who have brought up three or more children was contrary to the Community principle of equal pay. He instructed the administration to grant petitioners immediate access to their pensions. The administrative judge in chambers, in his judgement of 16 June 2003, *Yves Floch* (petition no. 257224), ordained the suspension of a decision to reject a request for immediate granting of the retirement pension, the suspension decision having been accompanied by an injunction directed at the administration to re-examine the request within fifteen days.

8 OJ no. 108 of 10 May 2001, p. 7320.
9 OJ no. 193 of 22 August 2003, p. 14310.
10 Case C-206/00, Rec. p. I-10201.

- Concerning seniority discounts

Council of State, 29 July 2002, *Griesmar* (petition no. 141112): the Council of State has applied the Community interpretation it had requested from the CJEC[11] by cancelling a ministerial order which refused Mr. Griesmar, a retired magistrate, the benefit of the seniority discount even though he would establish that he had raised his children. See also CE (Council of State), 18 December 2002, *Plouhinec* (petition no. 247224) CE, 6 June 2003, *Ivanoff* (petition no. 252490); CE, 6 June 2003, *Blanc* (petition no. 251678); CE, 6 June 2003, *Blondel* (petition no. 251671); CE, 6 June 2003, *Courtois* (petition no. 246605); CE, 11 June 2003, *Massot* (petition no. 251536); CE, 11 June 2003, *Defrancais* (petition no. 251152).

The Council of State opposed a case of lapse of rights to the requests for review of retirement pensions based on breach of the Community principle of equal pay. In application of Article L. 55 of the Civil and Military Retirement Pensions Code, civil servants must have requested a review of their pension within one year of notification of the concession decision in the event of an error in law: CE, 29 January 2003, *Lucet* (petition no. 246829).

- Others

Council of State, 5 March 2003, Interco CFDT Federation[12] (petition no. 163518)

3. Doctrine

D. Ritleng, Jurisprudence administrative française intéressant le droit communautaire (French administrative jurisprudence concerning Community law), *RTDE* (Quarterly Review of European Law), October-December 2003, particularly p. 875 ff.

C. Weisse-Marchal, La réforme du régime des retraites des fonctionnaires et l'égalité de traitement entre hommes et femmes (Reform of the pension system for civil servants and equal treatment of men and women), *AJDA* (Legal Current Affairs – Administrative Law), 8 March 2004, p. 474.

11 CJEC, 29 November 2001, *Griesmar*, case 366/99, Rec. p. I-9383.

12 *Les cahiers de la fonction publique*, October 2003, jurisprudence, p. 27.

Chapter III
Employment in the Public Sector

A. Access to employment in the civil service

1. State civil service

Council of State Decision no. 366.313 of 31 January 2002, General Meeting, on the conditions and methods for opening corps, officers and positions in the French civil service to nationals of Member States of the European Community or another State party to the European Economic Area.

This decision preceded a significant regulatory movement described below. The Council of State, based on the CJEC's interpretation of Article 39 § 4 EC, recalls the legal obligations imposed on the French Republic and goes on to interpret its limits relating to "capacities inseparable from sovereignty" or "involving participation in the prerogatives of the public authorities".

Texts adopted

Decree no. 2002-759 of 2 May 2002[13] regarding the acceptance of civil servants on secondment from a Member State of the European Community or another State party to the agreement regarding the European Economic Area other than France into the State civil service and amending decree no. 85-986 of 16 September 1985 regarding the particular system governing certain civil servants' positions and certain methods of permanently leaving office, in particular Article 5 deals with the question of civil servants in the civil service of a Member State of the European Community or another State party to the EEA agreement.

Article 5 of this decree creates an equivalence committee reporting to the minister responsible for the civil service, checking appropriateness between the posts previously held by the civil servant and the corps likely to accept him.

Decree no. 2002-1294 of 24 October 2002[14] establishing the general provisions relating to the situation and the methods of classification of nationals from Member States of the European Community or of another State party to the agreement on the European Economic Area, appointed to a corps of civil servants of the State or its public institutions applies the principle of equality between French civil servants and these nationals at different stages in their careers. It excludes those in question from posts which are inseparable from the exercise of sovereignty or involving direct or indirect participation in exercising the prerogatives of the public authorities.

Decree no. 2003-20 of 6 January 2003 also relates to the opening up of some corps and State civil service posts to nationals of Member States of the European Community or another State party to the agreement on the European Economic Area apart from

13 OJ no. 104 of 4 May 2002, p. 8531.
14 OJ no. 251 of 26 October 2002, p. 17796.

France.[15] This decree adds 108 new corps likely to accept Community nationals to an already-long list.

Decree no. 2003-77 of 23 January 2003 relating to the opening up of certain State civil service corps under the Minister of Culture and Communication to nationals of Member States of the European Community or of another State party to the agreement on the European Economic Area other than France and amending some provisions relating to recruitment to these corps[16] opens up the research corps (research and study engineers, engineering assistants), the corps of art technicians, cultural services technicians of Bâtiments de France, documentation secretaries for culture and architecture, and cultural services and heritage engineers.

Report on the civil service

On 12 June 2003, senior member Lemoyne de Forges submitted a study to the civil service minister concerning the legal developments brought about by the legislation and Community jurisprudence in the area of the civil service.

French civil jurisprudence

Court of Cassation, Criminal Division, 4 June 2003, *Castaing Elian* (appeal 02-83647) applies the reserve of Article 39 § 4 EC to the recruitment of a ship's captain under highly questionable conditions with respect to the previous jurisprudence of the CJEC[17] on the nationality condition.

Doctrinal comment: J.P Lhernould, Interdictions d'emploi des étrangers : la préférence nationale confirmée (Bans on employing foreigners: national preference confirmed), *Droit social*, December 2003, no. 12, p. 1094.

Jurisprudence of French administrative jurisdictions

Council of State, 3 October 2003, *Ms. X.* (petition no. 210661): In a judgement dated 4 April 2001, the Council of State had overruled the decision of the French Minister of Education to reject a request aimed at changing the status of the corps of administrative assistants of the national Ministry of Education in order to bring them into line with the provisions added to the law of 13 July 1983 by the law of 26 July 1991. The judge had required the State, subject to a fine, to pass the necessary decree within a period of six months. The Council considers that it is not appropriate to proceed with settlement of the fine since the deadline for adopting the decree, 6 January 2003, is justified by the additional need to pass other regulatory provisions, in particular to open up the corps to Community nationals.

Council of State, 3 November 2003, *GISTI* (petition no. 244045): the administrative judge overrules ministerial decisions rejecting the requests for rescission and amendment of the provisions relating to the status and conditions for admission to the

15 OJ 9 January 2003, p. 471.
16 OJ 30 January 2003, p. 1870.
17 CJEC, 30 September 2003, *Colegio de Oficiales de la Marina Mercante Española*, case C-405/01; CJEC, 30 September 2003, *Anker et al.,* case C-47/02.

Ecole Normale Supérieure in breach of the agreement on the European Economic Area [for] non-members of the European Community.

2. Territorial civil service

Texts adopted
Decree no. 2003-673 of 22 July 2003[18] establishes the general provisions relating to the situation and to the methods of classification for nationals of Member States of the European Community or of another State party to the agreement on the European Economic Area, appointed to a post in the territorial civil services and envisages taking their prior service into account.

Decree no. 2003-672 of 22 July 2003,[19] regarding the acceptance of civil servants on secondment from a Member State of the European Community or another State party to the agreement on the European Economic Area other than France into the territorial civil service and amending decree no. 86-68 of 13 January 1986 regarding secondment posts, non-category, availability, parental leave and parental presence of territorial civil servants, states that the secondment is made for a renewable period of five years, that it gives rise to remuneration consistent with the index that would have applied to a French civil servant who had acquired the same experience. An agreement must be reached with his government of origin in order to specify the methods for ensuring availability in advance.

3. Hospital civil service
CJEC, 9 September 2003, *Ms. Isabel Burbaud*, case C-285/01. The judgement is passed on the prejudicial question by the CAA of Douai. It gives the Court the opportunity to indicate that, if an equivalent qualification is held, Community law is opposed to the authorities of a Member State making the acceptance of a national from another Member State for a post conditional upon being successful in a competitive examination, such as the entrance examination for the École Nationale de la Santé Publique. It stipulates that Directive 89/48/EEC of 21 December 1988, regarding a general system for recognising higher education qualifications, is opposed to the authorities of a Member State subjecting access of a national of another Member State to the profession of director in the hospital civil service to the condition that he follow the training provided at the École Nationale de la Santé Publique and sit the examination held at the end of this training. This judgement implies an adjustment of the access routes to the civil service, enabling Community nationals to be recruited and exempt from taking part in the entrance examination.

Doctrinal comment: *Liaisons sociales Europe*, no. 87, 18 September to 1 October 2003, p. 3; *AJDA*, Fonction publique (Civil Service), November-December 2003, p. 8; *Recueil Dalloz* 2003, no. 42, p. 2851, note Philippe Icard: "Le concours d'accès aux écoles de l'administration contesté" (The disputed entrance examination for civil service training college).

18 OJ no. 169 of 24 July 2003, p. 12493.
19 OJ no. 169 of 24 July 2003, p. 12491.

B. Recognition of professional experience and seniority, qualifications and certificates

1. Recognition of certificates and qualifications

Council of State, 22 May 2002, *Miss Douche* (petition no. 233927) and Council of State, 3 March 2003, *Miss Douche* (petition no. 237078): repeal of the refusal by the Commission for the Classification of European Qualifications to grant access to the territorial civil service, judged contrary to Decree no. 94-743 of 30 August 1994 which establishes the recognition of qualifications of at least the same level, awarded in another Member State.

Council of State, 19 February 2003, *Mr. Altchenko* (petition no. 234062): rejection of an action for cancellation of a refusal by the Classification Commission regarding registration for the competition for State public works engineer.

Council of State, 28 April 2003, *Mr. Vincent Y* (petition no. 241251): rejection of an action for cancellation of refusal by the Classification Commission regarding a Belgian special needs teacher qualification. Council of State, 23 April 2003, Miss Loeuilleux, (petition no. 246868): case similar to the previous case but regarding the hospital civil service.

Council of State, 27 February 2002, *Moukah* (petition 226378), Council of State, 30 December 2002, 3 judgments (petitions 248699, 241250, 241582) for similar cases. Council of State, 3 November 2003, *Miss Zafiria X* (petition no. 240785): cancellation of a rejection by the Classification Commission regarding a dance teacher's certificate.

2. Recognition of professional experience and seniority

The Council of State has taken cognisance of cases regarding the application of Community jurisprudence relating to rebuilding careers in the civil service which stipulates that experience gained in the government of another Member State must be taken into consideration with a view to recruitment into the national civil service or the establishment of seniority.

Council of State, 13 March 2002, *Courbage* (petition no. 209938): "When recruiting personnel, when a Member State plans to take into consideration previous professional activities performed by the candidates within a public administration, it may not make any distinction with respect to Community nationals according to whether these activities have been carried out in the civil service of this same Member State or within that of another Member State". The judge thus repealed the ministerial decrees establishing the rights of reclassification of the petitioner which did not take into consideration the posts of researcher and teacher held in Belgium between 1974 and 1982.

Council of State, 18 October 2002, *Ms. Spaggiari* (petition nos. 224804 and 236744): in the latter judgement, the Council of State, after having recalled the terms of Article 39 EC and relevant French provisions, states that,

> "the aforementioned clauses of the treaty creating the European Union must be interpreted as prohibiting not only discrimination based on nationality, but also all other forms of discrimination which, in applying other distinction criteria, in fact produce the same result; that, in particular, when a civil servant is recruited for a post within the scope of Article 5 bis above of

> the law of 13 July 1983, the competent administrative authorities take into consideration previous professional activity performed by the candidates within a public administration, they cannot make any distinction with respect to nationals of Member States of the European Union depending on whether these activities were performed within a French public authority or within that of another Member State".

The Council of State therefore cancelled the resolution of the Commission of experts of the University of Paris III, rejecting the application by Ms. Spaggiari for a job as a university lecturer for the sole reason that she did not have adequate experience of the French university system, while recognising the scientific value of her file, and requires the university to re-examine the issue of recruitment within a period of two months.

Doctrinal comment: *Actualité juridique* – Fonctions publiques, March-April 2003, p. 12.

CAA Nantes, 10 April 2003, *Trevor Harris* (petition no. 00NT00077): the petitioner questioned a decree by the French Minister of Education which had appointed him to the corps of qualified teachers without taking into consideration, on account of his seniority, teaching services previously provided in institutions in the UK. The Court firstly explicitly recalls the jurisprudence of the CJEC[20] interpreting Article 39 EC:

> "when a Member State recruits personnel and plans to take into consideration previous professional activities performed by the candidates within a public administration, it may not make any distinction with respect to Community nationals according to whether these activities have been carried out in the civil service of this same Member State or within that of another Member State".

It judges, according to the corresponding interpretation mechanism, that Article 3 of Decree no. 51-1523 of 5 December 1951 which provides for consideration of services rendered as a teacher, teaching assistant or assistant in an educational establishment abroad cannot be regarded as excluding the consideration of services of the same nature rendered on behalf of another Member State. The Court therefore repeals the ministerial decree and requires the minister to re-examine the petitioner's rights to reclassification within a period of four months.

Council of State, 9 July 2003, *Mr. X.* (petition no. 239085): repeal of refusal by the French Minister of Education to take into consideration his activities as a researcher previously performed in Germany in order to determine the classification of the party in question in terms of seniority, this being contrary to the provisions of the EC treaty regarding the free circulation of people and, more specifically, Article 39 EC, particularly by virtue of Community jurisprudence.[21]

3. Doctrine

G. Alberton, L'ouverture de la fonction publique française aux ressortissants de la Communauté européenne, Entre exigences communautaires et reconnaissance nationale (Opening up the French civil service to nationals of the European Commu-

20 CJEC, 23 February 1994, case C-419/92.
21 CJEC, 23 February 1994, case C-419/92.

nity; between Community requirements and national recognition), *RFDA* (French Review of Administrative Law), November-December 2003, p. 1194-1213.

Chapter IV
Family Members

Council of State, 9 July 2003, *Mr. X.* petition no. 244395:
Within the terms of Article 9-1 of the ordinance of 2 November 1945 introduced by the law of 11 May 1998, nationals of Member States of the European Community ... performing a salaried or freelance economic activity in France, as well as members of their families who wish to establish their usual residence in France receive a residence card provided they do not pose a threat to law and order (...) and a Council of State decree specifies the conditions of application of the present article. According to Article 4 of the decree of 11 March 1994, governing the conditions for entry to and residence in France for nationals of Member States of the European Community benefiting from the free circulation of people: family members … who are not nationals of a Member State of the European Community … enter the territory by showing a valid passport, if applicable bearing a visa. The result of the combination of these provisions is that a foreigner who is not himself a Community national can only avail himself of his capacity as the spouse of a European Community national in order to obtain a residence permit if he entered France legally. It is evident from documents in the file that Mr. X did not have a visa, that he entered France illegally in April 2001 and has continued his illegal situation there. He cannot therefore take advantage of his capacity as the spouse of a European Community national to claim that a residence permit should have been issued to him.

Chapter V
Monitoring the Jurisprudence of the CJEC

The circular NDSS/DACI no. 2002-171 of 22 March 2002 relates to the implementation of decision no. 183 of 27 June 2001 by the administrative commission on the social security of immigrant workers regarding the interpretation of Article 22, §1, point a, of EEC Regulation 1408/71 for services relating to pregnancy and labour. It recalls the content of decision no. 183 which states

> "that an excessively narrow interpretation of Article 22, §1, point a, would pose a substantial barrier to the free circulation of pregnant women whose condition requires constant and regular medical treatment or medical check-ups, assuming an immediate need for services during a visit to the territory of another Member State".

The circular then details the specific methods of application of this decision in terms of the beneficiaries, the intended care, the place of the care and the reasons for the visit.

Circular no. DSS/DACI/2002/439 of 2 August 2002 relates to the implementation by French social security institutions of the CJEC Gottardo judgement of 15 January 2002.[22] This judgement by the CJEC stipulates that

> "Member States must treat nationals of other Member States, within certain limits, in a manner equal to that of their own nationals with respect to bilateral agreements they have reached with third-party States", since "when a Member State reaches an international bilateral social security agreement with a third-party country, providing for consideration of periods of insurance completed in this third-party country in order to gain the right to services for the elderly, the fundamental principle of equal treatment (mentioned in Article 12 EC, but also more specifically in Article 39 EC) obliges this Member State to grant nationals of other Member States the same benefits as those enjoyed by its own nationals under the same agreement".

The circular emphasises that

> "this jurisprudence is therefore aimed at all international agreements reached by France with third-party countries on matters of social security, for all the systems, risks and branches covered by these agreements […] and that those affected are Community nationals and their family members, without being limited in any way as far as the former are concerned solely to salaried workers or former workers, nationals of the EEA or Swiss nationals. In addition to these conditions of nationality and situation, interested parties must have exercised their right to free circulation if they are salaried workers and their right to free establishment or free provision of services if they are non-salaried workers".

The circular then details the specific methods of application of this jurisprudence in terms of the situations in question, relations with the institutions of third-party States and those of other Member States and the coordination rules if periods have to be added together.

22 CJEC, 15 January 2002, *Gottardo*, case C-55/00.

Chapter VI
Texts, Doctrine and Jurisprudence of a General Nature

A. 2003 public report of the Council of State: Civil Service law and Community law
This is an extremely important report by the French Council of State. At the request of the Government, the Council measures the impact of European jurisprudence and construction on the notion and law of the civil service. The most significant developments will be summarised below; the entire text is attached as an appendix.

Scope of the principle of free circulation of workers with respect to the civil service: with respect to the jurisprudence of the CJEC and the traditional principle of French law, which states that nobody can serve as a civil servant unless they possess French nationality and the organisation into corps and categories of posts in the civil service, a provision inserted into Article 5 bis of the general constitution enabled law no. 91-715 of 26 July 1991 to stipulate that

> "nationals of Member States of the European Community or of another State party to the agreement on the European Economic Area other than France have access, under the conditions envisaged in the general constitution, to the corps, categories of post and posts of a nature either separable from the exercise of sovereignty or not involving direct or indirect participation in the exercise of prerogatives of the State public authorities or other public organisations…".

The Council of State recalls the evolution of the jurisprudence of the CJEC which now states that " in certain sectors of public administration, the derogation incorporated in the treaty became the exception", which led the Government to refer to it a request for a decision on the consequences to be drawn from the points revealed by the Commission and Community jurisprudence on the scope of Article 39 § 4. The 2003 report by the Council of State recalls the substance of its decision of 31 January 2002.

The current scope of the principle: For the Council of State,

> "one simple fact is clear: once the jobs – having become public – are subjected to the principle of the free circulation of workers, all the Community rules governing this free circulation, Article 39 of the Treaty, derived law affecting the basis of Article 40 in particular and EEC Regulation no. 1612/68 of 15 October 1968, are applicable to them".

As a result, direct and indirect discrimination against nationals of other Member States and all obstacles to free circulation must be eliminated. There is however one exception to this rule: if direct forms of discrimination, such as the nationality requirement, can in no way be upheld, indirect forms of discrimination may be permitted "if they are justified by objective considerations, independent of the nationality of the workers in question and are strictly necessary and in proportion to these objectives". These principles find a way of application and present problems in terms of the equivalence of qualifications and certificates, the equivalence of professional experience and the uniqueness of careers with respect to the right to social security services.

- Concerning the recognition of the equivalence of qualifications and certificates

This question is raised in a general way for access to "regulated professions", in other words those for which "access or exercise is directly or indirectly subject, by legislative, regulatory or administrative provisions, to the possession of a certificate".[23] […] The debate also revolves around knowing whether the corps and categories of posts in the civil service must be regarded as entering in a general way into the field of the "regulated professions" intended by the Community directives establishing a general system for the recognition of qualifications and professional training. The report considers that this is a contestable point since the qualifications required for access to public employment are most often qualifications awarded following a certain level of study and are not specific qualifications except in certain cases, particularly in the hospital civil service; it is also possible to gain access to these posts via internal promotion or secondment, without holding these qualifications.

The Council of State specifies that the most recent Community jurisprudence – the Bobadilla judgement by the CJEC of 8 July 1999[24] and the interpretative communication by the Commission of 11 December 2002[25] – "does not on principle seem to make the entire civil service a regulated profession", even though regulated professions may exist within the civil service.

It thus concludes "that one cannot of course deny that the principle of equivalence of qualifications is in the absolute interest of free circulation in public employment. France is so aware of this that, while expressing reserves about the applicability of the directives to all public posts, it has created committees for each civil service post, responsible for assessing equivalences (decrees of 30 August 1994). On the other hand, it would be difficult to justify shifting the entire civil service purely and simply towards the "regulated professions", within the meaning of the directives.

- Concerning the equivalence of professional experience

For the Council of State, the subject is even more complex since it directly affects career progress. It is a matter of ensuring that professional experience gained in another Member State is treated in the same way as experience gained in one's own country, but this simple idea raises many questions.

France has assumed its responsibilities by defining, in Decree 2002-1294 of 24 October 2002 […] what has to be understood by the equivalence of professional experience, describing it thus,

> "service accomplished in a government, a body or an establishment of the Member State of origin where the tasks are comparable to those of the governments and public establishments in which the civil servants mentioned in Article 2 of the law of 13 July 1983 aforementioned carry out their duties".

23 CJEC, 1 February 1996, *Aranitis*, C-164/94, rec. p. I-135.
24 CJEC, 8 July 1999, *Fernandez de Bobadilla*, C-237/97, rec. I-4795.
25 Commission Communication, 11 December 2002, Free circulation of workers – take full advantage of the benefits and potential, COM (2002) 694 final.

Moreover, the decree admits that these services may have been performed by an officer under a private law contract, in a department operating under a system of private law in accordance with the Commission's position on this matter.

- Concerning the uniqueness of the professional career with respect to the right to social security services

> "The objective is that the immigrant workers do not suffer on account of moving from one country to another and that all periods of activity in various States be taken into consideration by the last State in question for granting or upholding the right to services, as well as when calculating them. This principle of uniqueness is raised in Article 42 of the Treaty".

The report recalls that the national constraints linked to special retirement systems have been highlighted and that the principle of uniqueness has been retained immediately for health insurance and family services, but not for retirement pensions. It also recalls that it was necessary to wait for condemnation of the Council in 1995 by the CJEC to allow this exception to persist and for the compromise obtained in Regulation 1606/98 of 29 June 1998 amending regulation 1408/71 for an adapted coordination system for special retirement schemes to be adopted.

The Council of State concludes that these developments "highlight the difficulties of reconciling the functional logic which underpins the Community approach with career logic, with its corollary of corps organisation, which characterises the French civil service system".

Difficulties highlighted by the report

- Regarding the method chosen for access to the civil service

If, in certain corps, some jobs involve exercising the prerogatives of public authority, by virtue of the jurisprudence of the CJEC[26] the corps should be opened up to free circulation even if it means "reserving for national citizens, via the appropriate regulations, access to posts which involve the exercise of public authority and the granting of responsibilities to protect the general interests of the State within the same career, department or category". The report underlines the difficulties of implementing this.

- Regarding the potential impact of free circulation on internal promotion, which is a principle of our system of civil service

The Council of State underlines the difficulties of compatibility with the possibilities for internal promotion which are guaranteed in many ways; staff are particularly mindful of this since this constitutes one of the appeals of the civil service. Potentially granting access in the long term to European nationals could threaten them through their access to these internal competitions and to the reclassification system intended to benefit European nationals at the end of the competitions, as if the services rendered in the State of origin had been accomplished in France, including if they were fulfilled within bodies operating under a system governed by private law.

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26 CJEC, *Commission v. Belgium*, aforementioned.

For national citizens exercising the same professions under a private law system, who are themselves excluded from the internal competition and, if they enter the civil service via external examination or the third competitive examination, reverse discrimination could lead to them not being able to benefit from the same favourable reclassification. Moreover, current reclassification rules for French officials under the public law system will seem to some less favourable than the system envisaged in the Decree of 24 October 2002, for Community nationals with permanent contracts under public law.

The system of internal promotion and of the reclassification of nationals taking the different examinations or having been granted their preferred promotion or integration will therefore most probably have to be reviewed.

- Regarding access itself to the civil service, in mid-career, of European nationals having demonstrated in their country their aptitude for exercising the functions which they wish to perform in France, for whom the competition requirement – at least as a means of confirming this aptitude – is contested

The French tradition being that of entry by competition, the Council of State recalled in its aforementioned decision of 31 January 2002 that European nationals did not under any provision of the Treaty have the right to gain access to the French civil service without following the competition procedure as envisaged for recruiting candidates of French nationality, unless municipal law authorises other methods of recruitment. The report was published independently of the solution in the Burbaud decision of the CJEC which was not given until September 2003. The Council of State considered, when the report was compiled, that the response to the prejudicial question in this case would be of major importance.

- Regarding effects of the distinction made by Community law between posts open and posts not open to free circulation on the principle of the unity of the civil service, which underpins the French statutory structure

The Council of State believes that the Community law of the free circulation of workers leads to a dualist concept of the civil service, although without leading to collapse if the essential developments are correctly undertaken.

B. Opinion of the Delegation of the National Assembly for the European Union

At its meeting on 30 September 2003, the delegation approved the decision by the European Parliament and the Council, establishing a Community action programme to promote organisations operating at European level within the field of equality between men and women,[27] as well as the proposal for a European Parliament regulation modifying EEC Regulation no. 1408/71 of the Council regarding the application of social security systems to salaried workers, to non-salaried workers and to members of their family who move within the Community, and EEC Regulation no. 574/72 of the Council

27 COM (03) 279 final of 27 May 2003.

establishing the methods of application of EEC Regulation no. 1408/71 in terms of the harmonisation of rights and the simplification of procedures.[28]

Concerning the proposal for a European Parliament and Council directive regarding the right of Union citizens and members of their families to circulate and reside freely within the territory of Member States29, at its meeting of 23 October 2003 the delegation considered that "this text, in its current state, no longer raises particular difficulties for France, since the draft bill regarding immigration control and alien residence in France has, in this context, introduced more ambitious simplification. The French delegation's main concern, which related to retaining the possibility of deporting a European citizen in the event of a serious breach of law and order, has been met".

Concerning the proposal for a European Parliament and Council regulation, amending EEC Regulation no. 1408/71 of the Council regarding the application of social security systems to salaried workers, non-salaried workers and members of their families who move within the Community, and EEC Regulation no. 574/72 of the Council establishing the methods of application of EEC Regulation no. 1408/7130, the delegation approved it on 17 December 2003, taking into account the improvements made to facilitate worker mobility within the European Union.

28 COM (03) 378 final of 27 June 2003.
29 COM (01) 257 final of 23 May 2001.
30 COM (03) 468 final of 31 July 2003.

Chapter VII
EU Enlargement

The circular NOR/INT/D/04/00006/C of 20 January 2004 of the Minister of the Interior regarding the application of law no. 2003-1119 of 26 November 2003 regarding immigration control, alien residence in France and nationality states that

> "the requirement that a residence permit must be held will also continue to be applied with respect to nationals of States that will join the European Union on 1 May 2004, on the assumption that they may want to carry out a professional activity during the period of validity of the transition measures taken for access to the national employment markets by these nationals (with the exception of those from Cyprus and Malta). However, nationals of these countries who do not hold the status of working person will not be subject to the residence permit requirement".

The Delegation for European and international affairs of the Ministry of Social Affairs, Employment and Solidarity has published a leaflet entitled, "Europe is expanding: how will France welcome nationals from the new Member States?"

The restriction on the full and complete freedom of circulation of nationals of future member countries will be of only limited scope. It will be applicable only to salaried workers. The freedom of circulation of researchers, self-employed workers, students and the free provision of services will not be restricted in any way. This restriction on salaried employment will be applicable for a period of up to five years; however, France could take certain gradual opening-up measures at the end of the first two years, depending on the internal situation on its employment market. The leaflet states that, "nationals of new Member States will, whatever their status, be granted their social rights (equal treatment in terms of work and employment, right to family reunification) in accordance with the principles governing the European social model".

Salaried workers will be able to rely on three additional commitments, not envisaged by the treaties of accession:

- France has decided, within a bilateral context, to take opening-up measures in order to prepare for the day when free circulation will be complete. This is the case for young professionals coming to improve themselves in France for a limited period. Other sectoral openings could be decided upon depending on the internal situation on the labour market;
- workers from the new Member States authorised to work in France will, in social matters, enjoy entirely equal treatment alongside nationals and this will apply from the day that country becomes a member;
- their family members will have the right to settle in France and will have free access to the employment market.

France, even though it does not share borders with any of the new member countries, has chosen a transition period for three reasons:

- because great uncertainty surrounds the immigration movements of workers likely to take place after enlargement. Studies carried out in this respect, despite occasionally being contradictory, do however reveal a significant desire among nationals of

future member countries to emigrate, even if temporarily, which is difficult to estimate as far as France is concerned;
- because it is impossible to disregard the situation on the employment market in France, which remains characterised by major recruitment difficulties. The potential offered by enlargement can only be taken into account gradually as this market evolves;
- because the French demographic situation is unique among Member States of the European Union because the fertility rate ensures more young people on the labour market in the long term than in neighbouring countries and because of the age structure of the working population, highlighting the existence of potential manpower among young people aged 15 to 25 as well as among those aged over 55.

The mechanism used in the treaty of accession is based on a three-stage system, "2+3+2":
- an initial two-year period starting on 1 May 2004 will represent the strictly fixed period during which France plans to apply the transition period to salaried workers originating from the new Member States. At the end of this period, an overview will be compiled at national level in order to see how this restriction has worked and to examine the state of the employment market and its immediate prospects;
- depending on the lessons drawn from this overview, an extension for three years may possibly be decided upon and notified to the European Commission. Adjustments will be possible, such as opening up certain sectors of activity or suspending application of the transition period at national level – still as a function of developments on the employment market;
- as far as the additional two-year period is concerned, the French authorities do not currently envisage finding themselves in this position.

A. The working population

1. Special categories of workers

Researchers
Member States of the European Union have decided that nationals of the new member countries with the status of researcher will, for their part, enjoy freedom of circulation without restriction from 1 May 2004. Researchers will either have the status of student or the status of salaried worker who, exceptionally, will not be in conflict with the local employment situation by virtue of their status as researcher and they will be exempt from the need to obtain a work permit.

Young professionals
Young workers undergoing training, aged between 18 and 35 and wishing to improve themselves professionally in the branch of activity relevant to them can take advantage of the provisions laid down in the bilateral agreements between France and some of the

future Member States, such as Poland and Hungary. In this case, they will be exempt from the transition period, which implies that the employment situation cannot conflict with their request for temporary introduction made by a local employer and that they will enjoy equal treatment in terms of employment conditions, pay and social security, in an equal work position as salaried workers in the company where they hold a post, for the entire duration of that employment. On the other hand, they cannot enter the French employment market and will have to return to their country of origin upon expiry of the authorised duration of the salaried employment in the host company.

Generally speaking, the policy pursued in terms of the mobility of young professionals will be developed from the point of view of enlargement (extension of agreements to other partner countries) and procedures will be improved as will the information given in professional and associative circles in order to develop the mutually profitable use of this type of professional training.

The aforementioned bilateral agreements are managed by the International Migration Office (OMI) which is responsible, in coordination with the relevant local authorities, for applying the agreements, for centralising and checking the applications made by employers in this respect, as well as applications from young local professionals. The international branch of the OMI, "International Employment Area", examines the files for France and is competent in this respect to complete the admission procedure for the people concerned, liasing with the departmental authorities in question.

Young professionals are defined as people "entering or already engaged in professional life who travel to another country to improve their career prospects through paid work experience in a traditional, agricultural, industrial or commercial company in the host country, as well as to increase their knowledge and understanding of the host country and its language". They must at least hold a certificate corresponding to the qualification required for the employment offered or have professional experience in the field in question and have a degree of knowledge of the language of the host country. In principle, the authorised duration of the professional work placement is one year and it can only be extended once for a period of six months, with the same employer (i.e. a duration of eighteen months' authorised work in France).

Seasonal workers

This category of workers is the subject of bilateral agreements with some future Member States, aimed at facilitating their temporary admission to the French employment market, depending on the labour force needs made known locally and relayed by the Ministry of Agriculture.

Their situation is similar to that of young professionals in training:

- the internal employment situation will not be a barrier for them, since their admission to the employment market is temporary;
- they will enjoy equal treatment alongside national workers in the same situation in terms of all employment conditions, pay and social security;
- on the other hand, at the end of the period of employment, seasonal workers – who cannot gain access to the national employment market – must return to the country of origin upon expiry of their residence and work permits.

These bilateral agreements are managed by the OMI which is responsible, together with the local authorities responsible for the application of agreements, for centralising and checking the applications made in this respect by employers to the relevant departmental authorities. The international branch of the OMI, "International Employment Space", examines the files aimed at admitting the parties in question to French territory.

Seasonal workers are admitted into France under a season employment contract issued to them by an employer. The latter must obtain the approval of the relevant departmental authorities for labour, employment and professional training (foreign labour division) for each contract signed, by means of a declaration of recruitment or employment. For the seasonal worker, this document initially represents proof of his residence in France and of the work he is performing there.

Salaried workers in sectors suffering from a shortage of skilled or unskilled labour

The implementation of a transition period in no way excludes possible openings in the labour market in professional sectors where temporary or structural shortages of skilled or unskilled labour may exist. In this scenario, the decision to open up a professional sector to salaried workers from new member countries will essentially involve the removal of conflict with the employment situation in France with respect to these persons.

It is not possible to foresee or to define absolutely the professional sectors likely to be opened up under the conditions described above, given the major uncertainty still hanging over the long-term evolution of the employment market in France.

It is likely that, in 2006, at the end of the first two years of the transition period, new directions will probably be followed by the French authorities. The choice that will then be made will take into account not only the employment situation in France, but also those prevailing in the new member countries.

France will not set quantitative objectives for itself since the reasoning in terms of quotas per nationality is not compatible with its notion of integration into French society and the general principles of non-discrimination.

Measures aimed at facilitating access to certain specific jobs have recently been introduced in France, particularly with a view to recruiting IT engineers, according to pay and qualification criteria, or staff with a technological and commercial interest in the French companies wishing to recruit them.

The circular DPM/DMI 2 no. 2002-26 of 16 January 2002 relates to the treatment of applications for work permit from foreigners.

Special case of medical professions

The circular DPM/DMI 2/DHOS/P 2 no. 2003-101 of 3 March 2003 relates to the issue of residence and work permits to male or female nurses from countries outside the EEA who hold a foreign qualification. Medical professionals from the new member countries are covered by specific European directives with respect to their professional training (diploma, certificate or training conditions in order to practise on Community territory); a certain number of documents issued by the new member countries will therefore be added to the existing lists. As far as practising their activity in France is concerned, dif-

ferences in status will exist depending on whether they decide to apply for a salaried job or to practise privately.

Medical professionals who want to take up a salaried position will not in principle have access to the national employment market during the transition period.

If the national does not hold one of the documents referred to in the sectoral directives, he cannot be authorised to practise and the departmental authority for health and social affairs that is territorially competent applies the normal procedure for people who hold foreign nursing qualifications (examination on a case-by-case basis of the training provided in the country of origin and requirement that a French qualification be obtained in order to practise as a nurse).

If the national holds one of the documents included in the sectoral directives applicable on 1 May 2004 and if a local need arises, the relevant Departmental office of labour, employment and professional training can approve the entry of a national from one of the new member countries who fulfils the above conditions. It can issue authorisation to practise as a general nurse, as it does for current Community nationals.

Anyone wishing to practise privately will have to observe the qualification and Community residence conditions for access to regulated professions before being able to benefit from registration with the competent administrative authorities.

2. General framework for workers not covered by these special categories

Other salaried workers

Since free circulation has been temporarily suspended for an initial period of five years by France, municipal law applicable to foreign nationals in matters of entry, residence and access to employment will apply exclusively throughout this period.

That being the case, the procedure to be followed for a salaried worker from a new member country will continue to be that which is applicable to salaried workers from a third-party country outside the European Union:

- that person must apply for a work permit;
- possible conflict with the local situation prevailing in the labour pool when the application for admission by the foreign worker is made, which will be assessed by the Departmental office of labour, employment and professional training competent to approve or deny this application, depending on the existing demand and supply of labour;
- however, the "Community preference" established by the treaties of accession will favour this worker with respect to job-seekers who are nationals of non-Member States of the European Union;
- the right to family reunification will remain subject to internal legislation regarding alien law.

Once the salaried worker has been granted the work permit for which he applied, he will enjoy "national assimilation", which will grant him the same rights as a French salaried worker in the same employment situation.

Apart from the admission procedure which implies that work permit has been issued, the Community rules will therefore be applicable in matters of conditions of residence, work and claiming social security rights.

Non-salaried workers: freedom of establishment as of 1 May 2004

The situation for non-salaried workers appears particularly favourable since these workers, not being covered by the provisions relating to the transition period, will benefit, once the treaties of accession enter into force, from the liberalisation of the right to establishment and the free provision of services within Member States of the Union. This is progress with respect to the current status of the law applicable within the framework of European association agreements currently in force, whereby these workers must apply in advance for admission to the territory of a Member State, consequently once again subjecting them to the common law legislation applicable to residence by foreigners.

Access to these professional activities will be governed by the same rules as those applicable to nationals: compulsory registration on the commercial register, in the professional directory or with a professional association, depending on the profession practised. The key question for these workers will be that of the recognition of their professional qualifications awarded in the new member countries, as well as consideration of their professional experience so that not only can they be granted freedom of establishment but also, where appropriate, reclassification in the professional hierarchy concerned.

For the regulated professions, such as the health-related professions, the mutual recognition of qualifications entirely determines the employment possibilities for a Member State national in another Member State, based on correspondence tables between the length of study and specialist qualifications awarded by each Member State.

In the absence of the mutual recognition of qualifications and therefore the automatic nature of this recognition, any non-salaried worker wishing to establish himself privately in a Member State of the Union will be forced to follow the individual procedure applicable to qualifications awarded in a third-party country. Apart from procedural delays, no guarantee of recognition can be given in this context: assessment is carried out on a case-by-case basis.

Non-salaried or freelance workers can hold a residence permit issued by the competent authorities. Once they have acknowledgement of receipt for this application, they are able to practise the activity in question once registration with the professional body (register of commerce or of professions) has been obtained.

The family members of non-salaried workers also receive a residence card for the same duration as that issued to the worker on whom they depend. However, this provision does not apply to the family members of service providers.

Free provision of services

This is aimed at two categories of economic actors for whom the market will be totally and immediately open with effect from 1 May 2004:

- non-salaried or freelance workers practising a craft, commercial or industrial profession, representatives or social agents of companies which, while maintaining their head office or domicile in a new member country, come to France to practise a temporary activity linked to the fulfilment of a contract, separate from any notion of establishment:
  The petitioner will have to present the company's contract or any document confirming the genuineness of the service to be provided in order to obtain his residence card in cases where the temporary assignment is longer than three months.
  Family members of service providers are not authorised to join the latter.
- Service companies which are established in the new member countries will, from 1 May 2004 onwards, enjoy the freedom to provide services in most Member States, including France, for all the sectors of activity in question:

Generally speaking, the provision of services by companies established in the new member countries will be completely liberalised and they will be able to dispatch their staff to fulfil a commercial contract reached locally.

Applicable municipal law is derived from the decree of 11 July 1994 as amended. It is up to the company established in a new Member State to notify its activity to the employment inspection offices of the place where it is being performed, by supplying them with a file containing, in particular, a list of names of the salaried workers seconded so that these offices are in a position to check that the people in question do actually fulfil the conditions imposed. French regulations require the service company to apply to seconded workers all the labour law rights applicable in France for the job in question. A worker who is seconded within the framework of providing services can hold a residence card issued by the competent authorities for the duration of the secondment. To this end, he must present the statement of employment applied for on his behalf by the company to which he has been seconded, as well as the secondment certificate issued by the social security office of the country of origin.

B. Non-workers

Students
The Member States have decided not to impose any restrictions on the free circulation of students from the new member countries of the enlarged Union. In order to encourage student exchanges from now on, the visa obligation which used to apply to Polish and Estonian students coming to France to finish their studies has recently been abolished and this liberalisation may be extended before the accession of other prospective member countries which may request it, such as Hungary and Lithuania.
Upon presentation of the documents required by current Community regulations (passport or identity card, medical insurance certificate, proof of adequate means), students obtain a residence card from the relevant authorities, which is issued in accordance with Directive 93/96, for a period limited to that of the training followed in France, without being able to exceed one year. This card may possibly be renewed every year,

depending on the duration of the training undertaken, as confirmed by the registration receipt or corresponding student card. The residence card for family members is issued under the same conditions as that of the student on whom they depend.

If, when his application for a residence document is made to the Prefectoral offices, the student is not able to present a certificate of health care coverage together with supporting documents linked to his capacity, he must sign an affidavit in which he undertakes to obtain adequate social security cover for himself and for his family members. In this scenario, a receipt for the application is issued and renewed, if necessary by the Prefectoral offices, until the person in question is able to produce the required statement. As far as the amount of the means which the student must have available is concerned, this is calculated with reference to the amount of the grants allocated to foreign grant recipients and is the subject of a simple statement drawn up by the person in question himself.

A circular exists, DPM/DMI 2 no. 2002-25 of 15 January 2002 regarding the issue and renewal of work permits for foreign students.

Job-seekers

Job-seekers from Member States do not enjoy freedom of circulation on the territory of another Member State of the European Union. A Community migrant worker who is unemployed is given an "allowance" to be present for a limited period in another Member State in order to help him find work. This allowance is subject to the following conditions:

- compulsory registration as a job-seeker with the appropriate State employment office in order to be able to receive the unemployment benefit envisaged by the internal legislation in this State;
- the possibility of going to look for work in his State of origin for a period limited to three months: this includes prior obligation to re-register as a job-seeker with the appropriate office in the State of origin in order to continue to receive a benefit provided there for this duration from the State employment office and the obligation to return to the State of employment upon expiry of this three-month period in order to continue to receive the benefit payable to him.

Job-seekers from new Member States with either be covered, as Community migrant workers, by the regulations relating to the coordination of social security systems or they will not enjoy any freedom of circulation if, prior to their unemployment, they had not emigrated from the State of origin to another Member State in order to settle and work there.

Retired people and other non-workers

They may exercise their right to free circulation in order to go and settle in another Member State, provided they declare that they have social security cover and sufficient means to prevent them becoming a burden on the welfare system of the host State.

Within this context, the coordination of the national social security systems of the Member States has been implemented and these people can benefit from this if they

transfer their residence to another Member State. Retired people and non-worker nationals of member countries are not therefore covered by any special provisions.

Chapter VIII
Statistics

The 2001 30th report of the National Institute of Demographic Studies (INED) on the demographic situation in France gives immigration figures up to 1999. Flows of foreigners who are not nationals of countries within the European Economic Area have increased the most, since documents issued to foreigners enjoying freedom of circulation have fluctuated around 43,000 for several years, with a slight drop in 1997. Among the latter, the three leading countries have tended to show a decline (Germany, the United Kingdom and, in particular, Portugal) while flows from Italy, Belgium and Spain are rising (Table B).[31]

The majority of first documents are issued for a period of one year: out of 130,000 documents for at least one year given to people of majority age in 1999, this was the case for 81,000 of them, or 62% (43% for nationals of countries in the European Economic Area and 71% for foreigners from third-party countries).

The INED web site provides the most up-to-date data regarding immigration and migratory flows. It is thus possible to present a set of tables taken from this site:

Country of birth	Immigrants in 1999 census		
	Total	French by naturalisation	Foreigners
Total	4 308 527	1 554 939	2 753 588
Europe	1 934 758	772 364	1 162 394
Albania	2 475	523	1 952
Andorra	900	247	653
Austria	8 520	4 479	4 041
Belarus	822	221	601
Belgium	93 395	33 664	59 731
Bosnia-Herzegovina	6 099	933	5 166
Bulgaria	6 863	3 282	3 581
Croatia	7 636	4 419	3 217
Czech Republic	3 077	1 416	1 661
Denmark	4 942	871	4 071
Estonia	604	297	307
Finland	3 220	620	2 600
Former Czechoslovakia	5 346	4 183	1 163
Former Yugoslavia	54 394	21 112	33 282
Germany	125 227	50 170	75 057
Greece	10 157	5 314	4 843
Hungary	9 782	6 658	3 124
Iceland	289	35	254
Ireland	4 891	621	4 270
Italy	380 798	210 529	170 269
Latvia	956	548	408
Lithuania	1 129	522	607
Luxembourg	5 850	2 078	3 772
Macedonia	2 468	670	1 798
Malta	664	299	365
Moldavia	628	111	517
Monaco	2 395	1 020	1 375

31 P. 24 of the report + Table 2. Legal long-term immigration by geographic origin; p. 42 of the report.

Netherlands	25 119	4 076	21 043
Norway	2 377	375	2 002
Poland	98 566	68 441	30 125
Portugal	570 243	115 755	454 488
Romania	23 301	12 591	10 710
Russia	15 601	7 436	8 165
Saint-Marin	181	91	90
Slovakia	2 022	904	1 118
Slovenia	2 448	1 649	799
Spain	316 544	172 505	144 039
Sweden	7 740	1 249	6 491
Switzerland	44 431	18 176	26 255
Ukraine	5 743	2 905	2 838
United Kingdom	74 683	10 836	63 847
Yugoslavia	2 099	499	1 600
Other European countries	133	34	99
Africa	1 692 110	510 738	1 181 372
Algeria	575 740	156 856	418 884
Angola	8 392	1 292	7 100
Benin	8 375	4 739	3 636
Botswana	133	27	106
Burkina Faso	2 796	1 250	1 546
Burundi	981	267	714
Cameroon	26 890	9 105	17 785
Cape Verde	11 938	3 442	8 496
Chad	1 864	832	1 032
Central African Republic	6 197	2 118	4 079
Comoro Islands	13 763	7 366	6 397
Congo	35 318	9 411	25 907
Congo (Dem. Rep. former Zaire)	23 727	4 647	19 080
Côte d'Ivoire	29 879	10 692	19 187
Djibouti	2 226	1 064	1 162
Egypt	16 386	8 561	7 825
Equatorial Guinea	105	38	67
Eritrea	117	58	59
Ethiopia	2 810	1 663	1 147
Gabon	5 794	1 113	4 681
Gambia	970	103	867
Ghana	4 069	1 016	3 053
Guinea (Rep. of)	5 704	1 565	4 139
Guinea Bissau	5 882	1 432	4 450
Kenya	691	133	558
Liberia	586	143	443
Libya	988	410	578
Madagascar	28 272	18 401	9 871
Mali	35 978	5 683	30 295
Morocco	521 059	133 405	387 654
Mauritania	8 237	1 515	6 722
Mauritius	27 806	15 231	12 575
Mozambique	765	180	585
Niger	1 247	445	802
Nigeria	1 978	499	1 479
Rwanda	2 299	647	1 652
Senegal	53 859	17 583	36 276
Seychelles	313	186	127
Sierra Leone	520	165	355
Somalia	1 084	193	891
South Africa	1 749	536	1 213
Sudan	826	271	555
Tanzania	459	137	322
Togo	10 598	5 077	5 521
Tunisia	201 700	80 987	120 713
Uganda	307	89	218

Zambia	201	39	162
Zimbabwe	282	67	215
Other African countries	250	59	191
Asia	550 166	220 671	329 495
Afghanistan	2 442	988	1 454
Armenia	4 778	2 983	1 795
Azerbaijan	292	44	248
Bangladesh	1 604	331	1 273
Bhutan	175	34	141
Cambodia	50 526	30 589	19 937
China (People's Rep.)	30 418	6 172	24 246
Cyprus	783	366	417
Georgia	976	208	768
Hong Kong	1 625	644	981
India	18 841	11 559	7 282
Indonesia	2 811	857	1 954
Iran	17 047	7 332	9 715
Iraq	3 367	874	2 493
Israel	4 281	2 741	1 540
Japan	13 183	817	12 366
Jordan	686	299	387
Kazakhstan	318	54	264
Kuwait	496	132	364
Laos	36 708	24 761	11 947
Lebanon	28 169	18 523	9 646
Malaysia	1 387	434	953
Mongolia	210	61	149
Myanmar (Burma)	491	147	344
Nepal	516	274	242
Pakistan	11 369	2 637	8 732
Palestine	620	271	349
Philippines	5 823	1 411	4 412
Qatar	110	30	80
Saudi Arabia	909	110	799
Singapore	984	205	779
South Korea (Rep. of)	13 304	7 878	5 426
Sri Lanka	24 113	5 043	19 070
Syria	9 957	6 477	3 480
Taiwan	2 162	590	1 572
Thailand	8 809	3 529	5 280
Turkey	175 987	26 759	149 228
Turkmenistan	158	52	106
United Arab Emirates	194	44	150
Uzbekistan	221	34	187
Vietnam	72 318	53 884	18 434
Yemen	665	392	273
Other Asian countries	333	101	232
America	127 344	50 150	77 194
Argentina	7 398	3 732	3 666
Bolivia	939	462	477
Brazil	14 913	7 004	7 909
Canada	12 056	4 245	7 811
Chile	9 638	5 551	4 087
Colombia	10 983	5 839	5 144
Costa Rica	307	140	167
Cuba	1 482	483	999
Dominica	543	256	287
Dominican Rep.	331	142	189
Ecuador	1 157	383	774
Guatemala	1 178	832	346
Haiti	19 159	6 996	12 163

Honduras	352	152	200
Jamaica	338	108	230
Mexico	4 601	1 547	3 054
Nicaragua	357	186	171
Panama	261	117	144
Paraguay	551	225	326
Peru	5 770	2 553	3 217
Puerto Rico	212	46	166
Salvador	729	479	250
St. Lucia	113	77	36
Surinam	195	69	126
Trinity & Tobago	196	81	115
USA	29 381	6 706	22 675
Uruguay	1 507	870	637
Venezuela	2 374	755	1 619
Other American countries	323	114	209
South Sea Islands	4 149	1 016	3 133
Australia	2 868	636	2 232
New Zealand	890	222	668
Tonga	120	47	73
Other South Sea Island countries	271	111	160

Sources: Insee – 1999 census

Foreign immigration flows since 1994

Last updated, September 2002

	1994	1995	1996	1997	1998	1999
European Economic Area	47 697	44 422	43 258	41 306	43 033	42 791
including: Germany	9 531	8 582	8 155	7 761	8 020	7 866
United Kingdom	9 267	8 077	8 021	7 500	7 712	7 437
Portugal	9 124	8 442	7 522	6 327	5 899	5 657
Italy	4 705	4 934	4 950	4 829	5 197	5 417
Belgium	3 880	4 013	4 005	4 108	4 267	4 341
Spain	3 632	3 549	3 832	3 778	4 323	4 260
Other European nationalities	13 396	11 240	10 938	12 901	16 271	18 400
including: Turkey	4 456	3 337	3 165	4 543	5 723	5 257
former Yugoslavia	2 779	1 782	1 495	1 727	2 165	4 119
North Africa	23 029	18 431	18 746	27 286	36 138	33 554
including: Morocco	9 267	6 830	7 669	10 957	16 243	16 496
Algeria	10 911	7 770	8 469	12 412	14 523	12 103
Tunisia	2 851	3 832	2 609	3 917	5 372	4 954
Other African countries	11 680	10 152	10 575	19 313	28 732	20 431
including: Senegal	12 249	1 282	1 257	2 023	3 175	2 678
Mali	444	418	493	1 535	3 966	2 054
Other French-speaking African countries	6 028	5 491	5 857	8 152	11 989	10 333
Democratic Republic of Congo	1 305	772	788	2 786	3 631	1 631
Asia	13 271	11 205	11 471	15 003	19 962	17 772
including: China	1 370	1 260	1 050	3 253	5 569	3 728
Japan	2 465	2 512	2 567	2 662	2 623	2 907
America	9 818	9 233	9 366	10 266	11 266	11510
including: United States	4 496	4 489	4 658	4 409	4 455	4 523
Others (1)	679	1 497	1 632	1 356	746	662
Total	119 570	106 180	105 986	127 431	155 878	145 120

(1) South Sea Islands, stateless and undeclared nationalities

Source: compiled by INED from sources provided by the Minister of the Interior and statistical directory of the International Migration Office, cf. X. Thierry, Population, no. 3, 2001 (detailed information)

Flow of foreign immigration by reason for admission in 1999
Last updated on 10-02-2004

Nationality groups		Overall	Reason for admission								
			Minor(6)	Student	Worker	Foreigner's family	French family	Visitor	Non-worker (7)	Stateless refugee	Others (8)
European Economic Area (1)		42 791	2 727	11 559	15 322	3 000	2 199	0	7 937	0	47
Third-party countries											
Europe	Countries joining the EU (2)	2 748	135	1 208	268	186	547	207	44	20	133
	Other European countries (3)	15 655	1 563	2 192	1 385	2 589	3 261	1 245	108	2411	901
	Total Europe non-EEC	18 403	1 698	3 400	1 653	2 775	3 808	1 452	153	2 431	1 034
Africa	North Africa	33 554	5 948	5 279	2 793	6 136	9 048	1 221	521	288	2 319
	Countries formerly under French administration (4)	14 959	1 124	4 606	923	1333	3 956	436	704	285	1 592
	Other African countries	5 495	1 078	791	579	827	983	202	227	383	424
	Total Africa	54 007	8 151	10 677	4 295	8 296	13 987	1 859	1 452	956	4 335
Asia	Southeast Asia (5)	1 276	40	404	73	64	511	64	13	35	71
	Other Asian countries	16 484	1 557	6 129	1 597	1 246	2 289	1 549	128	918	1 071
	Total Asia	17 759	1 598	6 534	1 670	1 309	2 801	1 613	141	952	1 142
America	North America	6 197	653	2 158	1 139	252	581	1 183	5	2	225
	Other American countries	5 301	507	2 202	340	377	1 123	373	41	51	288
	Total America	11 498	1 160	4 360	1 479	628	1 704	1 556	46	53	513
Others		661	26	215	128	51	84	123	3	12	20
Total third-party countries		102 329	12 631	25 186	9 225	13 060	22 383	6 602	1 794	4 405	7 043
TOTAL :		145 120	15 359	36 745	24 547	16 060	24 582	6 602	9 731	4 405	7 090

Source: compiled by the INED from sources provided by the Ministry of the Interior and statistical directories from the International Migration Office, cf. X. Thierry, Population, no. 3, 2001 (detailed information).

(1) Member States of the European Union + Iceland, Liechtenstein, Norway.
(2) Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia, Czech Republic.
(3) Including Turkey.
(4) Countries formerly under French administration: Benin, Burkina Faso, Cameroon, Central Africa, Comoros, Congo, Djibouti, Gabon, Guinea, Côte d'Ivoire, Madagascar, Mali, Mauritania, Niger, Senegal, Chad, Togo.
(5) Cambodia, Laos, Vietnam.
(6) Minors in family reunification, children of refugee mothers or EEA nationals.
(7) Former soldiers, retired people, holders of an allowance, young European volunteers, sick foreigners.

(8) Admitted after long-term presence, reason undetermined.

Flow of foreign immigration by age group in 1999

Last updated on 5-02-2004

Nationality groups		Overall	Age groups (6)								
			0-17 (7)	18-19	20-24	25-29	30-34	35-39	40-49	50-59	60+
European Economic Area(1)		42 791	2 727	1 462	12 997	7 167	5 158	3 475	3 859	2 869	3 076
Third-party countries											
Europe	Countries joining the EU(2)	2 748	135	154	1 048	754	287	139	137	35	59
	Other European countries (3)	15 655	1 563	1 007	3 838	3 139	1 877	1 243	1 433	784	771
	Total for non-EEC Europe	18 403	1 698	1 161	4 886	3 893	2 164	1 382	1 571	819	830
Africa	North Africa	33 554	5 948	1 616	5 509	6 585	5 184	3 030	2 797	1 207	1 676
	Countries formerly under French administration(4)	14 959	1 124	867	3 454	2 889	2 652	1 953	1 404	351	265
	Other African countries	5 495	1 078	221	632	774	1066	824	670	115	115
	Total for Africa	54 007	8 151	2 703	9 594	10 249	8 902	5 806	4 872	1 673	2 056
Asia	Southeast Asia(5)	1 276	40	60	381	319	171	109	126	30	38
	Other Asian countries	16 484	1 557	605	3 623	4 069	2 751	1 552	1 323	483	519
	Total for Asia	17 759	1 598	665	4 004	4 389	2 923	1 662	1 449	513	558
America	North America	6 197	653	246	1 978	824	728	580	662	350	175
	Other American countries	5 301	507	206	1 082	1 361	887	583	453	141	83
	Total for America	11 498	1 160	452	3 060	2 184	1 615	1 163	1 115	491	258
Others		661	26	20	153	159	108	56	72	41	25
Total for third-party countries		102 329	12 631	5 001	21 698	20 873	15 713	10 069	9 079	3 538	3 726
TOTAL:		145 120	15 359	6 463	34 694	28 041	20 871	13 544	12 938	6 407	6 803

Source. compiled by the INED from sources provided by the Ministry of the Interior and statistical directories from the International Migration Office, cf. X. Thierry, Population, no. 3, 2001 (detailed information).

(1) Member States of the European Union + Iceland, Liechtenstein, Norway.
(2) Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia, Czech Republic.
(3) Including Turkey.
(4) Countries formerly under French administration: Benin, Burkina Faso, Cameroon, Central Africa, Comoros,
Congo, Djibouti, Gabon, Guinea, Côte d'Ivoire, Madagascar, Mali, Mauritania, Niger, Senegal, Chad, Togo.
(5) Cambodia, Laos, Vietnam.
(6) Age reached: difference between year of admission to residence and year of birth.
(7) Minors in family reunification, children of refugee mothers or EEA nationals.

Chapter IX
Social Security

A. Texts adopted

Decree no. 2002-1568 of 24 December 2002 relates to the centre for European and international social security relations and amends the social security code.

The circular from the National Old Age Pension Fund no. 2003/27 of 10 June 2003 sets out the conditions for application of EC Regulation no. 859-2003 of 14 May 2003 extending, with effect from 1 June 2003, the provisions of EEC Regulation no. 574-72 to nationals of third-party countries, with respect to old age pensions. The objective of the Community legislation on the matter is to coordinate the social security systems of Member States for all nationals of third-party countries who are currently excluded from them by virtue of their nationality. In order to benefit from this mechanism, those concerned must hold a legal residence permit, whether temporary or permanent. All periods spent in other Member States, with the exception of Denmark, are then added up in order to determine that person's rights. This mechanism does not apply to purely internal situations.

The circular DSS/DACI no. 2003-280 of 11 June 2003 relates to the nature of paternity leave with respect to EEC Regulation no. 1408-71 concerning coordination of social security systems and the bilateral social security agreements reached by France.

The circular DSS/DACI no. 2003-318 of 2 July 2003 relates to the application of EC Regulation no. 859-2003 of the Council of 14 May 2003 aimed at expanding the provisions of EEC Regulation no. 1408-71 and EEC Regulation no. 574-72 to nationals of third-party countries who are not already covered by these provisions solely because of their nationality.[32] It adds comments and details to this new text so as to facilitate its application by the French social security institutions.

The circular DSS/DACI no. 2003-431 of 10 September 2003 relates to the advantage of maintaining the right to health insurance and maternity services by people who move outside France. Based on Community jurisprudence, it recalls that within the EU-EEA-Switzerland zone, a person who is able to maintain a right to services in France, if she is neither a worker nor insured under a compulsory French social security system, is nevertheless subject to French social security legislation when it comes to benefiting from health insurance and maternity services and must, in this capacity, be regarded as a worker within the meaning of the Community regulations.

The circular DSS/DACI no. 2003/443 of 16 September 2003 regarding the benefits of the rights to family services and to health insurance and maternity services for seconded workers recalls that the notion of secondment

> "involves excluding certain categories of workers under the general rule in matters of social security affiliation from the legislation of the State where the activity is performed. […] In the Community context [EEC Regulation no. 1408/71 regarding coordination of social security systems], secondment takes place on the basis of an "Article 17 agreement".

32 *Solidarité-Santé Official Bulletin*, no. 2003-37.

B. Jurisprudence

Court of Cassation, Social Division, 11 July 2002 (appeal 00-17152): The decision rightfully maintains that the provisions of Community regulations stipulate that workers benefit from unemployment services in the State of residence, according to the legislation in force in that State.

Court of Cassation, Social Division, 28 March 2002, *Robert Magnan v. CPAM des Hauts-de-Seine* (appeal 00-15903): the Court of Cassation considers that,

> "notwithstanding the provisions of Article 22 of Regulation no. 1408/71 which define the conditions of coverage for care provided during a period of residence abroad by the social security organisation of the place of residence for the account of the organisation with which the member is insured and those of Article 34 of EEC Regulation no. 574/72, which provide for reimbursement for this care by the organisation in question, the result of the provisions of Article 49 [EC], as interpreted by the Court of Justice of the European Communities in its decision of 12 July 2001[33], that the Fund of the place of membership is obliged to cover the medical expenses submitted by its insured party in another Member State according to the rate applicable for identical care provided in France".

It thus gives priority. A potential freedom of choice for Community patients is evident.

Doctrinal comment: *Liaisons sociales Europe*, no. 55, 2 to 15 May 2002, Comments by F. Kessler, p. 4 response to J-C Fillon in *Liaisons sociales Europe*, no. 65, 17 to 30 October 2002, p. 2 : Prise en charge de frais d'urgence par une CPAM (Coverage of emergency expenses by a health insurance fund).

Council of State, 3 April 2002, *Mr. Renie* (petition no. 232733): repeal of contested provisions of the Social Security Code constituting a barrier to the free circulation of workers banned under Article 39 EC.

Court of Cassation, Social Division, 26 September 2002, *Caisse nationale militaire de sécurité sociale v. Jozan* (appeal 01-20316): the Court considers that a person with social security insurance could not obtain coverage for a surgical operation which took place in Germany for reasons of personal convenience.

Court of Cassation, 23 January 2003, *Mr. Laborde v. Caisse autonome de retraite des médecins de France* (appeal 01-10895): see Travail et Protection sociale (Labour and social protection), April 2003, p. 32, comments 186 (compulsory social security contributions for a surgeon who has practised in Germany).

Court of Cassation, 3 April 2003, *Mr. P. Goossens v. CPAM de Pau* (appeal M 01-21266): Debatable validity of decisions refusing admission to the benefits of a pricing and coverage system by the health insurance for actions undertaken in France by a doctor who is a national of another European Union Member State while the latter does not exactly satisfy the criteria required for qualified doctors in France.

C. Doctrine

J-C Fillon; Les 'non-communautaires' bénéficient d'une sécurité sociale coordonnée (Non-Community nationals benefit from coordinated social security), *Liaisons sociales Europe*, no. 83, 26 June to 9 July 2003, p. 2.

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33 CJEC, 12 July 2001, *Vanbraekel vs ANMC*, case C-368/98.

J-P Lhernould, L'administration précise les conditions de l'extension de la coordination aux étrangers (The government specifies the conditions of extending coordination to foreigners), *Liaisons sociales Europe*, no. 90, 30 October to 13 November 2003, p.7

Chapter X
Establishment, Provision of Services, Students

A. Establishment

By ordinance of 6 November 2002,[34] the Council of State asked two prejudicial questions of the CJEC concerning the interpretation of Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 and the ban imposed by a Member State on banking institutions legally established on its territory on serving interest on current account deposits and other repayable funds with regard to the freedom of establishment.

- Court of Cassation, Criminal Division, 17 September 2002, (appeal 01-85907):
The holder of a Dutch dental technician's qualification ("tandprotheticus") cannot take advantage of this document, which is not included on the list of qualifications, certificates and other papers for practitioners of the art of dentistry awarded by the European Union Member States, established by decisions in application of Article L. 356-2.2 later L. 4141-3 of the Public Health Code, in order to practise activities covered by the art of dentistry.

- CAA Bordeaux, 4 March 2003, *Département des Deux-Sèvres* (petition nos. 00BX01170 and 00BX02417):
Article 262 of the former procurement contracts code is incompatible with the principles of equality and free competition which was aimed at reserving, in the case of allotment of a procurement contract, one quarter of the lots for industrial cooperative production societies (SCOPs).

- Council of State, 5 March 2003, *Sté Immaldi et Compagnie* (petition 225470):
The Council of State judges that the barrier created by the authorisation required by the Royer law of 27 December 1973 regarding the establishment of hypermarkets is necessary and proportionate with respect to the general interest objectives pursued, in accordance with Article 43 EC as interpreted by the CJEC.

- Council of State, 30 December 2003, *Ministry of the Economy v. Société Coréal Gestion* (petition no. 249047): non-conformity with Article 52 of the EC treaty and with the jurisprudence of the CJEC of unequal fiscal treatment for subsidiaries incorporated on its territory in accordance with its legislation depending on whether the parent company is itself established there or not since, with respect to the object of the tax in question, both of these subsidiaries are in an objectively comparable situation.

34 Petition no. 247209.

B. Recognition of qualifications

1. Texts adopted

Decree 2002-649 of 29 April 2002 passed in application of Article 15-2 of law no. 84-610 of 16 July 1984 and relating to the licensing of sports agents stipulates that

> "nationals of European Community Member States and of another State party to the agreement on the European Economic Area can exercise the activity of sports agent in France provided they obtain a licence under the conditions imposed by the present Decree or that they produce a licence issued by one of these States or that they establish that they hold the documents or the professional qualification allowing them to practise this profession there".

Decree 2003-1073 of 14 November 2003 relating to the conditions for issuing authorisation to use the title of psychologist in a professional capacity specifies that nationals of a European Community Member State and of another State party to the agreement on the European Economic Area who do not hold one of the qualifications, certificates or documents stated under I of Article 44 of the law of 25 July 1985 can be authorised to make use of the title of psychologist in a professional capacity by decision of the minister responsible for higher education, taken following an opinion expressed by the commission referred to in Decree no. 90-255 of 22 March 1990 as amended, establishing the list of qualifications allowing the holder to use the title of psychologist in a professional capacity.

2. Report on the adaptation status of European directives

The information report by Mr. Christian Philip on behalf of the Delegation from the National Assembly to the European Union on the adaptation status of European directives[35] submitted on 9 July 2003 concentrates in particular on the non-adaptation of Directive 89/48/EEC of the Council of 21 December 1988 relating to a general system for the recognition of higher education qualifications which sanctions professional training courses lasting a minimum of three years, known as the BAC + 3 directive, particularly following the condemnation of France by the CJEC.[36]

The report also concentrates on the non-adaptation of Directive 2001/19/EC of the European Parliament and of the Council of 14 May 2001, amending the directives regarding the general system of recognising professional qualifications and the directives regarding the professions of general care nurse, practitioner of the art of dentistry, veterinary surgeon, midwife, architect, pharmacist and doctor. France was the subject of a formal notice on 22 January 2002. The draft bill regarding authorisation of the government to adapt Community directives via ordinances, presented to the Council of Ministers on 21 January 2004, specifically concerns the adaptation of this directive.

3. Jurisprudence

- Council of State, 29 July 2002, *Mr. Mauro X* (petition no. 221825): For the Council of State, although the Directive of 21 December 1988 introduces a system of mutual recognition of qualifications for professional purposes, its objective is not the academic

35 Text in appendix.

36 CJEC of 10 May 2000 (case C-285/00).

recognition of qualifications and it does not imply that the persons who enjoy recognition of their professional capacities can be regarded as holders of the national qualification equivalent to the qualification they have obtained. The decree of 12 August 1969 which governs access to the position of auditor of persons who have been trained in a European Union country other than France under conditions conforming to the provisions of the directive of 21 December 1988 does not detract from the usefulness of the equivalence of the qualifications, as referred to in this text, and does not ignore the provisions of the treaty creating the European Community regarding the freedom of establishment in so far as it would offer direct access to the functions of auditor only to holders of one of the French chartered accountancy qualifications.

- Council of State, 6 June 2003, *National Union of Psychologists* (petition no. 233168): the Council of State rejects the request for repeal of ordinance no. 2001-199 of 1 March 2001 relating to the adaptation of Directives 89/48/EEC of the Council of 21 December 1988 and 92/51/EEC of the Council of 18 June 1992 envisaging a general system for the recognition of higher education and professional training qualifications.

- CJEC, 19 June 2003, *Malika Tennah-Durez and Conseil national de l'ordre des médecins*, case C-110/01: Upon prejudicial referral by the Council of State regarding the interpretation of Articles 9, §5 and 23, §2 and Directive 93/16/EEC37 of the Council of 5 April 1993 aimed at facilitating the free circulation of doctors and the mutual recognition of their qualifications, certificates and other documents, the CJEC indicates that

> "the medical training required by Article 23, paragraph 2 of Directive 93/16 may consist, even predominantly, of training received in a third-party country, on condition that the competent authority in the Member State which awards the qualification is in a position to validate this training and to consider, as a result, that it makes a valid contribution to fulfilling the training requirements for doctors established by the above Directive".

In a judgment of 17 December 2003,[38] the Council of State notes this interpretation to repeal a decision by the National Council of the Order of Physicians of 28 April 1999 which rejected the application for registration by the petitioner on the register of the Order, while the Belgian authorities had validated her training, received in Algeria.
In a judgement given on the same day,[39] the Council rejected a similar appeal against a decision by the National Council of the Order of Physicians which had not authorised the petitioner to state his qualification as a specialist doctor, qualified in radiology. In this case, the petitioner had not received any specialist radiology training in Belgium which could have been validated by the competent authorities in this State.

37 OJ L165, p. 1.
38 EC, 17 December 2003, petition no. 211058
39 EC, 17 December 2003, petition no. 240514

B. Provision of services

1. Texts adopted

The circular DSS/DACI no. 2003-286 of 16 June 2003 relating to the application of the regulations to ensure access to care of those insured under a French social security system within the European Union and the European Economic Area recalls the Community jurisprudence and presents the amendments implemented in French practices as well as the cases to come.

Medicines and medical devices

In order to conform to Community jurisprudence concerning the free circulation of goods, medicines prescribed or invoiced in another European Union Member State or part of the European Economic Area must be covered under the same conditions as those prescribed and invoiced in France. […] Medicines purchased in another Member State of the EU/EEA are refunded if they are on the list of refundable specialities [listed in the social security code]. […] Insured persons must advance the costs and send their requests for refund to their medical insurance office, enclosing proofs of expenses actually incurred (medical prescriptions and corresponding invoices for the pharmaceutical products).

Health professionals

Concerning treatment by health professionals, the conditions for exercising medical activity for doctors in France are envisaged by the public health code, which specifically requires registration with the Order (Art. L. 4112-1 of the public health code; however, it provides for an exception for nationals of a Member State of the EU/EEA who, if they have established themselves and legally practise their medical activity in another Member State, can also exercise their profession in France (Art. L. 4112-7 of the same code)).

Their treatment must be covered on the basis of authority rates, in the same way as professional treatments by non-affiliated French professionals. The circular stipulates that "the systematic application of authority rates for treatment by health professionals established in another Member State of the EU/EEA risks constituting a new indirect barrier to the free provision of services as interpreted by the Court of Justice. […] New links must be established between professionals established in another Member State of the EU/EEA on the one hand and French health insurance on the other hand".

The circular regarding medical biology analysis laboratories stresses that reflection is also needed "in order perfectly to combine the Community principles of the operation of the internal market with the requirements of public health".

Doctrinal comment

J-P Lhernould, Un petit pas en direction de la libre circulation des soins de santé (A small step towards the free circulation of health care), *Liaisons sociales Europe*, no. 85, 24 July to 3 September 2003, p. 2.

2. Jurisprudence

CJEC, 23 October 2003, *Inizan v. Caisse primaire d'assurance maladie des Hauts-de-Seine* (case C-56/01). Upon prejudicial appeal, the CJEC stipulated the conditions applicable to prior authorisation for coverage for medical treatment received abroad. Articles 49 and 50 EC must be interpreted in the sense that they do not conflict with the legislation of a Member State, on the one hand making reimbursement for hospital care provided in a Member State other than that where the health insurance office of the insured party in question is established dependent on acquisition of authorisation issued by this office and, on the other hand, subjecting the granting of this authorisation to the condition that it be established that the person in question could not receive the care appropriate to his condition on the territory of the latter Member State. Such authorisation can only be refused for this reason if an identical treatment or one offering the same degree of effectiveness for the patient can be obtained at the appropriate time on the territory of the Member State in which he resides. It is therefore important that the authorisation system be easily accessible and capable of guaranteeing those concerned that their request will be dealt with within a reasonable period, with objectivity and impartiality and with the possibility of jurisdictional recourse.

3. Profession of lawyer

CJEC, 26 September 2002, *Commission v. France* (case C-351/01). The Court of Justice condemned France for failing to adapt the directive of 16 February 1998 aimed at making it easier to exercise the profession of lawyer permanently in a Member State other than that where the qualification was obtained. Following this condemnation, law no. 2004-130 of 11 February 2004 amending the status of lawyer adapted the directive. The principle is that any lawyer from a Member State of the European Community can, for an unlimited duration, practise in another Member State under his original title and only under this title. National titles will be approved by decree. Lawyers practising under their original titles who can prove effective and legal activity on French territory under French law for at least three years can request admission to the bar in France. This admission is practically an entitlement, subject to moral standards and incompatibilities.

C. Students

The circular DPM/DMI 2 no. 2002-25 of 15 January 2002 relating to the issue and renewal of work permits to foreign students[40] does not include specific provisions for students who are nationals of a Member State of the European Communities.

Decree no. 2002-482 of 8 April 2002 concerns application to the French system of higher education of the construction of the European higher education area.

40 *Official Bulletin of labour, employment and professional training*, no. 2002-5 of 20 March 2002.

Chapter XI
Miscellaneous

A. Overseas territories

Three decrees of 3 May 2002 concern the application of ordinances nos. 2000-372, 2000-371 and 2000-373 of 26 April 2000 and establish the conditions of entry into French Polynesia, Wallis and Futuna Islands and to Mayotte for nationals of European Community Member States and members of their families, as well as the residence conditions for these nationals exercising an economic activity.[41]

Circular of 3 April 2002 no. NOR/INT/D/02/00118/C relates to the application of ordinance no. 2000-373 of 26 April 2000 regarding the conditions for entry and residence for foreigners in Mayotte. Admission for residence by Community nationals and their family members is specifically regulated by ordinance of 26 April 2000, since the Community treaties and the directives passed on their foundation are not applicable to the community of Mayotte, this being simply associated with the European Community.

The freedom of circulation of Community nationals on Mayotte is consequently only exercised within the framework laid down in Article 13 of the ordinance and in the light of Decision no. 91-482/EEC of the Council of the European Communities of 25/7/1991, which establishes the freedom of establishment and provision of services but does not grant the right to a salaried activity, prior authorisation issued by the local authorities still being required.

Article 95 I-1 of the law no. 2003-1119 of 26 November 2003 relating to immigration control, the residence of foreigners in France and nationality stipulates that "the Government is authorised, under the conditions envisaged in Article 38 of the Constitution, to take the necessary measures, by ordinance, to adapt the provisions of the present law in French Polynesia, New Caledonia, in Wallis and Futuna Islands and Mayotte and to draw conclusions from it throughout the territory of the Republic".

B. Swiss nationals

Decree no. 2002-946 of 25 June 2002 concerns publication of the agreement between the European Community and its Member States on the one hand and the Swiss Confederation on the other hand on the free circulation of people, concluded in Luxembourg on 21 June 1999.

The circular NOR/INT/D/02/00133/C of the Ministry of the Interior relates to application of the agreement of 21 June 1999 between the European Union and Switzerland on the free circulation of people. The objective of this agreement is to grant the same living conditions, employment, residence and working conditions to Community nationals and to Swiss nationals on the territory of each of the parties as those granted to national citizens.. […] Regarding residence and work by Swiss nationals coming to France, they enjoy the rights and freedoms of circulation, residence and access to work under the same conditions as Community nationals. However, access to work will not

41 Decree no. 2002-820 for French Polynesia, decree no. 2002-821 for Wallis and Futuna Islands, decree no. 2002-822 for Mayotte, *French Official Journal*, 5 May 2002.

be entirely free until expiry of a period of 2 years from the entry into force of the agreement.

The information note DSS/DACI no. 2002-264 of 30 April 2002 relating to communication of the effective date of bilateral agreements between the Swiss Confederation and the European Union recalls that the seven bilateral agreements reached between Switzerland and the EU enter into force on 1 June 2002 and that only the agreement relating to the free circulation of people, mixed in nature, has been the subject of a national ratification procedure.

The note details the adoption of subsequent texts. This is circular 2002-326 of 4 June 2002 relating to the application of the agreement of 21 June 1999 between the European Union and Switzerland regarding the free circulation of people, specifying all the methods of application with the exception of the particular methods of implementation of the option right in matters of illness, and circular DSS/DACI no. 2002-368 of 27 June 2002 relating to the implementation of the option right in matters of health insurance, envisaged by the agreement reached between the European Union and the Swiss Confederation on the free circulation of people on 21 June 1999, specifying the methods of implementation of this option right in matters of illness.

Doctrinal comment: Libre circulation entre la Suisse et l'Union européenne (Free circulation between Switzerland and the European Union), *Liaisons sociales Europe*, no. 55, 2 to 15 May 2002, p. 5 ff.

C. Cooperation agreements

Court of Cassation, Social Division, 31 January 2002. The Court recalls that Article 39 of EEC Regulation no. 2210/78 of 26 September 1978 concerning cooperation agreement between the European Community and Algeria is aimed only at allowing Algerian nationals residing in a Member State to benefit from the social security legislation of the country of residence and has been previously detailed by bilateral agreements between France and Algeria by dispensation. The result is that someone of Algerian nationality residing in Algeria cannot claim an old age pension in France by virtue of periods prior to 1962 when he was employed in Algeria.

Court of Cassation, Social Division, 27 June 2002 (appeal 00-13768): the Court of Cassation recalls here that the Community rules aimed at ensuring the free circulation of workers only applies to movements of workers in the Community Member States and does not therefore apply to purely internal situations.

D. Elections

Council of State, 8 July 2002, *Smitt v. Préfet du Cher* (petition no. 240269): repeal of the election of a Dutch national as vice president of an intercommunal structure under conditions contrary to the organic law of 25 May 1998, establishing the conditions of application of Article 88-3 of the Constitution, which does not make nationals of a European Union Member State eligible for the functions of town councillor.

Council of State, 12 July 2002, *Local elections in Champigny-sur-Marne* (petition no. 239083): repeal of elections in Champigny based on the electoral Code: "(...) upon penalty of invalidity, the printed ballot papers distributed to electors include a state-

ment of nationality with respect to candidates who are nationals of a European Union Member State other than France," and "failing to state nationality on the ballot papers of candidates who are nationals of a European Union Member State other than France shall alone render these papers null and void".