REPORT
on the Free Movement of Workers
in France in 2012-2013

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Introduction

Few legislative changes to note. The Minister of the Interior decided to defer submission of his draft immigration law to 2014, in other words after the forthcoming local elections. It seems that the issue of migration is not the main preoccupation of the new presidential and parliamentary majority.

Thus, the study for the year 2012-2013 chiefly concerns application by the judges of the standards adopted during 2011. The spirit of migration policy remains the same. However, it should be emphasised that this problem has not figured largely in the official communication of the ministers since the change in majority, which seems to limit the stigmatisation of the Roma population.


These pages are presented in part in the report. They enable a new government procedure to be explained, with the aim of improving understanding and use of their rights by nationals of the European Union.
Chapter I
The Worker: Entry, Residence, Departure and Remedies

If we refer to the reference pages of the Ministry of the Interior, below is what is stipulated for nationals not covered by the transitional system (this is not new legislation but a reminder of the applicable law):

A European or Swiss citizen who wishes to settle and work in France must hold an identity card or a valid passport.
He can practise any economic, salaried or non-salaried activity (except certain public positions and, for regulated professions, subject to fulfilment of the conditions for practice).
He is not obliged to hold any kind of permit, for residence or work.
However, if he wants to obtain a residence permit, he can déposer une demande submit an application.
In any event (whether or not a residence card is applied for), he must be able to prove that he falls within the category of ‘workers’ for the first 5 years of his residence.
A salaried employee must be able to present a statement of intent drawn up, by his employer, or an employment contract.
A non-salaried worker must able to provide all documents demonstrating the existence and the long-term nature of his activity (entry on the register of commerce and companies, on the list of trades, etc.).
A service provider must be able to present all commercial documents (subcontracting contract, service contract, service orders, etc.).

1. TRANSPOSITION OF PROVISIONS SPECIFIC TO WORKERS

Taxes

A circular from the Ministry of the Interior dated 12 January 2012 detailed the provisions of the finance law for 2012 regarding taxes that are paid to the OFII1 and the Decree of 29 December 2011 concerning the adjustment of these taxes. This circular is still applicable, but the amount of the taxes has been changed for 2013 pursuant to finance law 2012-1509.

The 2012 circular stipulates that, in application of Article 25 of Directive 2004/38/EC, nationals of Member States of the EU (including those covered by the transitional system) and similar (EEA, Switzerland, Andorra) and their family members, regardless of the nationality of the latter, are not subject to the tax for the first issue of a residence card. The same is true for the tax due for renewing a residence card or for the tax due in the event of the renewal of a residence card for a foreigner who submitted his application after expiry of the period of validity of his previous card.

Residence permits of citizens of the EU and their family members are exempt from stamp duty. Equally, minors who are nationals of a Member State of the EU or similar (EEA, Switzerland, Andorra) and minors who are nationals of third-party countries who have the capacity of family members of nationals of Member States of the EU or similar are exempt

1 French Office for Immigration and Integration
from the ‘tax relating to the issue, renewal and supply of duplicates of travel documents for foreign minors (TDFM)’.

A tax is payable for applying for a copy. Decree 2012-1535 of 29 December 2012, passed in application of Article 42 of this finance law for 2013, aligns the rate for a copy of a residence card issued to nationals of Member States of the European Union with the rate for a copy of a French national identity card. This decree refers precisely to Directive 2004/38/EC.

Since the circular of 12 January 2012, the amount due in the event of failure to present the residence card at the time an application is made for renewal had already been aligned with the rate associated with the renewal of French identity cards (i.e. €16).

2. SITUATION OF JOB-SEEKERS

No notable change to highlight in this area for the year under review.

Below is the overview from the site of the Ministry of the Interior of the situation concerning applicable law:

<table>
<thead>
<tr>
<th>Citizens of the European Economic Area (EEA) or Switzerland have the right to come to France to look for work. However, this right is not open to Bulgarian, Romanian or Croatian citizens. A job-seeker must fulfill the necessary steps at the Pôle Emploi (French public employment service) and can, under certain conditions, receive unemployment benefits. The Pôle Emploi and the European Eures network can enable him to find work more easily.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Right of residence to look for work</strong></td>
</tr>
<tr>
<td>A European or Swiss citizen can come to France to look for work here for a period of 6 months. He must register as a job-seeker as soon as he arrives. Beyond this period of 6 months, if he has not found work he can be obliged to leave France unless:</td>
</tr>
<tr>
<td>he can prove that he is still actively looking for work;</td>
</tr>
<tr>
<td>and that he has genuine chances of being recruited.</td>
</tr>
<tr>
<td><strong>Pôle Emploi procedures</strong></td>
</tr>
<tr>
<td>The person in question must register with the office of the Pôle Emploi of his place of residence.</td>
</tr>
<tr>
<td><strong>Help with looking for work</strong></td>
</tr>
<tr>
<td>The offices of the Pôle Emploi can help the job-seeker to look for work. Moreover, the job-seeker can consult the database of vacancies on the Eures website. The Eures network brings together employment agencies in European countries to exchange vacancies that are likely to interest job-seekers in other countries.</td>
</tr>
</tbody>
</table>

3. OTHER ISSUES OF CONCERN: RETURN OF EUROPEAN CITIZENS

Several aspects of the removal of European citizens arose in the jurisprudence, in application of the latest status of the applicable legislation on the subject.

In a principle preamble, the Council of State identified the method for evaluating the legislation from 2011, application of which the judges have now recognised. Thus, in a judgment of 24 April 2013, no. 351460, Radu versus Ministry of the Interior, the judges of the Council of State were able to stipulate that, ‘Compliance with the requirements imposed by Articles 28 and 30 of Directive 2004/38, involving the obligation to give prior consideration to the personal situation of the person in question and the justification for enforced removal
decisions, must be evaluated with respect to the provisions and applicable rules of internal
law, which had to be regarded, even before the insertion of Article L. 511-3-1 of the CE-
SEDA by Law no. 2011-672 of 16 June 2011, as guaranteeing their complete transposition,
since, on the one hand, the obligation to leave French territory is a measure that must, as
such, be justified in application of the rules enacted, for all administrative decisions, by the
first Article of Law no. 79-587 of 11 July 1979, and should be, since it involves nationals of
the Member States of the European Union in application of the second paragraph of I of
Article L. 511-1 of the CESEDA, in its version then in force and since, on the other hand, the
passing of return decisions is never of an automatic nature since it is up to the administrative
authority, in all cases, to carry out an examination of the personal and family situation of the
foreigner and to take into account potential circumstances forming an obstacle to the ado-
pition of a removal measure with respect to that person’.

• Abuse of law

In accordance with the objectives of Directive 2004/38, by Article 39 of the Law of 16 June
2011, codified in Article L. 511-3-1 of the Code for the Entry and Residence of Foreigners
and the Right of Asylum, the legislator stipulated that, ‘The competent administrative au-
thority can, in a reasoned decision, force a national of a Member State of the European Uni-
ion, of another State party to the European Economic Area agreement or of the Swiss Con-
federation, or a member of his family, to leave French territory if it observes: / (...) / 2. Or
that his residence constitutes an abuse of law. An abuse of law exists when stays of less than
three months are extended with the aim of remaining on the territory although the conditions
required for a period of stay of longer than three months have not been fulfilled. An abuse of
law also exists in the event of residence in France with the principle aim of benefiting from
the social security system (...) ’. The grounds linked to the fact of benefiting from the social
assistance system seems fundamental in cases involving an abuse of the law.

‘In a judgment dated 30 October 2012, the Administrative Court of Appeal of Bordeaux finds that
the definition of abuse of the law retained by French law covers only situations characterised, on
the one hand, by objectively putting the aims of European legislation on free movement on hold
and, on the other hand, by the desire to benefit from the latter by using trickery. It deduces, with
respect to the jurisprudence of the Court of Justice, that this definition is compatible with Union
law’.

An examination of the jurisprudence provided by the Administrative Court of Appeal of
Douai reveals the state of French jurisprudence on this concept of the abuse of law.

In a judgment of 29 November 2012, the judges of the Administrative Court of Appeal of
Douai justified the conformity of this Article with Article 35 of Directive 2004/38, by stipu-
lating that this Article 35 does not confine abuses of law to marriages of convenience.

The Administrative Court of Appeal of Douai has taken cognisance of many cases applying
this Article in judgments handed down in late 2012 and in 2013. Some judgments re-

2 Administrative Court of Appeal of Bordeaux, 30 Oct. 2012, nos. 12BX00601, 12BX00602, 12BX00603,
12BX00604, 12BX00605, Yankov et al.; La Semaine Juridique Administrations et Collectivités territoriales no. 6,
4 February 2013, 2028, ‘Éloigner un citoyen européen abusant de son droit au séjour est compatible avec le droit
de l’Union’ (Removing a European citizen abusing his right of residence is compatible with Union law).
3 Administrative Court of Appeal of Douai, 29 November 2012, no. 12DA00773, no. 12DA00772.
jected the application of this Article after a detailed analysis of the return trips of the parties in question:

- Administrative Court of Appeal of Douai, 28 May 2013, no. 13DA00079

Mr. C...B..., a Romanian national, born on 20 November 1986, appeals the judgment of 22 November 2012 in which the Administrative Court of Lille rejected his request for repeal of the decision, dated 3 November 2011, of the Prefect of Pas-de-Calais, obliging him to leave French territory within thirty days and deciding that he could be officially deported to the country whose nationality he holds.

In this case, the judges, after having explained the specific situation of the person in question, establish that the Prefect wrongly applied these provisions relating to the abuse of law: ‘in order to impose on Mr. B... an Obligation to Leave French Territory within a period of thirty days, the Prefect of Pas-de-Calais took as a basis the fact that the applicant stated that he entered France for the last time three or four months before the disputed decision, did not have his own resources and that he extended his stays in France in order to receive social assistance; that it is however evident from the documents in the file that the applicant stated that he entered France three to four months before his questioning, that he made a return trip between France and Romania and came back to France on 26 October 2011, that he regularly makes return trips between France and Romania, that he generally stays two weeks in France each time, that he has already received repatriation assistance and that he does not have resources; that these return trips are not such that they establish, in this case, that Mr. B... has organised his short stays and his movements in order to be able to remain illegally on French territory without the conditions for a stay of more than three months being fulfilled; that, while the administrative authority also emphasises, in its decision, that Mr. B... does not practise a professional activity and does not provide proof that he has his own income, these other circumstances do not additionally, in this case, establish that the disputed stay by the person in question in France is motivated by the desire to benefit from the national social assistance system’. Under these conditions, the Prefect of Pas-de-Calais, in taking the disputed decision, has inaccurately applied the provisions of 2. of Article L. 511-3-1 of the Code for the Entry and Stay of Aliens Foreigners and the Right to Asylum.4

- Administrative Court of Appeal of Douai, 16 May 2013, no. 12DA01094

In order to hand down to Mr. B..., of Romanian nationality, an Obligation to Leave French Territory within thirty days, the Prefect of Nord found that the person in question had made frequent return trips between France and Romania; that it is evident however from the official reports of the hearing of the person in question that the latter never acknowledged having made such trips; that the Prefect of Nord does not provide any element that would prove these return trips; that while the administrative authority also emphasises, in its decision, that Mr. B... does not practise a professional activity and does not provide proof that he possesses his own income, these other circumstances are not also, in this case, of a nature to establish that the disputed stay by the appellant in France is motivated by the desire to benefit from the national social assistance system; that, under these conditions, the Prefect of Nord, in taking the disputed decision, inaccurately applied Article L. 511-3-1 of the CESEDA.

4 CESEDA.
In order to hand down to Mr. B..., of Romanian nationality, an Obligation to Leave French Territory within thirty days, the Prefect of Nord found that the person in question made frequent return trips between France and Romania; that while Mr. B... himself mentioned that he had made ‘frequent return trips’ at the time of his hearing on 28 September 2011, it is however clear from the official report of this hearing as well as from the repeated assertions by the person in question that he stayed in France for less than three months in the year 2010, that he entered France again in February 2011 and left again in June of the same year, after having served a four-month prison sentence, and that he had again been resident on French soil for one-and-a-half months on the date of the disputed decision; that these return trips between France and Romania do not serve to establish that Mr. B.... organised his short stays and his movements in order to be able to remain illegally on French territory without the conditions for a stay of more than three months being fulfilled; that, while the administrative authority also emphasises, in its decision, that Mr. B... is not practising a professional activity and does not provide proof that he possess his own income, these other circumstances do not also, in this case, establish that the disputed stay by the appellant in France is motivated by the desire to benefit from the national social assistance system; that, under these conditions, the Prefect of Nord, in taking the disputed decision, inaccurately applied Article L. 511-3-1 of the CESEDA.

In order to impose on Ms. B.... an Obligation to Leave French Territory within thirty days, the Prefect of Pas-de-Calais took as a basis the fact that the applicant stated that she entered France for the last time on 2 January 2012, that she had no resources, that she lived in France in order to receive social assistance and that she had renewed return trips between France and Romania; that it is however evident from the documents in the file that Ms. B... stated that she entered France for the last time one month before the disputed decision in order to visit one of her sons in prison; that although she acknowledged having extended her stays in France and having received repatriation assistance on 20 October 2009, these elements are not such that they establish that the disputed stay by Ms. B... in France is motivated by the desire to benefit from the national social assistance system; that, under these conditions, the Prefect of Pas-de-Calais, in taking the disputed decision, inaccurately applied the provisions of Article L. 511-3-1 of the Code for the Entry and Stay of Aliens and the Right to Asylum’.

By contrast, some judgments accept an exact assessment of this Article by the Prefects:

It is evident from the documents in the file that, on 20 November 2011, Mr. B.... stated, during his police hearing, with the help of a translator, that he had resided in France for two years, that he had no fixed abode and no income; that he contributed no elements liable to bring into question the accuracy of his statements; that, consequently, the first judges lawfully considered that, in believing that the applicant fell within the framework of the aforementioned provisions of Article L. 511-3-1 of the CESEDA, the Prefect of Pas-de-Calais was not using materially inaccurate facts as his basis and had not committed an error in law.

For judgments within the same sense from other Administrative Courts of Appeal: Administrative Court of Appeal of Lyons, 30 May 2013, no. 12LY02929, no. 12LY02930, no. 13LY00578; no. 13LY00493.
The judges then examined the situation of the person in question with regard to Article 8 ECHR, justifying the decision of the Prefect with the possibility of leading a family life in Romania.

- Administrative Court of Appeal of Douai, 28 May 2013, no. 13DA00073
In order to impose on Ms. D... an Obligation to Leave French Territory within thirty days, the Prefect of Pas-de-Calais found that the person in question entered France for the last time on 25 December 2011, made return trips between France and Romania, as well as stays in France of three months with the aim of receiving social assistance; that it effectively emerges from the official reports of the hearing of the person in question that the latter acknowledged having made these return trips, having entered France for the first time two to three years before the disputed decision, having benefited from repatriation assistance in order to execute a previous removal measure dated 3 November 2011, having received 250 euros in social assistance and being without resources; that, under these conditions, the applicant represents a burden on the social assistance system and does not meet the conditions envisaged in Article L. 121-1 for the receipt of a right of residence of more than three months; that, consequently, the Prefect of Pas-de-Calais was legally able to view the presence in France of Ms. D... as constituting an abuse of the law.

- Administrative Court of Appeal of Douai 28 May 2013, no. 13DA00074
In order to hand down to Ms. A... an Obligation to Leave French Territory within thirty days, the Prefect of Pas-de-Calais took as a basis the fact that the person in question stated that she entered France for the last time on 5 December 2011, that she extended her stays in France, that she had no resources and wanted to live on French territory by begging and social assistance; that it is evident from the documents in the file that Ms. A... effectively stated that she entered France for the last time on 5 December 2011, that she regularly made return trips between France and Romania, that she had received repatriation assistance, that she lived by begging and on social and humanitarian assistance; that, under the these conditions, the applicant represents a burden on the social assistance system and does not fulfil the conditions envisaged in Article L. 121-1 for the granting of a right of residence of more than three months; that, consequently, the Prefect of Pas-de-Calais was legally able to view the presence in France of Ms. A... as constituting an abuse of the law.

- Administrative Court of Appeal of Douai, 28 May 2013, no. 13DA00076
In order to impose on Ms. A... an Obligation to Leave the Territory within thirty days, the Prefect of Nord took as a basis the fact that the applicant stated that she entered France for the last time five days before the disputed decision and that she had no resources, that it is evident from the documents in the file that the applicant effectively stated that she entered France for the last time five days before the disputed decision, that she acknowledged that she was the subject of two previous Obligations to Leave French Territory, dated 28 September 2011 and 15 November 2011, the legality of which was confirmed by a court judgment dated 31 January 2013, that she indicated that she came to France in order to undergo a surgical operation and, therefore, to benefit from the health coverage offered by the French social assistance and health insurance systems; that, under these conditions, the applicant represents a burden on the social assistance system and does not fulfil Article L. 121-1 of the

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Code for the Entry and Stay of Aliens and the Right to Asylum in order to enjoy a right of residence of more than three months; that, consequently, the Prefect of Nord was legally able to view the presence of Ms. A... in France as constituting an abuse of the law.

- Administrative Court of Appeal of Douai 28 May 2013, no. 13DA00078
In order to impose on Mr. A... an Obligation to Leave the Territory within thirty days, the Prefect of Pas-de-Calais took as a basis the fact that the applicant stated that he entered France for the last time two months before the disputed decision, that he had no resources, that he lived in France and extended his stays there in order to receive social assistance; that it is evident from the official report of the hearing that Mr. A. acknowledged that he left Romania two months before the disputed decision, that he returned there one week before this decision and went back to his country of origin every three months ‘in accordance with French law’, he also stated that he received the sum of 300 euros per month in social assistance; that, under these conditions, the applicant represents a burden on the social assistance system and does not fulfil the conditions envisaged in Article L. 121-1 of the Code for the Entry and Stay of Aliens and the Right to Asylum for the granting of a right of residence of more than three months; that, consequently, the Prefect of Pas-de-Calais was legally able to view the presence of Mr. A... in France as constituting an abuse of the law.

- Administrative Court of Appeal of Douai 28 May 2013, no. 13DA000778
In order to impose an Obligation to Leave French Territory on Mr. B..., the Prefect of Nord took as a basis the fact that the person in question stated that he entered France for the last time in August 2011, that he made frequent return trips between France and Romania, that he did not practise a professional activity and received 180 euros in social assistance per month; that it is evident from the official report of the hearing that the applicant acknowledged that he made frequent return trips between France and Romania, that he was without resources and received a sum of 180 euros per month in social assistance, an amount that is above that which would be paid to him in Romania; that, under these conditions, the applicant represents a burden on the social assistance system and does not fulfil the conditions envisaged in Article L. 121-1 for the granting of a right of residence of more than three months; that, consequently, the Prefect of Nord was legally able to view the presence of Mr. B... in France as constituting an abuse of the law.

It should also be emphasised that not all removal decisions concern solely Romanian or Bulgarian nationals. Therefore, in this judgment, the Administrative Court of Appeal of Bordeaux, 12 July 2012, no. 11BX03318, justifies the removal of a Dutch national.

It is evident from the documents in the file that, in order to deny the applicant the right to maintain his residence in France, the Prefect, applying the Circular of 10 September 2010, took as a basis the fact that he had resided in France for more than three months, that his spouse was in an irregular situation on French territory and that he did not fulfil the condition envisaged by the aforementioned provisions of 2. of Article L. 121-1; that the circumstance that the disputed decision referred to in this article includes a clerical error in that it mentions that Mr. A does not fulfil the conditions of Article L. 121-2 instead of Article L. 121-1-2 does not affect its legality. It is not disputed that, on the date of the disputed deci-

8 For similar conclusions: Administrative Court of Appeal of Douai 28 May 2013, no. 13DA00080; no. 13DA00072.
Mr. A had resided for more than three months in France and received the Workers Solidarity Income as well as family allowances and a housing allowance; that thus, and although it is neither established nor even alleged that his state of health forms the basis for this situation and that he would be entitled to Article R. 121-6 of the Code for the Entry and Stay of Aliens and the Right to Asylum, the Prefect was able, without committing either an error in law or an obvious error in assessing his personal situation, to refuse to uphold his right of residence, Article L. 121-2 of the Code for the Entry and Stay of Aliens and the Right to Asylum.

**Procedure: respect for fundamental rights**

*The Administrative Court of Lyons, in a judgment dated 28 February 2013, no. 1208055,* imposes respect for the fundamental rights of procedure during the adoption of removal decisions regarding citizens of the EU.

The judges emphasise that the right to be heard prior to any decision that substantially and unfavourably affects the interests of its recipient, which constitutes one of the components of the right of defence, which forms part of the general principles of European Union law of the same value as the treaties, is applicable to the administrative bodies of Member States in a situation governed by the law of the European Union; that this is the case for an Obligation to Leave French Territory taken with respect to a citizen of the European Union, which limits the fundamental and individual right to movement and to stay on the territory of the other Member States, conferred directly by the treaties upon every citizen of the European Union, exercised within the conditions and limits envisaged specifically by the aforementioned Directive 2004/38/EC.

Respect for the right to be heard is applicable even though the relevant Community regulations do not explicitly envisage this formality; even though it guarantees everyone the possibility to make his point of view known, in a useful and effective way, during the administrative procedure in order for the competent authority to be able to take into account all the elements relevant to justifying its decision.

The judges consider that, with the exception of emergency situations where the implementation of this right risks compromising the efficiency of the removal measure, the right to be heard implies, on pain of depriving the foreigner of a guarantee, that the latter be informed in good time that he is likely to be the subject of an Obligation to Leave French Territory at the end of the examination of his right of residence and that he be placed in a position, within an adequate time, to present his observations on the possibility of this decision as well as on its methods of execution.

It is not evident from the documents in the file, specifically not from the ‘examination sheet regarding the right of residence’ used by the police for the hearing involving Ms. D., that the latter was informed that she was likely to be the subject of an Obligation to Leave the Territory within thirty days for Romania and that she could present her observations on these decisions; that, thus, and in the absence of any specific emergency established by the Prefect of Rhône, Ms. D. has been deprived of the guarantee embodied in the right to be heard, without the Prefect being usefully able to assert that she does not raise any elements liable to lead to a different decision; that, consequently, and without the need to examine the other grounds for the application, Ms. D. is justified in requesting the repeal of the decisions
of 23 August 2012, in which the Prefect of Rhône ordered her to leave French territory within a period of thirty days and established Romania as the country of destination.

Administrative Court of Appeal of Versailles, 22 November 2012, no. 10VE03216
The judges find that it is evident from the documents in the file that the decision to escort to the border taken on 20 August 2010 by the Prefect of Yvelines with respect to Mr. A did not grant the latter any deadline within which to leave French territory, nor did it mention any circumstance, taking the emergency into consideration, liable to justify the lack of any deadline; that this decision was thus taken in Article R. 512-1-1 of the CESEDA and must be repealed as well as, consequently, the separate decision establishing the country of destination; that, consequently, Mr. A is justified in maintaining that, in the disputed judgment, the magistrate appointed by the President of the Administrative Court of Versailles wrongly rejected his conclusions, directed at these decisions.

• Threat to law and order and public safety

Administrative Court of Appeal of Paris, 1 February 2013, no. 12PA01733
The judges find that it is evident from the documents in the file, specifically the official report drawn up on 25 January 2012 by the police, that Ms. A..., a Romanian national, is involved in prostitution, that she was apprehended and placed in police custody twice for active soliciting; that she however disputes that she indulged in soliciting activities and that no prosecution was initiated; that in any event these facts are not sufficient, in the absence of special circumstances, to establish that her presence in France constituted a genuine, present and sufficiently serious threat to a fundamental interest of French society and that her removal was of an urgent nature on these grounds; that it follows from this that the Prefect of Vienne could not legally refuse, based on the aforementioned provisions of Article L. 511-3-1 of the CESEDA, to grant Ms. A a deadline for voluntary departure. The decisions of the Prefect to place Ms. A in detention and to refuse to grant her a voluntary departure deadline are repealed.

Administrative Court of Appeal of Nantes, 14 February 2013, no. 12NT01961
The judges find that it is evident from the documents in the file that Mr. B..., a Romanian national not subject to the visa obligation, was apprehended on 20 September 2011, in other words less than three months from his arrival in France, in the act of gang robbery of hi-fi and computer equipment; that he acknowledged these facts during his police hearing on 21 September 2011; that, under these conditions, with regard to all the circumstances of the case, the Prefect of Loire-Atlantique, while not denying the principle of the presumption of innocence even though no punitive sentence had been passed with respect to Mr. B...., was able to consider that the behaviour of the latter represented a genuine, present and sufficiently serious threat to public safety, which constitutes a fundamental interest of society and, consequently, to pass the disputed measure involving the Obligation to Leave French Territory.
4. **FREE MOVEMENT OF ROMA WORKERS**

The stigmatisation of the Roma population in the French public and political debate has abated somewhat, despite the lack of change in the policy of the Ministry of the Interior. The communication from the new Minister does not specifically relate to this population.

*Administrative Court of Appeal of Douai, 29 November 2012, no. 12DA00776*

As a result of the numerous returns of Roma nationals of Romanian nationality on joint flights to Romania, a possible infringement of Article 4 of additional protocol no. 4 to the ECHR was raised before the French judges. These grounds were rejected on the basis of the individual examination made of each personal situation before handing down an Obligation to Leave French Territory with respect to a Romanian national.
Chapter II
Members of the Family

1. THE DEFINITION OF FAMILY MEMBERS AND THE ISSUE OF REVERSE DISCRIMINATION

Law no. 2013-404 of 17 May 2013 making marriage possible for same-sex couples in fact modified the definition of family members, since the same-sex spouse of a citizen of the European Union will from now on have the same rights as a spouse of the opposite sex.

No other legislation regarding family members was adopted in the year under review.

The website of the Ministry of the Interior presents a fairly wide view of family members, wider than would be assumed from the circulars by the previous government:

<table>
<thead>
<tr>
<th>A citizen of the European Economic Area (EEA) or Switzerland can be accompanied to France by: his spouse, children below the age of 21 or dependent and direct dependent ascendants. Children and direct dependent ascendants of the spouse are also affected. Residence by any other family member (co-habiting partner, for example), regardless of his or her nationality, is also possible. However, this is not an automatic right. Several categories of beneficiary exist.</th>
</tr>
</thead>
</table>
| **Dependent or person belonging to household**
A person who is dependent on or belongs to the household of a European citizen (apart from spouse, child or ascendant) in the country of origin can apply for residence in France.
For example, this could be a brother, sister, uncle or aunt.
His financial and social situation, his need for material support and his acceptance by the European citizen are examined.
In the event of a favourable opinion by the administration, an EU residence permit – all professional activities – is issued.|
| **Seriously ill person**
A person who has serious health problems, requiring urgent and personal support from a European citizen, can obtain a right of residence in France following an examination of his situation.
If necessary, a doctor from the regional health agency that has territorial competence or, in Paris, the head physician of the medical department of police headquarters, gives an opinion on his medical file.
In the event of a favourable decision by the administration, an EU residence permit – all professional activities – is issued.|
| **Partner of European citizen**
A partner with whom the European has an authenticated and long-term relationship can be issued with an EU residence permit – family member – all professional activities.
The relationship may be based on:
a Civil Solidarity Partnership (PACS) or foreign equivalent;
or cohabitation confirmed by a certificate and proof of conjugal life.
The minimum duration of conjugal life required (in France and/or in another country) is, subject to exceptions:
one year for partners bound by a PACS or foreign partnership;
5 years for cohabiting partners.|
| **Non-European parent of a European dependent minor**
A non-European father or mother, who is in charge of a European minor, can receive:
a carte de séjour visitor’s residence permit; |
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or a carte permettant l’exercice d’une activité professionnelle permit allowing the practice of a
professional activity (salaried, non-salaried, etc.) if he has obtained the required authorisation.
This person must fulfil the following 2 conditions:
full responsibility for the child;
possession of sufficient resources and social security coverage for himself and the child.

Questions?
Prefecture
For applicants with domicile outside Paris; for all matters.
Paris police headquarters
Sub-prefecture
French embassy or consulate abroad

2. ENTRY AND RESIDENCE RIGHTS, ACCESS TO WORK

Situation of applicable law

Below is the explanation from the web site of the Ministry of the Interior on the rights of
family members, providing clarification of current law for the persons in question:

A European citizen can be accompanied or joined in France by his close family members, regardless of their nationality. These members are the spouse, children below the age of 21 or dependent and those of the spouse, direct dependent ascents and those of the spouse. Students, however, cannot bring their ascendants.

Nationalities and persons affected
This page concerns citizens of the European Economic Area (EEA) and Switzerland, with the exception of Bulgarians, Romanians and Croats, who are subject to special rules des Bulgares, Roumains et Croates qui sont soumis à des règles particulières.
In order to bring his family, a European or Swiss citizen has to have the right of residence in France (as a worker, non-worker or student: travailleur, inactif or étudiant).
His family members can be of European (or Swiss) nationality or non-European. The formalities regarding their residence in France, however, are different depending on their nationality and whether they are European or not.
Note: d’autres membres de famille other family members can also be authorised to reside in France (cohabiting partner, partner, etc.) but this is not an automatic right.

Residence of European family for the first 5 years
Formalités for settlement in France
European or Swiss family members must hold an identity card or a valid passport.
They must not pose a threat to law and order.

Optional residence permit
Adult family members residing in France for less than 5 years, can demander une carte de séjour, apply for an EU residence permit – family member – all professional activities.
This residence permit is not compulsory. It is valid for the same period as that of the citizen they are accompanying or joining in France or, if he has not applied for this, the period to which he is entitled, up to a maximum of 5 years.

Residence of non-European family for the first 5 years
Compulsory residence card
Adult non-European family members (or aged over 16 if they wish to work) must hold a residence
card. They must apply for it within 3 months of arriving in France. 

Within a maximum period of 6 months, a residence permit for a family member of a European Union citizen is issued, subject to the absence of any threat to law and order. This permit is valid for the same period as that of the European citizen or, if he has not applied for this, the period to which he is entitled, up to a maximum of 5 years.

Extension of card
This is compulsory and must be applied for within the 2 months preceding its expiry.

Maintenance of right of residence of the family
The right of residence of the family ends with that of the citizen being accompanied or joined. However, in some situations and under some conditions, the family can stay in France (divorce, departure from France or death of the citizen being accompanied, etc.).

After 5 years of residence
Permanent right of residence
Family members who have resided legally and without interruption in France for the previous 5 years with the European citizen are granted a permanent right of residence. This permanent right of residence affects all families, European and non-European. Once acquired, this right enables them to stay permanently in France, subject to the absence of any serious threat to law and order.

Continuity of residence and proof of right of residence
The continuity of residence over 5 years can be demonstrated by any means (for example, documents from governments or private bodies).

Some absences are authorised, specifically:
- temporary absences not in excess of 6 months per year;
- absences in order to fulfil military obligations;
- or an absence of a maximum of 12 consecutive months because of serious illness or professional secondment.

The continuity of residence is interrupted by the execution of any removal measure. The right of residence for the preceding 5 years can also be demonstrated by any means (documents in the spouses’ names, etc).

Loss of permanent right of residence
A person who acquires a permanent right of residence loses it if he is absent from France for more than 2 consecutive years.

Derogation for families of workers
Regardless of nationality, a worker’s family can obtain a permanent right of residence in some situations, before the aforementioned 5-year deadline. This is the case, for example, when a worker who is active in France dies as the result of an industrial accident.

Permanent residence permit
European family members and similar can demander en préfecture une carte de séjour apply to the Prefecture for an EU residence permit – permanent residence – all professional activities. This permit is not compulsory. It is automatically renewable.
Non-European family members are obliged to apply to the Prefecture for an EU residence permit – permanent residence – all professional activities. They must do so within the 2-month period preceding the 5 years of uninterrupted residence.
Renewal of this permit must be applied for within the 2-month period preceding its expiry.
Jurisprudence

Faced with administrative practices that are not yet in conformity with Directive 2004/38, the judges took cognisance of cases enabling the rights of family members of EU citizens to be guaranteed:

Administrative Court of Appeal of Bordeaux, 5 July 2012, no. 12BX00350

It is evident from the documents in the file that Mr. A, of Ecuadorian nationality, entered France legally in 2006, holding a long-stay visa in order to study, and that he was issued with a ‘student’ residence card; that he obtained a Master 2 in sciences in 2008 and a university diploma in geographic information in 2010; that, on 27 April 2011, he submitted an application for a residence card, stipulating that he had entered into a Civil Solidarity Pact on 2 April 2011 with Miss B, a Swedish national; that since this stipulation is shown on the print-out of the application for a residence card, the Prefect, who mentioned this nationality in his decision, is not in any event justified in maintaining that he was not informed of the nationality of the companion of Mr. A; that it follows from the aforementioned provisions of Article 2.2 of Directive 2004/38 that the partner with whom a citizen of the Union has entered into a registered partnership is among the family members of a citizen of the Union. Now, the Prefect applied to Mr. A the provisions of the CESEDA pertaining to the general system for foreigners, not the articles relating to family members of citizens of the EU (Articles L. 121-1 and L. 121-3 of this Code). The judges therefore find that the Prefect committed an error in law.

However, the Prefect maintains that the application made by Mr. A was fraudulent in nature since no cohabitation existed between the partners on the date of the submission of this application and takes as his basis a letter sent on 17 October 2011 by Miss B to his offices. However, it is evident from this letter that, at the beginning of April 2011, Miss B moved in with Mr. A and that, despite steps taken in Sweden to arrange her removal, they lived together; that this cohabitation is confirmed by rent receipts for the months of June, July and August 2011. The judges find that the Prefect, who contributes no evidence in support of his allegations of fraud, thus establishes neither the absence of shared residence nor the absence of cohabitation of the couple on the date of his decision, nor, incidentally, on the date of the application for a residence card. The Prefect is therefore charged with issuing a temporary residence permit to Mr. A.

Administrative Court of Appeal of Versailles, 11 October 2012, no. 11VE03952

The judges find that it is evident from the documents in the file that Mr. A, at least since 1998, has been the companion of a Portuguese national, with whom he lived in Portugal before entering France in 2000; that a child of Portuguese nationality was born of their relationship, recognised by his father at his birth in 1998; that the arrival in France of Mr. MONIZ-TAVARES was followed, in 1992, by that of his companion and his son. The provisions of Article L. 122-1 of the CESEDA, passed in transposition of Directive 2004/38, grant a permanent right of residence on French territory to the companion of Mr. A; that, however, Mr. A, who entered into France before the arrival of his companion and has not entered into a marriage with her, cannot be issued with a residence card on the basis of the provisions of Article L. 121-3 of the CESEDA, which are only applicable to the spouse of a Community national, accompanying or joining the latter in France.
However, the judges emphasise that Mr. A does establish that he has had habitual and continuous residence in France alongside his companion and his son since at least 2006, as is confirmed by the documents produced in appeal; that his son, aged twelve at the time of the disputed decision, has been at school in France since September 2003; that his companion practises a professional activity; that, consequently, under the circumstances of the case, the decision by the Prefect of Seine-Saint-Denis to reject the application by Mr. A for a residence permit, which, incidentally, incorrectly mentioned that the applicant was not the father of the child, represented a disproportionate attack on the right of the person in question to respect for his private and family life with regard to the aims for which it was taken; that this decision and those subsequent decisions forcing him to leave French territory for his country of origin thus ignored the stipulations of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the provisions of 7. of Article L. 313-11 of the CESEDA.

Administrative Court of Appeal of Nancy, 4 April 2013, no. 12NC01897
The appeal judges decide to adopt the grounds used by the first judges, who believed that, on the date of the disputed decision, the spouse of the applicant was covered by an employment contract as a temporary worker; that the Prefect therefore marred his decision with an error in law in believing, on the grounds that the employment contracts given to the person in question were established for periods that, taken in isolation, were less than one year; that the situation of the spouse of the applicant should be evaluated with regard to point 2 of Article L. 121-1 of the Code for the Entry and Stay of Aliens and the Right to Asylum and specifically the sufficient nature of his resources and not with regard to point 1 of this Article, relating to his situation as a professional and that, consequently, the administration could not deny the person in question, on the grounds that her spouse, in his capacity as a national of the European Union, no longer enjoyed a right of residence, the extension of the document for which she was applying;

The result of all of the above is that the Prefect of Haut-Rhin is not justified in maintaining that, in the disputed judgement, the Administrative Court of Strasbourg wrongly repealed its decision to refuse to issue a residence card to Ms. A, forcing her to leave French territory within a period of thirty days and confiscating her passport.

In a judgment of the Administrative Court of Appeal of Versailles of 26 March 2013, no. 12VE01287, the judges consider that the circumstance that the Cape Verdian applicant is accompanying her son, a Portuguese national minor, does not grant her any right of residence in France.

3. IMPLICATIONS OF THE ECJ JUDGMENTS

The Administrative Court of Lyons, in a judgement dated 24 January 2013, no. 12LY01534, recalls the jurisprudence of the ECJ and applies it to the case in question.

It is evident from the documents in the file that Ms. C..., a Tunisian national born on 11 May 1967 in Tunisia, entered France during the summer of 2011, accompanied by her spouse and their three minor children, all four of Belgian nationality; that, on 30 November 2011, she applied to the Prefect of Rhône for the issue of a residence card in her capacity as the spouse of a Community national, on the basis of the provisions of point 4 of Article L.
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121-1 and Article L. 121-3 of the CESEDA; that, in the disputed decision, the Prefect of Rhône rejected this application on the grounds that her spouse could not be regarded as holding a right of residence on French territory since he does not practise a professional activity, is not registered with an institution to study or receive vocational training and cannot prove that he possesses, for himself and his family members, sufficient resources so as not to become a burden on the social assistance system, although he had submitted an application for the Workers Solidarity Income.

The judges find that the spouse of Ms. C.... did not practise a professional activity in France on the date of the disputed decision; that he was not therefore covered by the scope of point 1 of Article L. 121-1 CESEDA; that, moreover, while the file contains a payslip establishing that he was in salaried employment from 7 to 30 November 2011 as a general worker in a grocery owned by Ms. B...C..., this document does not on its own establish that Mr. C... was covered by the scope of the aforementioned provisions of the CESEDA; that, in addition, while her spouse, who has not incidentally been the subject of any removal measure, registered with the Pôle Emploi on 9 November 2011 in order to look for a job as head of manufacturing for non-woven products or head of warehousing operations, in line with the positions he had held in Tunisia for several years, he produces no proof that such jobs had been offered to him on the date of the disputed decision, nor that, on the date of the disputed decision, he was continuing to look for salaried work in this field and had genuine chances of being recruited, while the documents placed in the file lead to the opposite conclusion, revealing his plan to create a fast food business in March and April 2012, as well as payslips and employment contracts relating to casual salaried jobs in maintenance, security or fast food, during the months of August and September 2012.

On the other hand, the judges stress that Ms. C... maintains that her spouse possessed, for himself and for his family members, sufficient resources so as not to become a burden on the social security system; that in order to back up these assertions, she produces proof establishing that the couple possessed, in February 2012, almost 29,000 euros in savings in a deposit account and other savings accounts and maintains that her family was housed free of charge by a close family member; that it is not however evident from the documents in the file that Mr. C... or his spouse possessed regular sources of income to meet the needs of the household, consisting of five persons, since neither of them was practising a professional activity and on 18 August 2011, in other words once he arrived on French territory, Mr. C... had applied to receive the Workers Solidarity Income for himself and a certificate was produced from the Family Allowances Office mentioning that the latter received, for the month of December 2011, the Workers Solidarity Income, family allowances and a family supplement, making an overall amount of 886.43 euros; that thus, under the circumstances of the case, with regard to the short duration of residence in France of the spouse of Ms. C..., who, since his arrival on French territory, has relied on national solidarity to meet the needs of his household by applying for and obtaining the Workers Solidarity Income and had no regular source of income apart from the non-contributory allowances and benefits paid by the social assistance system, upon which his household therefore now posed a burden as of the date of the disputed decision, Ms. C... is not justified in maintaining, notwithstanding the savings her household possessed, that her spouse could be regarded as the holder of a right of residence in France within the meaning of point 2 of Article L. 121-1 of the CESEDA;

As a result of the above, Ms. C... is not justified in maintaining that she fulfilled the conditions established in point 4 of Article L. 121-1 of the CESEDA in order to be granted a
right of residence in France for a period of longer than three months in her capacity as spouse of a Community national.

In their 7th preamble, the judges recall the situation of EU law: ‘Whereas, thirdly, under the terms of Article 20 of the Treaty on the Functioning of the European Union: ‘1. Citizenship of the Union is introduced. A citizen of the Union is any person who holds the nationality of a Member State. Citizenship of the Union is in addition to national citizenship and does not replace it. / 2. Citizens of the Union enjoy the rights and are subject to the obligations envisaged in the treaties. They have, among others; / a) the right to move and to reside freely on the territory of the Member States; / (...) These rights are exercised under the conditions and within the limits defined by the treaties and by the measures adopted in application of the treaties.’; that it follows from the judgment of the Court of Justice of the European Union of 8 March 2011, Grand Chamber, case C-34/09, Zambrano v. National Employment Office, ‘that Article 20 of the Treaty on the Functioning of the European Union must be interpreted in the sense that it prevents a Member State, on the one hand, from denying a national of a third-party State, who is responsible for his young children, who are citizens of the Union, residence in the Member State of residence of the latter and of which they hold nationality and, on the other hand, from denying the said national of a third-party State a work permit, in so far as such decisions would deprive these children of the effective benefits of the essence of the rights associated with the status of citizen of the Union’, and that it follows from the judgment of the Court of Justice of the European Union dated 17 September 2002, case C-413/99, Baumbast v. Secretary of State for the Home Department, that: ‘1) The children of a citizen of the European Union who have settled in a Member State while their parent exercised rights of residence as a migrant worker in this Member State have the right to stay there in order to pursue courses in general education, in accordance with Article 12 of Regulation (EEC) no. 1612/68 of the Council dated 15 October 1968, relating to the free movement of workers within the Community. The fact that the parents of the children in question have since divorced, the fact that only one of the parents is a citizen of the Union and that this parent is no longer a migrant worker in the host Member State or the fact that the children are not themselves citizens of the Union are of no relevance in this respect. 2) When children enjoy a right of residence in a host Member State in order to follow courses in general education there in accordance with Article 12 of Regulation no. 1612/68, this provision must be interpreted in the sense that it allows the parent who is effectively responsible for these children, regardless of his nationality, to stay with them in order to facilitate the exercise of this right, notwithstanding the fact that the parents have since divorced or that the parent who holds the capacity of citizen of the European Union is no longer a migrant worker in the host Member State. 3) A citizen of the European Union who no longer enjoys a right of residence in the host Member State as a migrant worker can, in his capacity as citizen of the Union, enjoy a right of residence there by direct application of Article 18, paragraph 1, EC. Exercise of this right is subject to limitations and conditions attached to this provision but the competent authorities and, where appropriate, the national jurisdictions, must ensure that application of the said limitations and conditions be made with respect for the general principles of Community law and, specifically, the principle of proportionality’.

The judges then apply these provisions in finding that Ms. C.... does not establish that she applied for the issue of a residence card in her capacity as the parent of minor children who are citizens of the European Union, on which basis the Prefect of Rhône did not pronounce in the disputed decision, which is confined to refusing to issue her with the residence
card for which she applied in her capacity as spouse of a national of the European Union; that, in any event, the right of her children to reside freely on French territory is not of an absolute nature and is exercised within the limits and conditions envisaged by the Treaty on the Functioning of the European Union and the provisions made for its application, which are not fulfilled in this case, specifically because of a lack of proof concerning the persons in question, who are the recipients of universal health coverage, that they possess health insurance within the meaning of Article L. 121-1 of the CESEDA and for failing to establish that they do not pose a burden on the social assistance system; that, moreover, with regard to the very short duration of residence in France of Ms. C..., of her spouse and her three children, all five of whom were born in Tunisia, where the household was formed and where the children always lived until their arrival on French territory during the summer of 2011, France cannot be regarded as the State of habitual residence of the children of Ms. C.... on the date of the decision to refuse to issue the disputed residence card; that, finally, it is constant that the children of Ms. C.... do not possess French nationality; that, consequently, the grounds for the infringement, by the decision refusing to issue Ms. C.... with a residence card, of the provisions of Article 20 of the Treaty on the Functioning of the European Union, as interpreted by the European Court of Justice in its judgment of 8 March 2011 concerning case no. C-34/09, Zambrano v. National Employment Office, can only be quashed; that, equally, Ms. C... could not enjoy a right of residence in France in application of the judgment of the European Court of Justice of 17 September 2002, case C-413/99, Baumbast v. Secretary of State for the Home Department.
Chapter III
Access to Employment; (a) Private Sector and (b) Public Sector

A. ACCESS TO EMPLOYMENT IN THE PRIVATE SECTOR

A.1. Equal treatment in access to employment

A complex judgment of the Court of Appeal of Angers dated 18 June 2013 has underlined the difficulty of recognising professional equivalents, specifically in the medical field. The judges had to go over in detail all the aspects of the past and present professional situation of the Belgian doctor and applicant before giving a ruling. In the extensive extracts from the judgment set forth below, it is evident that the judges had to examine very closely the entire professional career of the applicant:

‘Doctor Benoît X... of Belgian nationality, is the holder, in his country, of a qualification as a medical doctor specialising in anaesthesia and resuscitation, this qualification having been obtained on 15 December 1994. He practises as an anaesthetist within the Surgical Clinic of Loire.

In a letter dated 1 January 2008, he applied to the Local Sickness Insurance Fund of Angers, which now governs the Local Sickness Insurance Fund of Maine et Loire, for authorisation to establish himself in the département of Maine et Loire for the individual and professional practice of medicine licensed in sector II, known as the ‘different fee sector’.

His application was denied in a decision by the Fund dated 2 October 2008, issued on the unfavourable opinions of the National Sickness Insurance Fund for Salaried Workers (hereafter referred to as the CNAMTS) dated 15 May and 12 September 2000 (the latter given with respect to supplementary documents) and unfavourable opinions of the National Council of the Order of Physicians dated 21 April and 3 July 2008.

Mr. X... brought his case before the Amicable Appeals Board, which rejected his appeal by decision of 12 March 2009, notified on 24 March following. He therefore appealed against this decision.

Whereas, under the terms of Article 4. 3 d) of the decision of 3 February 2005 regarding approval of the National Convention of General and Specialist Physicians:

‘Those able to apply for authorisation to implement different fees are doctors who, with effect from the effective date of the convention, are exercising a liberal professional for the first time and who hold the qualifications listed below, obtained from public institutions or at the Free Faculty of Medicine of Lille, or equivalent qualifications obtained from private institutions participating in the public hospital sector or obtained within the European Union or the Swiss Confederation:
- former chief resident of universities-registrar;
- former general or regional registrar in a hospital not part of university medical centre;
- former specialist registrar;
- practitioner-chief resident or registrar of military hospitals;
- full-time hospital practitioner whose status is dependent on Decree 84-131 of 24 February 1984;
- part-time hospital practitioner with a minimum of five years of practice in such positions, whose status is dependent on Decree 84-131 of 24 February 1984.'
Since this involves qualifications obtained in private institutions participating in the public hospital sector and those obtained within the European Union and the Swiss Confederation, their equivalence with the qualifications listed in the preceding paragraph is recognised by the Local Sickness Insurance Fund of the place of establishment of the main office of the doctor in accordance with the decisions of the National Sickness Insurance Fund.

Mr. Benoît X... fulfils the first condition in that his application relates to an initial settlement to practise a liberal profession in France; however, of the qualifications listed in Article 4.3 d), the only qualification that he can assert within the framework of the equivalence required by this text is that of chief resident of universities-registrar.

It is evident from the provisions of Decree 84-135 of 24 February 1984 regarding the status of teaching, hospital and university personnel that a chief resident of universities-registrar is a doctor who has previously acquired a speciality in a specific discipline and who exercises a clinical function associated with a university teaching and research post at a university medical centre; that he therefore assumes hospital care functions and pedagogic functions with participation in the supervision of knowledge and a research activity; Within the terms of Article 26-5 of this Decree, the title of former chief resident of universities-registrar is only conferred upon a doctor who can demonstrate two years of effective practice in this capacity.

Now, chief residents do not have the right to practise a liberal activity.

The appellant can prove that he acquired, in Belgium, a specialisation in anaesthesiology-resuscitation. In support of his position that he would hold a qualification, obtained within the European Union, equivalent to that of former chief resident of universities-registrar, he contributes two statements drawn up by Professor Y... on 19 October 2009, who firstly lists the clinics where Dr. X. was successively posted to pursue his training as a specialist in anaesthesiology-resuscitation as well as the length of these successive postings; that, secondly, he points out that Dr. X... completed 33.5 months as senior registrar of anaesthesiology-resuscitation in the Saint-Luc University Hospital anaesthesiology department and six months at the Mont-Godinne University Hospital of the Catholic University of Louvain, concluding that these are university medical centres that are officially recognised in Belgium such that, according to the person making the statement, this period as senior registrar would be the equivalent of 39.5 months practising in the capacity of chief resident in France.

But it is clear from these statements that these periods, specifically the 33.5 months spent within the anaesthesiology-resuscitation department of the Saint-Luc University Hospital in Brussels and 6 months spent at the university hospital of Mont-Godinne at the Catholic University of Louvain as senior registrar correspond to the training periods of the appellant as a specialist in anaesthesiology-resuscitation, in other words as a resident in France; that these periods of training in the specialisation cannot therefore be taken into consideration in evaluating equivalence with periods of practising the function of chief resident, which are practised after obtaining the specialist qualification.

Dr. X... also produced for the National Council of the Order of Physicians a statement by Dr. Jean-Pierre D..., head of the department of anaesthesia-resuscitation of the Inter-Hospital Association of Tournai (A.I.T), which indicates that the appellant worked in this institution from 1 May 1996 to 31 December 2004 as an anaesthetist-resuscitation specialist, that he was responsible for the orthopaedic anaesthesiology sector, that he developed a particular form of care for acute pain in the perioperative phase, that he ‘presented case conferences’ on this subject and contributed to both theoretical and practical teaching of paramedi-
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cal personnel and, especially, to the supervision of trainee anaesthetists, the clinic having
then reached agreements with the University of Liège and the department, gaining the status
of official training centre. But it is evident from the opinion expressed by the CNAMTS on
26 February 2009 that the Inter-Hospital Association of Tournai is not listed as a public uni-
versity establishment; and the appellant produces no evidence to contradict this opinion.

Moreover, under the terms of the letter that he sent to the CPAM of Angers on 1 January
2008, Mr. Benoît X... himself additionally indicated that he had always ‘been independent’,
in other words that he had practised liberally, that his competence and his concern for pro-
viding personalised and individual service had led him to claim additional moderately as-
sessed fees from his patients and that, in changing country, he wished to continue this prac-
tice; that no element established that, after having acquired his specialisation, he actually
practised the positions of university teacher for two years at the same time as his clinical
functions;

It follows from this that, exactly as the first judges held, the documents produced do not
serve to demonstrate that Dr. Benoît X..., after having obtained his qualification as a doctor
specialising in anaesthesia-resuscitation, effectively exercised, in Belgium for two years in a
public university institution, functions combining care, research and university teaching ac-
tivities and that, during these years, he participated exclusively in public service outside any
liberal activity. He does not therefore contribute proof of having obtained, within the Euro-
pean Union, a qualification equivalent to that of chief resident of universities-registrar.

A.2. Language requirements

No change in this area.

B. ACCESS TO EMPLOYMENT IN THE PUBLIC SECTOR

B.1. Nationality condition for access to positions in the public sector

Here is the explanation from the web site of the Ministry of the Interior on access to em-
ployment in the public sector for European citizens, providing clarification of the applicable
law for the salaried workers in questions, since all situations are stipulated:

A citizen of the European Economic Area (EEA) or Switzerland can work in the French public
sector. He can enter in various ways: by competition, by secondment or by contract.

Access by competition
General conditions
A European or Swiss citizen has access to all of the corps, levels of employment and posts in the
public sector, with the exception of posts involving issues of sovereignty.
In order to hold the position of civil servant, he must meet the same conditions as a French citi-
zen.

Qualification conditions for competition purposes
Diplomas, qualifications and training acquired in another country of the EEA or in Switzerland, or
experience acquired in one of these countries, can be accepted as equivalent to the French qualifi-
cation required in order to take part in some competitions.
In some cases, this equivalence is granted by law. In others, cases must be brought before equiva-
lence committees for qualifications and diplomas.
A candidate must obtain information from the administrative body organising the competition.

Access by secondment

Rules of secondment
A European or Swiss citizen can come to work in mid-career, on secondment, in the French public sector:
if he is a civil servant in another European country;
or if he holds or has held a job in an administrative body, an organisation or an establishment in another European country whose missions are comparable to those of French administrative bodies, territorial groupings and public institutions where civil servants work.
He must meet the aforementioned general conditions in order to be a civil servant.
All corps, levels of employment and posts are open to European citizens by secondment.
However, posts involving issues of sovereignty are reserved for French citizens.
The corps, levels of employment or posts to which the candidate for secondment can obtain access must correspond to the functions that person previously held. His professional experience is taken into account.

Remuneration and social protection during secondment
A person on secondment is paid by his French host administrative body.
He benefits from the social protection and pension systems applicable to the positions he holds in his host administrative body.

Integration
The secondment can be followed by integration at the request of the person, even if the particular status of the host corps or level of employment does not stipulate this or states the opposite.
A person who is authorised to continue his secondment beyond a period of 5 years must be offered integration into his host corps or level of employment by his administrative body.

Access by contract as a non-tenured officer
A European or Swiss citizen can also be recruited by public law contract into the French administration.
He must satisfy the general conditions of recruitment as a civil servant (enjoyment of civil rights, lack of criminal record, etc.).

Questions?
General information about Europe and the organisations to contact. Answers in all official languages of the European Union.
By telephone
00 800 67 89 10 11 (free from a landline in the European Union) or +32-2-299 96 96 from abroad (local call charges apply)
Monday to Friday, 9 am to 6 pm.
Instant messaging and chat
Access to messaging address adresse de messagerie and service d’assistance European Direct on-line.

B.2. Language requirements

No change in this area.
B.3. Recognition of professional experience for access to the public sector

Law no. 2012-347 of 12 March 2012 regarding to access to tenured employment and to the improvement of the employment conditions of contractual workers in the public sector and the battle against discrimination, and relating to various provisions concerning the public sector⁹, introduced a new Article L. 133-9 Code of Administrative Justice, which provides that, ‘Civil servants belonging to a corps recruited via the Ecole Nationale d’Administration, magistrates in the civil system, university professors and tenured lecturers, parliamentary assembly administrators, post office administrators, civil servants and military personnel of the State, the territorial civil service or the hospital public sector belonging to corps or levels of employment of an equivalent level, as well as civil servants of the European Union of an equivalent level, can be appointed by the Vice-President of the Council of State to practise, in the capacity as Extraordinary Junior Member, the functions vested in Junior Members for a period that may not exceed four years’.

Chapter IV
Equality of Treatment on the Basis of Nationality

1. WORKING CONDITIONS – DIRECT AND INDIRECT DISCRIMINATION

2. SOCIAL AND TAX ADVANTAGES

In a judgment dated 26 September 2012, no. 346556, the Council of State ratifies the following solution of the judges of the Administrative Court of Appeal of Versailles, 11 September 2012, no. 11VE00348, Mr. Boucherie: ‘The fact that a Member State does not allow a resident non-national to benefit from the fiscal advantages that it reserves for national residents is not discriminatory, since the provisions relating to the free movement of Community nationals does not prevent a State from subjecting those of its nationals who practise their professional activity on its territory to a heavier fiscal burden if they do not reside in that State than if they do reside there.’

2.1. General situation as laid down in Article 7 (2) Regulation 1612/68

Circular no. DSS/SD2B/2012/164 of 16 April 2012 relating to the receipt of family allowances by nationals of the European Union, the European Economic Area and Switzerland who are professionally inactive on French territory

Retention of the right to family allowances envisaged by Ministerial Circular DSS/2B/2009/146 of 3 June 2009 for nationals who received it before publication of this circular, without the condition of the legality of residence having been checked, must cease in the event of a Prefectural deportation order or the award of a benefit for repatriation assistance.

The aforementioned circular of 3 June 2009 restated the principle that the right to family allowances of nationals of the European Union, the European Economic Area and Switzerland is dependent on compliance with the condition of the legality of residence.

It also gave instructions to enable the Funds to assess and to check compliance with this condition. In derogation from this principle and for Community nationals not practising a professional activity who had received family allowances before publication of the circular without their right of residence having been studied beforehand, it provides for retention of their rights to family allowances. It thus indicates that, ‘this right to allowances shall not, particularly when the right to allowances is re-examined (within the context of an inspection, following a change in situation, when rights are renewed, etc.) be questioned based on the lack of proof of the existence of a right of residence’.

However, these instructions require some clarification. In fact, special circumstances may cause the Funds to wonder about the right to family allowances of these recipients. Such is the case when the latter form the subject of official Prefectural decisions, such as deportation or the award of repatriation assistance, which are notifications demonstrating the illegality of residence in France of the persons in question. In this respect, the circular recalls that Prefectural decisions, specifically deportation orders, decisions not to renew residence cards or orders to leave French territory, are now sent, as part of an experiment involving 13 départements, to the social security provider agencies. Therefore, as soon as they become
aware that such Prefectural decisions have been taken with respect to Community nationals who retain rights to family allowances, the Funds must terminate the rights of the persons in question. It is up to the agencies alone to draw conclusions from the administrative decisions taken by the competent services of the State, knowledge of which is necessary in order to avoid unduly paying allowances. In any event, Prefectural decisions ruling on the right of residence of foreign nationals are applicable to the funds paying out allowances.

2.2. Specific issue: the situation of jobseekers

Here is the explanation from the web site of the Ministry of the Interior on the rights to unemployment benefits for European citizens, also providing clarification of their rights for the persons in question:

Unemployment benefits
Previous work in Europe without payment of unemployment benefit
A person who has previously worked in the EEA without receiving benefits can receive allowances in France by taking advantage of periods of unemployment insurance completed in another country.
For this, he must have resumed professional activity in France (with the exception of special cases: seconded workers or those practising their activity in several European countries, etc.).
For example, a person who comes to France after having worked in Italy for 5 years and who is dismissed after having resumed an activity in France for a few days, will be able to receive unemployment benefits. His allowances will be calculated based on periods of insurance completed in Italy and France.
Before coming to France, a job-seeker must have applied for form U1 from the competent authority in the country where he worked. This form describes the periods taken into account for calculating unemployment benefits.
If the applicant does not have this document, the Pôle Emploi office of his place of residence can request it. Information from the your Pôle Emploi office.

Retention of unemployment benefits received in Europe
A job-seeker who, before his departure for France, received unemployment benefits in another European country, can continue to receive them in France. His benefits are retained in theory for 3 months (but extension is possible up to a maximum of 6 months), within the confines of the rights that were granted to him in the country in question.
For this, the unemployed person must:
have been registered as a job-seeker in the European country where he worked;
and have been actively looking for work there for at least 4 weeks after the start of his unemployment (subject to authorisation to depart before the end of this period).
Before his departure for France, an unemployed person must obtain form U2 (retention of rights to unemployment allowances) from the entity paying his unemployment benefits.
Once in possession of this document, he must register as a job-seeker with the Pôle Emploi office of his place of residence within 7 days of his arrival in France (subject to exceptional extension).
Chapter V
Other Obstacles to the Free Movement of Workers
Chapter VI
Specific Issues

1. **FRONTIER WORKERS (OTHER THAN SOCIAL SECURITY ISSUES)**

[Of particular interest here is the existence of residence clauses (see for instance the case law of C-212/05 ‘Hartmann’)]

2. **SPORTSMEN/SPORTSWOMEN**

A trend is emerging in the national federations of team sports in the form of a clear desire to introduce quotas of French players. Football does not seem to be affected.

By contrast, this situation already existed in rugby. In an interview in the sports newspaper, *L’équipe*, on 2 July 2013, ‘the governing board of the National Rugby League will raise the matter on Saturday 7 July in Aix-en-Provence of the extension of the JIFF quotas (players from training pathways) to match sheets. In the words of Paul Goze, its President, ‘We cannot continue, in French rugby, to have positions in which no French player is playing’. The quotas of JIFF players, which should reach 51% of players in professional clubs next season (as opposed to 50% last season), should be extended to players present on the match sheets. ‘We will meet with all the club presidents to raise this subject’, explains Goze. ‘A one-year moratorium will be authorised in order to take into account recruitment by clubs’.

The idea is to maintain strong national teams. Thus, in March 2013, during an interview with the sports media, it was revealed that the French Handball Federation was studying the possibility of implementing some kind of quota for French players that French clubs would have to match in the championship.

In fact, Law no. 2012-158 has reinforced the ethics of sport and the rights of sportsmen. For the delegate federations, the rules will from now include provisions relating to the implementation of a quota of locally trained players, as well as the implementation of a ceiling on the total payroll, in other words a salary cap, as is found within professional American leagues (*C. sport, Article. L. 131-16, 3 created; Law no. 2012-158, Article 2*). This kind of provision does of course raise some questions about compatibility with Community law.

3. **THE MARITIME SECTOR**

No change of note.

4. **RESEARCHERS/ARTISTS**

No change of note.

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10 Interview with Claude Onesta on sports.fr
5. **ACCESS TO STUDY GRANTS**

Circular no. 2012-0012\(^1\) of 22 June 2012 relating to the methods for awarding higher education grants based on social criteria and merit-based assistance and to international mobility for the year 2012-2013 recalls that, in application of the provisions of Article L. 821-1 of the Education Code, the State can award financial assistance to students registered for initial training. These forms of assistance are intended to promote access to further study, to improve study conditions and to contribute to students’ success.

In order to receive a higher education grant based on social criteria, a student must be registered for initial training in France or in a Member State of the Council of Europe, at a private or public educational establishment and for a form of training authorised to receive grant recipients. Moreover, the student must be in full-time higher education falling within the competence of the Ministry responsible for higher education.

Students registered at some higher educational establishments in a Member State of the Council of Europe can claim a higher education grant based on social criteria. Apart from the general conditions for the award of higher education grants on social criteria, the students must be able to prove, on the one hand, that they have sufficient resources as defined in Annex 3 to the present circular and, on the other hand, that they meet the conditions below:

a) French nationality or a national of a Member State of the European Union other than France or of a State party to the European Economic Area agreement or the Swiss Confederation;

b) holder of a French *baccalauréat* or a qualification accepted as an exemption or equivalent for registration for the first year of higher education on the territory of the French Republic or have started higher education in France, regardless of the Ministry in charge;

c) registered at a university or other higher educational establishment located in a Member State of the Council of Europe and officially recognised by this State for full-time higher education for one academic year or two semesters, depending on the country, leading to a national qualification corresponding to the studies referred to in point 1 above, the scope of which falls within the competence of the Minister responsible for higher education in France.

The following students can receive a higher education grant based on social criteria:

- Students of French nationality or nationals of a Member State of the European Union other than France, of another State party to the European Economic Area agreement or the Swiss Confederation.

In addition to the general conditions, a national of a Member State of the European Union other than France or of another State party to the European Economic Area agreement, in application of Articles 7 and 10 of Regulation (EU) no. 492/2011 of the European Parliament and of the Council of 5 April 2011, regarding the free movement of workers within the Union, must meet one of the following conditions:

- have previously held a job in France, either full-time or part-time. The activity must be genuine and effective and must have been practised as a salaried or non-salaried worker;
- demonstrate that one of his parents, his legal guardian or the person holding parental authority has received income in France.

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The condition of holding the capacity of Community worker or child of a Community worker is not required for a student who can prove a certain level of integration into French society. The level of integration is evaluated specifically with regard to the duration of stay (one year minimum), the compulsory schooling undertaken in France or family ties in France. This condition is in any event not required if the student can demonstrate 5 years of uninterrupted legal residence in France (Article 24 of Directive 2004/38/EC of 29 April 2004).

All of these provisions apply to nationals of the Swiss Confederation, in application of Articles 3 and 9 of Annex 1 to the agreement on the free movement of persons, signed on 21 June 1999 between the Swiss Confederation and the European Community and its Member States.

**Resources conditions**

In situations confirmed by a social assessment that reveal the inability of one of the parents to fulfil his nutritional obligation, a higher education grant based on social criteria may be granted based solely on the income of the tax household in question.

A European student whose parents do not reside on French territory must submit all the documents required for an examination of his right to a grant: a tax statement or a similar document relating to the year n-2 or, in the absence of this document, payslips for one or both parents, the legal guardian or the person holding parental authority relating to the last three months of the year n-2. The resources thus obtained, if necessary converted into euros and after reintegration of the amount of tax paid if this is withheld directly at source, constitute the ‘global gross income’ of the family that has to be taken into account as that accepted in France.

6. **YOUNG WORKERS**

There are still no specific provisions in this field in French law.
Chapter VII
Application of Transitional Measures

1. ARRIVAL, RESIDENCE AND REMOVAL OF ROMANIAN AND BULGARIAN NATIONALS

- Motion for resolution relating to nationals of Romanian and Bulgarian nationality, submitted on 13 June 2012 by senators of the ecology group. It should be emphasised that the ecology group now forms part of the new parliamentary majority.

The senators begin by recalling that the lack of trust of these populations is specifically reinforced by the idea of a massive influx of Roma into France. Now, their numbers on French territory have remained stable since the early 2000s and are comparatively small: approximately 15,000 Roma live in France.

The senators also recall that, since 2009 the HALDE had highlighted the situation of these nationals, who ‘are not regarded either in the same way as other Community nationals or as non-Community migrants’. The senators therefore request the immediate lifting of the transitional provisions that are applied to them.

Here is the text of their resolution:

Noting that Romanian and Bulgarian nationals and the Roma in particular are the victims of stigmatisation, discrimination and obstacles to integration and disputing that the precarious situation in which many families live is the result of the existence of a Roma culture resistant to work and to integration;

Regarding employment
Whereas access to employment is the essential factor in breaking out of a highly precarious situation as well as the condition for integration into French society and recalling that the vast majority of Roma living in France are of Romanian or Bulgarian nationality, that they are as a result subject to the transitional measures in the treaties under which they joined the European Union, restricting their access to the employment market;

Noting that the employer of a Bulgarian or Romanian national must, until the transitional measures are lifted, pay a tax to the French Office for Immigration and Integration, the amount of which varies depending on the term of the contract and the salary, that as a result this may have a dissuasive effect for some employers, that Bulgarian and Romanian nationals, unlike nationals of the other member countries of the European Union, must be in possession of a residence card and work authorisation in order to practise salaried employment in France and that the waiting time for obtaining these documents can be several months in some Prefectures, and whereas all of these procedures constitute a considerable obstacle to employment for these populations;

Finally, recalling that several European States have lifted these measures without seeing any deterioration in their labour markets.

Concerning access to training
Recalling that access to vocational training courses is governed by the same rules as those relating to registration on the list of job-seekers and that a Bulgarian or Romanian is subject to the same restrictions as a national of a country that is not a member of the European Union due to the existence of the transitional measures, the vast majority of Romanian and Bul-
garian nationals cannot therefore gain access to the services of the Pôle Emploi unless they have worked for a minimum of one year in France;

Recalling that the same is true of tools for professional reintegration such as the apprenticeship contract or the integration contract;

Emphasising that many local missions are reluctant to accept young Roma aged under twenty-six of Bulgarian or Romanian nationality because of the few tools they possess to support them, since the latter do not have access to vocational training, sandwich courses or assisted contracts.

**Concerning integration mechanisms**
Noting that the support mechanisms implemented by the associations of regional bodies and co-financed by the public authorities cannot fully achieve their objectives unless they lead to successful employment.

**Concerning public health**
Whereas, moreover, evictions from illegally occupied sites make it difficult to complete treatment and immunisation campaigns supported or co-financed by the public authorities, even though serious infectious diseases have been recorded within these populations;

Would like the French Government to terminate the transitional measures restricting access to employment for Bulgarian and Romanian nationals.

- **Repatriation assistance**

Humanitarian residence aid had been created, specifically by a decree dating from 2009. The decision of 16 January 2013 regarding repatriation assistance partially modified the mechanism and, specifically, it significantly reduced the amount of assistance for foreigners who are nationals of a Member State of the EU, the EEA or Switzerland and their family members. Thus, for these nationals, repatriation assistance comprises:
  - Administrative and material assistance with preparation for the trip to the country of return;
  - Acceptance of the rerouting charges from the place of departure in France to arrival in the return country, with acceptance of luggage up to a limit of 20 kg of luggage per adult and 10 kg of luggage per minor child;
  - A lump-sum allowance of € 50 per adult and € 30 per minor child.

These allowances are paid once only at the time of departure. Nobody can receive this assistance more than once.

The main recipients of this assistance were Romanian nationals.

2. **EMPLOYMENT**

- **Regulations**

The new regulations are aimed at encouraging professional integration by Romanian and Bulgarian nationals.
Circular NOR/INT/V/1243671C of 31 December 2012 regarding the taxes associated with immigration eliminated the tax paid to the OFII\textsuperscript{13} by the employers of Romanian and Bulgarian nationals; thus aligning their system with that of other nationals of a Member State of the EU.

A decision dated 1 October 2012 modified the annex to the decision of 18 January 2008 regarding the issue, without regard for the employment situation, of work authorisation to nationals of States of the European Union subject to the transitional measures. The new list includes 291 trades, as opposed to 150 previously. These trades represent more than 72% of the job offers registered with the French public employment service (\textit{Pôle Emploi}). The objective of this decision is to anticipate the end of the transitional period (31 December 2013 at the latest).

An annex is attached of the complete list of trades, which now presents a wider variety in terms of possibilities for employment.

Below is the explanation given on the web site of the Ministry of the Interior of the rights of citizens covered by the transitional system:

\begin{table}[h]
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\begin{tabular}{|l|}
\hline
\textbf{Formalities for Bulgarian, Romanian and Croatian citizens} \\
\hline
\textit{Compulsory residence card} \\
A Bulgarian, Romanian or Croatian citizen wishing to practise a professional activity (salaried or not) in France must possess a residence permit \textit{une carte de séjour}. \\
An exception is made for a young person who holds a qualification at least equivalent to a master’s degree obtained in France. This person can work freely in France without a residence card or work authorisation. \\
\textit{Practice of a salaried activity} \\
A salaried worker is also subject to work authorisation, with some exceptions. \\
An application for work authorisation must be made in advance by the employer, \textit{doit être faite, au préalable, par l’employeur}. \\
It is conducted by the local unit of the Regional Office for Companies, Competition, Consumption, Work and Employment (Direccte) that holds geographical authority. In particular, this office checks the employment situation in the profession for which the application is being made. \\
If the work authorisation is granted, the worker receives a residence permit with the words EU – all professional activities. This permit, which is issued by the Prefecture, allows him to work. \\
However, to gain access to 291 trades, a Bulgarian, Romanian or Croatian worker benefits from a facilitated work authorisation procedure. For these professions, known as ‘under pressure’, the employment situation, which is the most difficult work authorisation criterion to fulfil, is not applied. The list of these trades, established by decision, includes for example hairdresser, baker, pastry cook, cashier, bricklayer, server, electrician, security officer, telephone adviser, doctor and nurse. \\
\textit{Exemption from work authorisation} \\
The following salaried workers are exempt from work authorisation: \\
- those accepted for work and employed continuously for one year in France, upon expiry of the residence card; \\
- or temporarily seconded to France (under certain conditions) by an employer established in Europe or Switzerland. \\
\textit{Practice of a non-salaried activity} \\
A Bulgarian, Romanian or Croatian citizen can practise the non-salaried activity of his choice in \\
\hline
\end{tabular}
\end{table}

\textsuperscript{13} French Office for Immigration and Integration
France, under the same conditions as French citizens. He must fulfil the same formalities and meet the same requirements regarding skill and qualifications. Before starting his activity, he must apply to the Prefecture for a residence permit bearing the words EU – all professional activities except salaried.

Service provider
A Bulgarian, Romanian or Croatian citizen can come to France to provide a service or a service for his own account for more than 3 months. He must obtain a residence permit bearing the words EU – service provider, in advance.

Questions?
Territorial unit of Directe (formerly DDTEFP)
For an employer wishing to make an application for work authorisation for a Bulgarian, Croatian or Romanian national.

Particular situation of Bulgarian, Romanian or Croatian students
Students from Bulgaria, Romania and Croatia are subject to restrictive measures in terms of access to work in France.

A Bulgarian, Romanian or Croatian student who wants to work while studying must hold a residence permit ‘EU – student – all secondary activities’ carte de séjour ‘UE – étudiant – toutes activités à titre accessoire’. This permit serves as authorisation to work in France and enables the student to hold salaried employment up to an annual limit of 964 hours of work. However, the student may not be recruited until after a personal statement made by the employer to the Prefecture that issued the residence permit. This statement must be sent at least 2 working days before the effective recruitment date. It must be accompanied by a copy of the residence permit of the student (or the original permit, at the Prefect’s discretion).

Jurisprudence

Administrative Court of Lyons, 27 December 2012, Fagyura v. Prefecture of Isère, no. 12LY01313

Mr. A, of Romanian nationality, applied for work authorisation in order to practise the trade of property cleaner. The competent authority is the Prefect, in this case, by delegation, it was the Director of Employment of the relevant local unit of the Regional Department of Companies, Competition, Consumption, Work and Employment. The latter denied this application.

Article R. 5221-20 of the Labour Code sets forth the conditions preceding the granting of this work authorisation, ‘The Prefect takes into account the following elements of assessment:

1. The employment situation in the profession and in the geographical area for which the application is made, taking into account the specific aspects required for the job in question and the search already conducted by the employer with employment services competing with the public employment office to recruit a candidate already on the labour market;

2. the suitability of the qualifications, experience, diplomas or certificates of the foreigner for the characteristics of the job for which he is applying;
3. compliance by the employer, user, host company or employer, the user mentioned in Article L. 1251-1 or host company with the legislation regarding work and social protection;
4. where appropriate, compliance by the employer, user host company or salaried worker with the regulatory conditions for practice of the activity under consideration;
5. the employment and remuneration conditions offered to the foreigner, which are comparable to those of salaried workers holding a job of the same type within the company or, failing this, in the same professional branch;
6. the salary offered to the foreigner which, even in the event of part-time employment, is at least equivalent to the minimum monthly remuneration referred to in Article L. 3232-1;
7. where appropriate, if the foreigner is resident outside France at the time of the application and the employer or the host company provides his accommodation, the provisions taken by the employer to ensure, under normal conditions, housing for the foreigner directly or via a person who is within the scope of Law no. 73-548 of 27 June 1973 regarding shared accommodation.

Article 1 of the decision of 18 January 2008 regarding the issue, regardless of the employment situation, of work authorisation to nationals of the States of the EU covered by the transitional measures stipulates that, ‘The employment situation or the lack of a prior search among candidates already on the labour market does not affect an application for work authorisation made for a national of Bulgaria or Romania who wishes to practise a salaried activity in a trade characterised by recruitment difficulties and shown on the list attached to the present decision’.

In this case, the trade of property cleaner was not on the list appended to the aforementioned decision. Thus, the competent authority conducted an examination of the employment situation; in basing its refusal specifically on the examination of the most recent employment data in the Rhône-Alpes region, the département of Isère and the Grenoble basin, which reveals a clear imbalance between demand for and supply of cleaners. The decision also mentions that the potential employer has not contributed to the file the application or the detailed result of his previous search for candidates already present on the labour market, despite the request to this effect sent to him on 9 May 2011, or the coefficient applicable to employment or the detailed CV of Mr. A.

Mr. A submitted an application for a residence card in his capacity as salaried worker on 22 March 2010 and was issued with a receipt for an initial application for a residence card bearing the words, ‘authorises holder to work’, on 6 January 2011. Now, he was recruited with effect from 5 July 2010 without having obtained work authorisation. The administration was therefore able to observe an infringement of the legislation relating to work.

He was therefore served with a denial of residence card, as well as an Obligation to Leave French Territory and return to Romania. All these decisions, which reveal an extremely strict application of the applicable law, were confirmed in the judgment of the Administrative Court of Lyons.

3. FAMILY MEMBERS

Below is the information given on the web site of the Ministry of the Interior in this regard, providing a clarification of the rights of the persons in question:
A Bulgarian, Romanian or Croatian citizen can be accompanied or joined in France by his close family. He must enjoy a right of residence in France as a worker, non-worker or student. After 5 years of legal residence in France, his family can obtain permanent right of residence.

**Persons affected**
The family members affected are:
- the spouse;
- children below the age of 21 or dependent (and those of the spouse);
- direct dependent ascendants (and those of the spouse).

However, students cannot bring their ascendants.

The family itself can be of Bulgarian, Romanian or Croatian nationality or of a non-European nationality. However, its conditions of residence differ depending on nationality.

For instance: *d’autres membres de famille* other family members can also be authorised to reside in France (cohabiting partner, partner, etc.) but this is not an automatic right.

**Residence of Bulgarian, Romanian or Croatian family for the first 5 years**

**Settlement formalities in France**
Family members, if they are themselves Bulgarian, Romanian or Croatian, must hold an identity card or a current passport.

They must not pose a threat to law and order.

**Residence card**
Family members who do not wish to work are exempt from holding a residence card.

However, if they apply for the card, the French administration must assess their case.

Family members who want to practise a salaried or non-salaried activity, by contrast, must apply for a residence permit *demander une carte de séjour*.

If they want to hold a salaried position, they must also hold work authorisation *une autorisation de travail*, except in exempt cases.

The residence card that can be issued to the family member is for the same period as that of the citizen being accompanied or, if the latter has not applied for a card, for the period to which he would be entitled, up to a maximum of 5 years.

**Residence of non-European family for the first 5 years**

**Compulsory residence card**
Non-European family members must apply for a residence permit within 3 months of their arrival in France *demander une carte de séjour, dans les 3 mois de leur entrée en France*.

This permit is issued subject to the absence of a threat to law and order.

Its period of validity is the same as that of the permit issued to the citizen being accompanied or, if the latter has not applied for a permit, for the period to which he would be entitled, up to a maximum of 5 years.

**Work authorisation**
If they wish to hold a salaried position, non-European family members must also hold work authorisation, except in exempt cases.

**Exemption from work authorisation**
A family member of any nationality is exempt from work authorisation:
- either, when his first residence permit is issued, if the person he is accompanying has been legally employed continuously in France for longer than one year;
- or, when his residence permit is renewed, if he himself has been authorised to hold a salaried position in France for more than one year continuously.

**Retention of the family’s right of residence**
The family’s right of residence comes to an end with that of the Bulgarian, Romanian or Croatian
FRANCE

citizen being accompanied.
However, in some situations and under some conditions, the family can remain in France (cases of divorce, departure from France of the citizen being accompanied, etc.).

After 5 years of residence
Permanent right of residence
A family that has resided legally and without interruption in France for the 5 previous years with a Bulgarian, Romanian or Croatian citizen obtains a permanent right of residence.
This right affects all families, regardless of their nationality. It allows them to remain in France permanently, subject to the absence of any serious threat to law and order.

Continuity of residence and proof of right of residence
The continuity of residence over 5 years can be demonstrated by any means.
Some absences are authorised, for example:
temporary absences not exceeding 6 months per year;
or an absence of a maximum of 12 consecutive months for an important reason, such as pregnancy.
The continuity of residence is interrupted by the execution of any removal measure.
The right of residence over the 5 preceding years can also be demonstrated by any means (documents in the names of both spouses, etc.).

Loss of right of residence
A person loses his permanent right of residence if he is absent from France for more than 2 consecutive years.

Derogation for a worker’s family
The family of a worker can, in some situations, acquire a permanent right of residence before the aforementioned 5 years.
This is the case, for example, when the worker, who is practising an activity in France, dies as the result of an industrial accident.

Permanent residence permit
Bulgarian, Romanian or Croatian family members must apply for a residence card, demander un titre de séjour, if they wish to work. If they do not wish to work, they can decide whether or not to apply for a residence permit.
This permit is automatically renewable.
Non-European family members, whether they work or not, must hold a residence permit, détenir une carte de séjour. The application must be made within the 2 months preceding the period of 5 years of uninterrupted residence.
Application for renewal of the permit must be made within the 2 months preceding its expiry.
Chapter VIII
Miscellaneous

1. **Relationship between Regulation 1408/71-883/04 and Article 45 TFEU and Regulation 1612/68**

A reading the judgments relating to social security rules shows that the judges apply Regulation 1408/71 or Regulation 883/04 depending on the exact date of the facts at stake. The applicability of the 2 regulations is therefore correctly implemented by the courts dealing with the substance of the case.  

2. **Relationship between the rules of Directive 2004/38 and Regulation 1612/68 for frontier workers**

3. **Existing policies, legislation and practices of a general nature that have a clear impact on the free movement of EU workers**

   3.1. Integration measures

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   3.2. Immigration policies for third-country nationals and the Union preference principle

   **EC, 21 February 2013, no. 348875, Covaci vs. Ministry of the Interior**

   The conditions under which nationals of Member States of the European Union can exercise their right of residence on French territory and can, where appropriate, be issued with a residence card, are governed by the provisions of Title II of the first book of the Code for the Entry and Stay of Aliens and the Right to Asylum, which deviate from the provisions of common law of the third book of the same Code. On the other hand, it is not evident from the provisions of this Code that nationals of Member States can secondarily take advantage of the provisions applicable to nationals of third-party countries. It follows from this that a national of a Member State of the European Union who does not fulfil one of the conditions set forth in Article L. 121-1 of the Code for the Entry and Stay of Foreigners and the Right of Asylum in order to benefit from the right of residence in France for a period of longer than three months, if he can still take advantage of the provisions of an international agreement and, specifically of Article 8 of the European Convention on Human Rights and Fundamental Freedoms to prove a right of residence, cannot, on the other hand, cite the enjoyment of the national provisions of common law to obtain the issue of a residence permit.

   While Article 37 of Directive 2004/38/EC of 29 April 2004, regarding the right of citizens of the Union and their family members to move and to reside freely on the territory of the Member States, authorises the Member States to (continue to) favour citizens of the European Union and their family members with provisions that are more favourable than those intended by the Directive, it does not oblige them to do so.

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14 See, specifically, Court of Cassation, 2nd civil chamber, 20 September 2012, appeal no. 11-14804.
In a written question to the Minister of the Interior, Senator Richard Yung wonders about the forms of discrimination suffered by Franco-foreign couples with respect to couples composed of citizens of other Member States of the European Union and nationals of third-party States.

‘He is reminded that the non-Community spouses of French nationals are obliged to apply for the issue of a long-stay visa if they wish to reside in France for a period longer than three months. In accordance with the Code for the Entry and Stay of Aliens and the Right to Asylum (CESEDA), the issue of this visa is subject to an evaluation, in the country where their application is made, of their knowledge of the French language and the values of the Republic. Once in France, they are certainly exempt from applying for the issue of a residence permit, since the visa issued takes the place of a residence card for the period of validity of the visa. However, they are compelled to take various steps with the French Office for Immigration and Integration and to pay the Office a tax of 340 euros. Moreover, in some cases, they can form the subject of measures to remove them from the territory. He observes that, by contrast, the CESEDA facilitates the entry and residence on French territory of nationals of third-party States who are married to non-French citizens of the EU, in accordance with Directive 2004/38/EC of 29 April 2004 regarding the right of citizens of the Union and their family members to move and to reside freely on the territory of Member States. These persons are in fact admitted to French territory on condition that their presence does not pose a threat to law and order and that, in the absence of a valid residence card issued by a Member State of the Union, they hold a current passport, a visa or, if exempt, a document establishing their family ties. If they require a visa, this is issued free of charge as soon as possible and as part of an accelerated procedure. Once in France, they must be issued with a residence permit bearing the words, ‘EC – family member – all professional activities’, subject to the absence of a threat to law and order. This residence card is valid for the same period as that of the Community national or, if the latter has not applied for a card, as that to which he would be entitled up to a maximum of five years. Moreover, after five years of uninterrupted residence in France, non-Community spouses of non-French citizens of the Union acquire a permanent right of residence for the entire French territory. The administration then issues them with a residence permit bearing the words, ‘EC – permanent residence – all professional activities’. This right enables them to remain permanently in France, providing they do not pose a serious threat to law and order. They also enjoy protection from removal from the territory, unless they have been the subject of a final sentencing for forgery, falsification, establishment under a name other than their own or lack of a residence card, if their residence card was denied or withdrawn on the grounds of a threat to law and order or if, during the first three months of their presence in France, they worked without authorisation or represented a threat to law and order. He believes that this difference in treatment, which results from a discrepancy between Community law and national law, leads to discrimination based on the nationality of the European spouse. Consequently, he asks him how the Government intends to strengthen legal protection for couples composed of a French citizen and a national of a third-party State’.

The reply from the Ministry of the Interior was as follows:

‘The conditions under which third-country nationals who are family members of citizens of the European Union are granted residence are the result of the transposition of Directive 2004/38/EC regarding the right of citizens of the Union and their family members to move and to reside freely on the territory of the European States. These family members thus enjoy a right of residence derived from that of the Community citizen whom they are accompanying or joining, which falls

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15 Publication in OJ: Senate of 1 November 2012.
within the framework of the exercise of the right of free movement. As a result, the conditions under which the persons in question are granted a residence card can differ from those applicable to third-country nationals who have a family tie with a citizen who remains in his country and which are based on the national legislation of the host Member State. The European legislation regarding the right of residence of Community citizens is not in fact intended to replace the internal legislation of the Member States in terms of the residence of third-country nationals with ties to nationals who have not used their right of free movement in another Member State. While differences can be observed between these two legislative systems, they are related to the aim and the characteristics of each of the two legal systems. Thus, in terms of the substantive conditions required to be granted residence, it must be noted that the issue of a residence permit to the spouse of a French national is not subject to any condition of resources. On the other hand, since the right of residence of the spouse of a Community national is linked to the right of the citizen of the European Union, this will be subject to proof by the latter, if he is non-working, of a sufficient level of resources assessed with reference to the amount of the Workers Solidarity Income, adjusted depending on the number of persons in the family. The condition regarding maintenance of the conjugal life is however applicable to the spouse of a French citizen for the granting of the first three temporary residence permits of one year, as well as for the issue – after three years of marriage – of a resident’s permit. While this condition, as such, is not applicable to the spouse of a Community citizen, the right of residence of the latter can nonetheless be questioned in the event of divorce or annulment of the marriage if the union lasted less than three years. Moreover, if the elements constituting a fraud are established, residence can be denied or the residence card not renewed or withdrawn. In cases of the award of a long-term residence card, a third-country national who is the spouse of a citizen of the European Union cannot claim permanent residence until after five years of legal residence and will then obtain a residence card for ten years. While the non-Community spouse of a French national can, after three years of marriage, also receive a residence card for ten years, which is automatically renewable, as well as protection from removal and can no longer form the subject of an Obligation to Leave French Territory provided the cohabitation with his spouse has not ended, the spouse of a Community national cannot take advantage of this protection from removal. Finally, concerning the evaluation of the level of knowledge of the language and the values of the Republic of the spouse of a French national, conducted at the time of the visa application, it should be pointed out that this is a simple assessment of level, intended to facilitate his integration upon arrival on the national territory, which can on no account form an obstacle to his entry to French territory. This assessment gives rise, if necessary, to free training in these areas. Upon arrival in France, the spouse of a French national will receive – through the French Office for Immigration and Integration (OFII) – citizenship training, additional linguistic training if the assessment of his level determined such a need, an information session about life in France, a statement of professional skills if he states that he is looking for work and, finally, social support if such a need is observed. All of these services, which demonstrate an interest in responding to the most immediate needs of first-time arrivals, are free of charge and enable the spouse of a French national to integrate more effectively into French society. The tax due by the spouse of the French national for the issue of his first residence card allows the OFII to supplement the resources it requires to implement all its training courses. Under these conditions, modifying national legislation concerning the spouses of French nationals is not envisaged, in the sense of alignment with the European provisions relating to free movement, since the two situations are governed by very different legal systems.’

This reply is in accordance with the applicable legislation as well as the jurisprudence.

3.3. Return of nationals to new EU Member States

No specific provisions exist on the return of citizens of the new Member States of the EU. However, it is interesting to emphasise that, in fact, these are the persons most affected by removal measures involving citizens of the EU.
4. **National organisations or non-judicial bodies to which complaints for violation of Community law can be addressed**

The Defender of Rights is a new administrative authority that combines pre-existing bodies, specifically the HALDE (French Equal Opportunities and Anti-Discrimination Commission). In particular, it takes over its tasks. In previous years, the productive debates within this institution have provided assistance to European citizens.

A new page on the website of the Ministry of the Interior is devoted to European citizens, their rights and the steps to be taken: [http://www.interieur.gouv.fr/A-votre-service/Mes-demarches/Etranger-Europe/Etrangers-en-France/Citoyens-europeens-en-France](http://www.interieur.gouv.fr/A-votre-service/Mes-demarches/Etranger-Europe/Etrangers-en-France/Citoyens-europeens-en-France). Every aspect of this study has been combined on these pages in order to identify the steps proposed by French institutions, as well as an explanation of rights. If a European citizen wishes to obtain a residence card or permit, the steps are outlined on the site, together with the institutions to be contacted.

Finally, most of the French associations devoted to alien rights concentrate more specifically on non-Community nationals, although GISTI\(^\text{17}\) remains an association that also deals with the situation of Community nationals, particularly in certain papers.

Many associations seek to help Roma populations as well, specifically RESF\(^\text{18}\) for children.

5. **Seminars, reports and articles**

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\(^{17}\) Information and support group for immigrants, gisti.org

\(^{18}\) Education Network Without Borders
ANNEX 1: LIST OF THE 291 TRADES OPEN TO NATIONALS OF EUROPEAN STATES SUBJECT TO TRANSITIONAL MEASURES

<table>
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<th>Trade Description</th>
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<td>Aide aux bénéficiaires d’une mesure de protection juridique.</td>
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<td>Aide d’élevage agricole et aquacole.</td>
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<td>Ajustement et montage de fabrication.</td>
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<td>Analyse et ingénierie financière.</td>
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<td>Analysiss of banking credit risks.</td>
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<td>Animation de loisirs auprès d’enfants ou d’adolescents.</td>
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<td>Assemblage, montage d’articles en cuirs, peaux.</td>
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<td>Assembly of electrical and telecommunication networks.</td>
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<td>Assistance auprès d’adultes.</td>
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<td>Circulation du réseau ferré.</td>
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<td>Conduite d’équipement d’usinage.</td>
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<td>Conduite d’équipement de déformation des métaux.</td>
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<td>Conduite d’équipement de fabrication de papier ou de carton.</td>
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<td>Conduite d’équipement de formage et découpage des matériaux.</td>
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<td>Conduite d’équipement de production chimique ou pharmaceutique.</td>
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<td>Conduite d’installation automatisée de production électrique, électronique et microélectronique.</td>
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<td>Conduite d’installation de production de matériaux de construction.</td>
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<td>Conduite d’installation de production des métaux.</td>
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<td>Conduite de machine de fabrication de produits textiles.</td>
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<td>Conduite de transport de marchandises sur longue distance.</td>
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<td>Conduite de transport en commun sur route.</td>
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<td>Conduite sur rails.</td>
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<td>Conseil en emploi et insertion socioprofessionnelle.</td>
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<td>Conseil en gestion de patrimoine financier.</td>
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<td>Construction des routes et des chemins.</td>
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<td>Contrôle de la navigation aérienne.</td>
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<td>Contrôle et diagnostic technique du bâtiment.</td>
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<td>Coordination de services médicaux ou paramédicaux.</td>
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<td>Crane operator.</td>
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<td>Défense et conseil juridique.</td>
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<td>Déménagement.</td>
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<td>Design and drawing of electrical and electronic products.</td>
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<td>Dessin BTP.</td>
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<td>Développement des ressources humaines.</td>
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Personnel d’attractions ou de structures de loisirs.
Personnel d’étage.
Personnel de la défense.
Personnel du hall.
Personnel polyvalent d’hôtellerie.
Personnel polyvalent en restauration.
Pig breeding.
Pilotage d’installation de production verrière.
Pilotage d’installation énergétique et pétrochimique.
Pilotage d’unité élémentaire de production mécanique.
Pilotage de centrale à béton prêt à l’emploi, ciment, enrobés et granulats.
Plonge en restauration.
Poissonnerie.
Pose de canalisations.
Pose de fermetures menuisées.
Pose de revêtements rigides.
Pose de revêtements souples.
Pose et restauration de couvertures.
Première transformation de bois d’œuvre.
Préparation de matières et produits industriels (broyage, mélange...).
Préparation du gros œuvre et des travaux publics.
Production et exploitation de systèmes d’information.
Production of leather and soft fabric items (apart from clothing).
Promotion des ventes.
Property transaction.
Rabbit and fowl breeding.
Réalisation de menuiserie bois et tonnelerie.
Réalisation de meubles en bois.
Réalisation de structures métalliques.
Réalisation et montage en tuyauterie.
Réalisation et restauration de façades.
Réalisation, installation d’ossatures bois.
Recherche en sciences de l’univers, de la matière et du vivant.
Rédaction et gestion en assurances.
Rééducation en psychomotricité.
Réglage d’équipement de formage des plastiques et caoutchoucs.
Réglage d’équipement de production industrielle.
Relation commerciale auprès de particuliers.
Relation commerciale grands comptes et entreprises.
Relation technico-commerciale.
Rental property management.
Réparation de carrosserie.
Reprography
Revalorisation de produits industriels.
Saisie de données.
Sales assistant.
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<td>Trésorerie et financement.</td>
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<td>Vehicle or leisure equipment rentals.</td>
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