REPORT
on the Free Movement of Workers
in France in 2011-2012

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Introduction

The reforms of 2011 regarding the law relating to aliens, in particular the changes made to the CESEDA, introduced new methods of monitoring the right of residence of nationals of the EU and their family members, specifically by the Prefectural authorities.

All the court decisions described in this report (apart from specifically mentioned exceptions) concern situations prior to the legislative reform of June 2011 (it should also be emphasised that the circulars implementing this law were adopted during the period under consideration). These judgments are therefore all based on the unmodified articles of the Code for the Entry and Stay of Foreigners and the Right of Asylum (CESEDA).

The area of social security benefits has also been the subject of many explanatory measures.

In the first six months of 2012, France saw a change in its presidential and parliamentary majorities, which should bring about new modifications to legislation in most of the areas studied in the report.
Chapter I
The Worker: Entry, residence, departure and remedies

Workers who are nationals of an EU Member State enjoy unrestricted freedom of movement and the right of entry and of stay. The essential difficulty arises in terms of the free movement of persons, specifically when they do not practise or no longer practise a professional activity.

The new legislation now in force complicates French law as it applies to nationals of a Member State of the European Union. It is strongly criticised at national level as being chiefly targeted at the Roma community. In fact, the new provisions are muddled and seemingly not in compliance with Directive 2004/38/EC. The work of the judges will lie fundamentally in this area.

1. Transposition of Provisions Specific to Workers

The Law of 16 June 2011

Article 22 of the Law of 16 June 2011 adds a new Article L. 121-4-1 to the CESEDA:

‘Provided they do not become an unreasonable burden on the social security system, citizens of the European Union, nationals of another State party to the European Economic Area Agreement or of the Swiss Confederation, as well as their family members as defined under points 4 and 5 of Article L. 121-1, have the right to reside in France for a maximum period of three months, subject to no other conditions or formalities except those envisaged for entry to French territory.’

Members of parliament have disputed the ‘lumping together’ of all foreigners contained in this provision. Specifically, they referred to the contents of Articles 27 and 28 of Directive 2004/38 and believe that the guarantees offered by the Directive are lacking.

The contents of this article had previously been quoted in Article R. 121-3 of the CESEDA, repealed by Decree 2011-1049. It therefore acquires legislative value, although it had no regulatory value in the previous version of the Code.

To many commentators, this Article implicitly targets Roma who are nationals of a Member State of the EU. Romanian and Bulgarian nationals will be subject to a transitional system, until 31 December 2013, allowing them to stay in another Member State for 3 months and on condition that they do not pose an unreasonable burden on the social security system when the period of stay is more than 3 months. A circular of 22 December 2006, censured by the Council of State, attempted to expand this condition to periods of stay of less than 3 months. As emphasised by Professor D. Turpin, this censure was linked to the fact that French law was silent, but this is no longer the case.

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Implementing decree

The regulatory section of the Code for the Entry and Stay of Foreigners and the Right of Asylum\(^3\) is thus modified in application of the Law of 16 June 2011.

Article R. 121-4 CESEDA regulates stays of more than 3 months. Decree 2011-1049 grants new powers to Prefects. In the event of doubt they can, without acting systematically, check the conditions referred to specifically in Article L. 121-1 of the CESEDA. This involves checking that the Community national either practises a professional activity or possesses sufficient resources so that he does not become a burden on the social security system, and health insurance, or that he fulfils the residence conditions for students who are EU nationals.

The Circular of 21 November 2011\(^4\) clarifies this Article. The Prefectural services are requested, as soon as doubts arise concerning the alleged facts, to verify the conditions required for permission to stay of the Community national and his family member, particularly in terms of resources, professional activity and health insurance. ‘These checks must not be carried out systematically but solely [in the event of] doubts concerning specific facts.’

The certificate of registration seems to be becoming a condition for a right of stay of more than 3 months. Article L. 121-2 of the CESEDA stipulates that the nationals referred to in Article L. 121-1, wishing to establish their habitual residence in France must register with the town hall of their commune of residence within three months of their arrival. Nationals who have not complied with this registration obligation are regarded as having been in France for less than three months.

The new Article R 121-5 CESEDA adds that a certificate is issued immediately by the town hall to nationals who comply with the registration obligation envisaged in Article L. 121-2. This certificate does not establish a right of residence. Possession of the certificate can under no circumstances constitute a prior condition for the assertion of a right or the fulfilment of another administrative formality. The town hall forwards to the Prefect and, in Paris, to the Chief of Police, a copy of the certificates it has issued.

This article therefore seems to add a condition to the right of stay of more than 3 months and, above all, to make the registration certificate compulsory, since only the certificate is forwarded to the Prefect, who can carry out checks. Moreover, it seems contrary to Directive 2004/38/EC in terms of preserving law and order since only personal behaviour can justify removal on law and order grounds but cannot justify a refusal of residence.

Moreover, a new Article R. 121-5-1 has been added by Decree 2011-1049: ‘In order to establish whether the national mentioned in the first paragraph of Article L. 121-1, in Article L. 121-3 and in Article R. 121-4-1 poses a threat to law and order or public safety, the Prefect may, if he deems it essential and without acting in a systematic fashion, request the authorities of the Member State of the European Union of origin of the Community national

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\(^3\) CESEDA.

\(^4\) NOR I0CLI130031C on the methods of application of Decree 2011-1049 of 6 September 2011 passed in implementation of Law no. 2011-672 relating to immigration, integration and nationality and relating to residence cards.
and, possibly, other Member States for information concerning the legal precedents of the party in question. The Member State consulted forwards its response within a period of two months. The Minister of the Interior notified by the authorities of a Member State of the European Union of a request relating to the legal precedents of a national forwards its response to the French authorities within the same period.

The decree stipulates that the measures assigning residence in a particular département or prohibitive measures relating to part of the national territory are not applicable to nationals of the EU, of other States party to the European Economic Area agreement or the Swiss Confederation, or to their family members.

Circular implementing the law
Circular of 21 November 2011 NOR IOCL1130031C concerning the methods of application of Decree 2011-1049 of 6 September 2011 passed in application of Law no. 2011-672 relating to immigration, integration and nationality and relating to residence cards
Several provisions of the Decree of 6 September 2011 aim to perfect the transposition specifically of Directive 2004/38/EC. This circular of 21 November 2011 supplements the provisions of the circular of 10 September 2010. The circular recalls that abuse of the law was defined in a communication of the European Commission as ‘artificial behaviour adopted with the sole aim of obtaining the right of residence or freedom of movement […] despite formal compliance with the conditions envisaged by Community regulations [...]’.

Prefects are reminded that reliance on the social security system by a citizen of the EU or a family member who has enjoyed a right of stay of more than 3 months must not automatically lead to a removal measure. Reference is made here to the methods for examining each situation as indicated in annex 1 to the Circular of 17 June 2011 concerning stays of less than 3 months. Therefore, in a case-by-case analysis, consideration should be given specifically to the nature of the difficulties encountered, whether or not they are temporary, to the amount and type of assistance granted, to the state of health of the person in question, his family situation and any other element of a personal and humanitarian nature.

Regarding stays of less than 3 months, the idea of an unreasonable burden can also not be derived from the sole condition that the party in question has had recourse to the social security system.

The circular stipulates that these 2 situations cannot automatically be analysed as an abuse of the law.

2. SITUATION OF JOB-SEEKERS

Administrative Court of Appeal of Bordeaux, 3 January 2012, no. 11BX01692
Mr. Nfamadi A, a Dutch national originally from Sierra Leone, who maintains that he entered French territory in the month of June 2009, applied to the Prefect of the Region of Poi-

5 Circular NOR IMIM1000016C of 16 September 2010.
tou-Charentes, Prefect of Vienne, for the issue of a residence card under Article L. 121-2 of the CESEDA. The Prefect denied his application in a decision dated 9 March 2011.

While Mr. A maintains that he practised a professional activity in France before being placed on temporary work incapacity leave because of his state of health, he confines himself to producing, in support of his claims, the copy of a CV stating that he worked in Paris as a surface technician for 4 months and as a stevedore for 5 months during the year 2008-2009, without attaching official documents such as payslips or a certificate from his employers. Moreover, it emerges from the documents in the file that, in a letter of 23 November 2010 sent to the Prefectural services of Vienne, the applicant stated that he had not worked but was looking for work and without income. Under these conditions, Mr. A. cannot be regarded as fulfilling one of the conditions envisaged by the provisions of the CESEDA on the date of the disputed order.

The documents produced by Mr. A., i.e. a CV, various documents for registration as a job-seeker with Pôle Emploi, specifying that he does not receive the back-to-work allowance, as well as registrations with temporary employment agencies, do not establish the fact that the person in question would have genuine chances of being recruited. Thus, the Prefect did not disregard the aforementioned provisions of Article R. 121-4 of the CESEDA in obliging him to leave French territory.

It emerges from these provisions that, apart from grounds of law and order, citizens of the Union who stay on the territory of a Member State for more than three months can be the subject of a removal measure if they no longer fulfil the conditions allowing them to be granted a right of residence; that they are however protected from removal measures if they hold or are looking for a job and if they have genuine chances of being recruited.

Mr. A. maintains that the obligation imposed upon him to leave French territory and the decision establishing the country of destination are in conflict with paragraph 4 of Article 14 of the Directive of 29 April 2004, since he does not pose an unreasonable burden on the social security system of France and he is looking for work. The judges emphasise that it is however evident from the documents in the file that the applicant has no resources in France and is not practising a professional activity; moreover, he does not submit any element allowing establishment of the fact that he had genuine chances of being recruited on the date of the disputed decision.

3. OTHER ISSUES OF CONCERN: RETURN OF EUROPEAN CITIZENS

3.1. Regulations

Law no. 2011-672 of 16 June 2011 relating to immigration, integration and nationality intended to implement a specific provision to govern the obligation to leave French territory as regards citizens of the European Union and their family members.

From now on, citizens who are nationals of a Member State of the European Union in a short stay situation (less than three months) can be deported. The new Law of 16 June 2011 relating to immigration, integration and nationality introduces a new Article L. 511-3-1 worded as follows:

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The competent administrative authority can, in a justified decision, force a national of a Member State of the European Union (…) or a family member to leave French territory if it observes:

1. That he can no longer prove any right of stay as envisaged in Articles L. 121-1, L. 121-3 or L. 121-4-1;
2. Or that his stay constitutes an abuse of law. The fact of extending stays of three months with the aim of remaining on the territory although the required conditions for a stay of more than three months are not fulfilled constitutes an abuse of law. An abuse of law is also embodied by a stay in France with the essential aim of benefiting from the social security system;
3. Or that, during the period of three months from his entry into France, his personal behaviour represents a genuine, present and sufficiently serious threat to the fundamental interests of French society.

The competent administrative authority takes into account all the circumstances relating to his situation, specifically the length of stay in France of the person in question, his age, state of health, family and economic situation, his social and cultural integration into France and the closeness of his ties with his country of origin.

In order to comply with the obligation imposed upon him to leave French territory, the foreigner has a period which, except in emergencies, cannot be less than thirty days from the date of notification. In exceptional cases, the administrative authority can grant a voluntary departure period in excess of thirty days. The obligation to leave French territory establishes the country of destination to which he is sent in the event of enforcement.’

It is also stipulated that the provisions relating to the administrative and contentious procedure for disputing obligations to leave French territory and bans on returning apply to Community nationals under the same conditions as are applicable to foreigners under common law.

During parliamentary discussions, this Article was the subject of many debates relating to the notion of abuse of law and its compliance with the spirit of Directive 2004/38. Some senators referred specifically to the fact that the Directive did not make the right of short stay conditional upon the level of social security allowances in the host country that the foreigner receives. Moreover, the Directive does not refer to the notion of abuse of law except in cases of fraud (specifically in marriages or unions) where the sole objective is to benefit from the rights associated with the freedom of movement.

This Article was perceived by some opposition senators as a ‘Roma article’, specifically in terms of the series of short stays. These senators found that this law changes the spirit of French law, which until now has presumed in favour of Community citizens, although from now on a certain level of suspicion exists at the very heart of the regulation. This provision would assert ‘as a presumption, that a Community national who came to France repeatedly [would have] the sole aim of remaining in the country without fulfilling the conditions required for stays of more than three months’10, and would therefore be abusing his right to freedom of movement. Now, before the Law of June 2011, French law imposed no restrictions on the right to stay for less than 3 months of any national of the European Union.

The specific inapplicability of the measure as a result of the fact that abuse of the right of short stay would be difficult to prove is an obstacle to its potential effectiveness. In fact, no particular formality or registration is necessary in order to stay for less than 3 months. Equally, abuse of the system of social security will be difficult to prove since the procedure for obtaining these forms of assistance require some time and legal residence.

9 Articles L. 512-1 to L. 512-4 CESEDA.
10 Ms. Nicole Borvo Cohen-Seat, senator.
Amendments have been put forward in order to provide better protection for Community nationals and their family members from removal measures. A literal transposition of paragraph 2 of Article 27 of Directive 2004/38 was requested, with the explicit aim of protecting the Roma community. Along the same lines, a literal transposition of the contents of Articles 30 and 31 of the Directive was demanded, in order to provide procedural guarantees in the event of removal.

The case in point relating to the behaviour of the person in question seems to make double use of the provisions of Article L. 121-4 regarding the limits for granting a right of residence. Thus, the Order to Leave French Territory appears here to be a substitute for the deportation procedure, without actually having the same guarantees, specifically from the procedural point of view. The essential aspect is the fact that it can only affect European nationals and similar during the period of three months from their entry into France.

The jurisprudence will have to elucidate the provisions of the fifth paragraph of the present article in determining the hypotheses under which the circumstances relating to the situation of the person in question – specifically the length of his stay in France, his age, state of health, family and economic situation, his social and cultural integration in France and the closeness of his ties with his country of origin – will be such as to pose an obstacle to the Order to Leave French Territory.

An initial judgment has implemented these provisions:

Administrative Court of Appeal of Bordeaux, 1 March 2012, no. 11BX02753

Mr. A., of Romanian nationality, lodged an appeal against judgment no. 1104294 dated 26 September 2011, in which the Administrative Court of Toulouse rejected his application to repeal the order of 21 September 2011 in which the Prefect of Tarn ordered him to leave French territory immediately and the order of the same day that he be placed in administrative detention.

It is evident from the applicant’s own statements, made to police officers during his questioning, that Mr. A., who has no identity papers, is of Romanian nationality and arrived in France from Italy in August 2011, one month before adoption of the order of the Prefect of Tarn of 21 September 2011; that therefore, on the date of this order, he had been in France for less than three months and was there in the situation where, in application of the aforementioned provisions of point 3 of Article L. 511-3-1 of the CESEDA, the Prefect can decide to order a national of a Member State of the European Union to leave French territory.

It emerges from the order to issue the Obligation to Leave French Territory immediately, passed on 21 September 2011, that the Prefect of Tarn based his order on the circumstances that the person in question had committed gang robbery in Albi, that this conduct represents a genuine, present and sufficiently serious threat to a fundamental interest of French society and that his removal is of an urgent nature for this reason; that it is evident from the statements made by the person in question himself in an official report that he has no resources other than those allegedly belonging to his wife, whose presence and resources in France have not been proven; that thus, having regard to all the circumstances of the case, the Prefect of Tarn has been able, without committing an error of judgment, to assess that the conduct of Mr. A. constituted a threat to law and order and, consequently, based on the provisions mentioned above, to order him to leave French territory immediately; that these grounds are sufficient to justify a genuine, present and sufficiently serious threat to public
safety, which is a fundamental interest of society within the meaning of Directive 2004/38/EC.

The law also introduces a new Article L. 521-5: ‘Expulsion measures envisaged in Articles L. 521-1 to L. 521-3 can be passed with respect to nationals of a Member State of the European Union (...) or a member of their family if their personal conduct represents a genuine, present and sufficiently serious threat to a fundamental interest of society.

In order to take such measures, the administrative authority takes into account all the circumstances pertaining to their situation, specifically the length of their residence on the national territory, age, state of health, family and economic situation, social and cultural integration into French society as well as the closeness of their ties with their country of origin.’

Article L. 521-2 of the CESEDA, modified by the same Law, stipulates that the following can only form the subject of an expulsion measure if this measure constitutes an imperative for the security of the State or public safety: ‘6. A national of a Member State of the European Union, of another State party to the European Economic Area agreement or the Swiss Confederation who has resided legally in France for ten years.’

As a consequence of the above, the removal of European nationals and similar on law and order grounds could take several forms, depending on the situation of the person in question:

- Obligation to leave French territory possible during the first three months of stay in France. This situation is contrary to the principle of the freedoms of movement and of residence of European citizens for 3 months. The fact that European nationals and similar who enjoy permanent right of residence cannot form the subject of this Obligation to Leave French Territory is emphasised;
- ‘Simple’ expulsion (Article L. 521-1 ff. of the CESEDA), unless the person in question can prove legal residence in France for ten years. Therefore, only expulsion as an imperative for the security of the State or public safety is conceivable in this case. This gradation in the extent of the threat to law and order will have to be submitted for inspection by the judges.

3.2. Jurisprudence prior to the modification of June 2011

The judgments of the Council of State handed down during the period 2010-2011 clarified the procedural rules applicable to the removal of nationals of a Member State of the European Union. The jurisprudence in this respect is therefore less dense and more consistent.

Insufficient resources

Administrative Court of Appeal of Bordeaux, 22 November 2011, no. 11BX00121

In an order of 9 July 2010, the Prefect of Haute-Garonne handed down a decision with respect to Ms. A., a Romanian national, to deny residence on the grounds that she could prove no right of residence based on the provisions of Article L. 121-1 of the CESEDA, and ordered her to leave French territory within one month. Ms. A. appealed the judgment of 20 December 2010 in which the Administrative Court of Toulouse rejected her application to repeal this order.
While Ms. A. maintains that she was on the national territory for less than three months before the disputed decision, it is evident from the documents in the file and in particular the entries on the information sheet produced by the administration, which the petitioner herself completed and signed, that she arrived in France on 1 March 2010; that the certificate dated 14 May 2010, which has not been translated into French, relating to her handicap and issued by the Romanian authorities, does not demonstrate that she had been in France for less than three months on the date of the disputed decision. Consequently, since Ms. A. failed to produce elements that usefully contradict those produced by the administration, the ground that the Prefect committed an error in law in assessing that she had stayed in France for more than three months must be dismissed.

The judges recall that, in implementation of the aforementioned provisions of Article L. 121-1 of the CESEDA, the object of which is to ensure accurate transposition into internal law of the provisions of Article 7 of Directive 2004/38/EC of 29 April 2004, all citizens of the European Union have the right to stay in France for a period longer than three months, specifically if they possess, for themselves and their family members, sufficient resources so that they do not become a burden on the social security system, as well as health insurance. It is evident from the documents in the file and in particular from the minutes of the hearing dated 17 August 2010, that the applicant stated that her only resources were 300 euros in social welfare and food in a social canteen, that while she maintains on appeal that she possesses health insurance enabling her to enjoy emergency medical assistance, she still cannot prove on appeal that she has sufficient personal resources or means of subsistence. On 9 July 2010, the date of the disputed order, the applicant had therefore stayed in France for more than 3 months and did not have resources in excess of Income Support (RMI). The application from Ms. A. is therefore rejected.

Administrative Court of Appeal of Lyons, 8 December 2011, no. 10LY02358

The applicants, who are Bulgarian nationals who entered France legally on 1 April 2006 and 16 January 2007 respectively, applied for residence cards on 16 October 2009. By orders of 20 April 2010, the Prefect of Yonne refused to issue them, ordering them to leave French territory within a period of one month and establishing the country of destination.

The judges recall that, in order to obtain a residence card in France, a citizen of the European Union must either practise a professional activity there or possess sufficient resources or be the spouse of a citizen of the European Union who fulfils one of these conditions and that, if he cannot prove a right of residence, he can also form the subject of a removal measure.

The applicants invoke the fact that Mr. A. directs a company that he founded in Bulgaria in August 2010 and for which he has recruited salaried employees in this country and has placed various contracts in France relating to cutting and shaping heating wood. They maintain that the turnover of this company was 170,000 euros between September 2009 and May 2010 and have placed on file five invoices that it sent to a client in February and March 2010, totalling 12,107 euros. However, these elements are not sufficient to establish that the activity practised in France by this company is enough for its director himself to be regarded as having a professional activity in France.

While the applicants maintain that the company created by Mr. A. clears net monthly profits of approximately 2,500 euros, they do not establish nor do they even allege that all or part of these amounts are paid back to them. Thus, they do not prove that they possess sufficient resources so as not to become a burden on the French social security system and could
not usefully maintain in any event either that they should not have continued, after the
launch of the aforementioned company, to be covered by the social security system, or that
the burden that they could represent, where applicable, would not be excessive. The circum-
stance that Mr. A. would be forced to dismiss the persons he recruited in Bulgaria for his
company, supposing it were established, does not affect the legality of the disputed deci-
sions. While Mr. and Ms. A. maintain that they are well integrated into French life and that
their eldest daughter is in school there, it emerges from the documents in the file that, on the
date of their entry into France, they were aged almost 36 and almost 30 respectively and their
eldest daughter aged 10 had previously lived in Bulgaria; that, under these conditions, the
Prefect of Yonne, in disputing the decisions, did not make a manifestly incorrect evaluation
of the consequences of them on their personal situation.

Administrative Court of Appeal of Nancy, 15 December 2011, no. 10NC01754
By order of 19 July 2010, the Prefect of Bas-Rhin issued a decision to refuse to maintain the
right of residence of Mr. A., a Romanian national, based on the aforementioned provisions of
Article L. 121-1 of the CESEDA and ordered him to leave French territory within a period of
one month.

The judges recall the applicable law: the provisions of Article L. 121-1 of the CESEDA,
the object of which is to ensure accurate transposition into internal law of the provisions of
Article 7 of Directive 2004/38/EC of 29 April 2004, stipulate that all citizens of the Euro-
pean Union have the right to stay in France for a period of more than three months specif-
ically when they possess, for themselves and their family members, sufficient resources so
that they do not become a burden on the social security system, as well as health insurance.

While Mr. A. asserts that he does not pose an unreasonable burden on the French social
security system, in any event it emerges from the aforementioned provisions of the CESEDA
that the lack of sufficient resources can be invoked by the Prefect in order to confirm the lack
of a right to stay of a Community national and to enact a removal measure with respect to
that person. Even if Mr. A., who was recognised as a handicapped worker until 1 May 2011,
maintains that he practised a professional activity from 1 July 2010 to 30 September 2010
with the association for the blind and visually handicapped of Alsace and Lorraine and he
works as a self-employed person, he cannot prove any resources emanating from the latter
activity. In addition, he produces no documents to establish that he had, on the date of the
disputed decision, sufficient resources within the meaning of the provisions of Article L.
121-1 of the CESEDA. To the judges, Mr. A. is consequently not justified in maintaining
that he had sufficient resources within the meaning of the aforementioned provisions. His
petition against the Prefectural order is therefore rejected.

Administrative Court of Appeal of Lyons, 5 January 2012, no. 11LY00993
Miss A. and Mr. B., Romanian nationals who entered France on an undetermined date, were
each the subject of an order of 20 August 2010 by the Prefect of Rhône, stating that they no
longer have any right to stay in France, that they are obliged to leave French territory within
a period of one month from notification of this order and that they may be automatically
deported to the country of their nationality upon expiry of this period. They are disputing
judgments nos. 1005659 and 1005660 of 10 December 2010 in which the Administrative
Court of Lyons rejected their findings to repeal the decisions contained in these orders.

It is evident from the terms of the disputed decisions that, on 20 August 2010, Miss A.
and Mr. B. were unlawfully occupying a building located in rue Paul Bert in Lyons; that the
applicants, who had left France on 4 May 2010 to return to Romania in implementation of a previous removal measure and who had then returned to France on an undetermined date, were presumed to have been in France for more than three months; that they could not then prove that they practised a professional activity in France or that they were looking for work, or that they possessed health insurance and sufficient resources so as not to become a burden on the social security system during their stay, or that they were registered at an establishment for the chief purpose of pursuing studies or vocational training, or that they were direct descendants aged under twenty-one or dependent, direct dependent ascendants, spouses, direct dependent ascendants or descendants of a spouse, accompanying or joining a national who met the conditions listed in point 1 or 2 of Article L. 121-1 of the CESEDA, or that they were spouses or dependent children accompanying or joining a national who met the conditions listed in point 3 of Article L. 121-1.

On the one hand, the Prefect of Rhône considered that the removal measure did not represent an excessive attack on the rights of Miss A. and Mr. B with respect to their private and family life with regard to the aims pursued since the parties in question could not prove prior, stable private and family life on French territory and did not prove that it was impossible to continue their family life in Romania and, on the other hand, that they did not prove that they fell within the scope of the provisions of Article L. 511-4 of the CESEDA.

The judges thus find that the Prefect of Rhône decided before taking these into account, the personalised elements that enabled him to decide the fate of Miss A. and Mr. B., in full knowledge of the facts; that while the latter accuse the Prefect of Rhône of having taken the disputed decisions based on sorely insufficient information and without seriously investigating whether they posed an unreasonable burden on the social security system, as of the date of the disputed decisions they have not provided the administrative authority with any element other than those contained therein with a view to an examination of their situation and the personalised elements taken into account by the Prefect are not usefully contradicted by the applicants, who initially produced only their passports and their children’s school attendance certificates.

The length of stay is the decisive criterion for the legal system applicable to Community nationals; if it is up to three months, they enjoy unqualified right of residence on the sole condition that they not pose an unreasonable burden on the social security system; beyond three months the right to stay becomes conditional and Article L. 121-1 of the CESEDA lists the conditions imposed by the Directive of 29 April 2004. Since Miss A. and Mr. B. at no time prove on what date they entered France for the last time, they cannot usefully contradict the Prefect of Rhône, who assumed that they had been present in France for more than three months as of the date of intervention of the disputed decisions, 20 August 2010, after having taken into account the fact that they had left France on 4 May 2010 to return to Romania in implementation of a previous removal measure.

The applicants’ petition was therefore rejected.

Administrative Court of Appeal of Nantes, 23 February 2012, no. 11NT02383

By order dated 26 March 2011, the Prefect of Loire-Atlantique refused to grant right of residence to Mr. X., a Romanian national, and served him with an obligation to leave French territory within a period of one month.

Mr. X., who entered France during 2009, maintains that he does not pose a burden on the French social security system by asserting that he has always been actively looking for work before being issued with temporary work authorisation on 27 January 2011 in order to work
as a service agent for the company Serenet on a fixed-term contract and then to enter into a permanent contract on 5 August 2011 with the same company, following a favourable response to his application for a change of status on 27 May 2011 by the deputy regional director for companies, competition, consumption, work and employment; that it is evident however from the documents in the file that, on the date of the disputed order, Mr. X. only held a part-time temporary job, which provided only modest income; that although he did have Universal Health Coverage, he did not however have health insurance; that thus, considering that he did not fulfil the condition referred to in point 2 of Article L. 121-1 aforementioned of the Code for the Entry and Stay of Foreigners and the Right of Asylum, the Prefect, who did not have to take into consideration the incomes of Ms. Z née Y, with whom the applicant indicated that he cohabited, did not incorrectly apply the said provisions.

**Interpreter**
The requirement of recourse to an interpreter remains a fundamental right protected by the judges.

*Administrative Court of Appeal of Versailles, 18 October 2011, Baicu vs. Prefecture of Val d’Oise, no. 10VE01306 (identical solutions in cases handed down by the same court on the same date: no. 10VE01307, no. 10VE01310, no. 10VE01311, no. 10VE01312).*

Mr. A., a Romanian national, appeals the judgment of 16 March 2010 in which the Administrative Court of Cergy-Pontoise rejected his application to repeal the order of the Prefect of Val-d’Oise of 15 January 2008, refusing to uphold the right of residence of the party in question and ordering him to leave French territory.

Under the provisions of the CESEDA relating to citizens of the EU, it is up to the administration, in the event of a dispute concerning the length of stay of a citizen of the European Union whom it has decided to remove, to enforce the elements it takes as a basis for considering that he no longer fulfils the conditions to stay in France. It is up to the foreigner who is requesting repeal of this decision to produce all elements of a nature to dispute its merits, according to the usual methods for the production of proof.

In order to conclude that Mr. A. had stayed in France for more than three months, the Prefect of Val-d’Oise took as a basis the statements allegedly obtained by the police when the person in question was apprehended. Mr. A. disputes having stated, during this control, that he entered France in August 2007. Even if the Prefect of Val-d’Oise establishes that he required an interpreter with a view to gathering statements from Mr. A., the file does not contain any individual interview sheet or any other element confirming that he stated that he entered France in August 2007; thus, the Prefect of Val-d’Oise does not establish that Mr. A. had been in France for more than three months as of the date of the disputed order. Mr. A., is therefore justified in maintaining that the Administrative Court of Cergy-Pontoise, in the disputed judgment, wrongly rejected his application.

**Procedure**

*Administrative Court of Appeal of Lyons, 4 October 2011, no. 11LY00507*

In two orders of 20 August 2010, the Prefect of Rhône, after having observed that Mr. and Ms., Romanian nationals, could no longer prove any right to stay in France, ordered them to leave French territory. The applicants appeal the judgments of the Administrative Court of Lyons of 23 November 2010, rejecting their requests aimed at repealing the decisions of the Prefect of Rhône.
The disputed orders of 20 August 2010 are confined to reproducing the conditions listed in Article L. 121-1 of the CESEDA, indicating that Mr. and Ms. could not prove that they fulfilled them. These orders, which do not rule on requests likely to contain elements of fact relating to the particular situation of Mr. and Ms., are confined to indicating that the persons in question were unlawfully occupying a property located at 186 avenue Berthelot in Lyons. Mr. and Ms. maintain, without being contradicted, that the police officers who went to this location on two occasions, the first time to confirm the identity of the occupants and the second to serve them with removal measures, did not conduct a hearing. It is therefore evident from the documents in the file that the Prefect of Rhône, before taking the disputed decisions, failed to gather the personalised elements that would have enabled him to decide the fate of Mr. and Ms. in full knowledge of the facts. Therefore, Mr. and Ms. are justified in maintaining that the Prefect of Rhône did not carry out an individual examination of their situation before making the disputed decisions. The Prefectural decisions taken with respect to them are consequently repealed.

4. FREE MOVEMENT OF ROMA WORKERS

The Roma population has been stigmatised in the French public and political debate, specifically during discussions associated with the adoption of new regulations or upon publication of delinquency figures by the Minister of the Interior, Claude Guéant, who explicitly highlighted the situation of Romanian nationals.

During discussion of the draft immigration law in 2011, senators in the parliamentary opposition at the time\textsuperscript{14} were of the view that the new provisions relating to the removal of Community nationals were directly targeted at the Roma population. Specifically, they refer to the failure to comply with the communication of the European Commission of 2009 regarding the transposition guidelines for Directive 2004/38.

A parliamentary bill was introduced in 2012, intended to reinforce the effectiveness of the secondary penalty for entering French territory and aimed at punishing persistent offenders. Even if this law had not been adopted (due to the reduced length of the parliamentary session because it was an election year), it is interesting to stress that it was the subject of debates relating to the Roma population. In his report\textsuperscript{15} relating to this parliamentary bill, Deputy J.-P. Garraud analyses crime levels among foreign nationals. An entire section of the report is devoted to the Romanian population, the report thus being accused of stigmatising the Roma population. Specifically, it states that, ‘according to statistics taken from the STIC, 4,352 persons of Romanian nationality were implicated in thefts in 2008, of whom over 2,000, or almost half, in shoplifting. In two years, the number implicated in thefts of Romanian nationality increased considerably, with an increase of 114.4%.

Depending on the type of theft committed, the number of those implicated of Romanian nationality increased by 2.5 times or more between 2008 and 2010 for breaking and entering and similar (increase of 168.1%), for pickpocketing (increase of 153.6%), for petty theft and other non-violent theft excluding shoplifting (increase of 162.1%). Without a doubt, violent unarmed theft has seen the greatest increase in the number of Romanian nationals implicated, with an increase of 300.3%.

\textsuperscript{14} Specifically Mr. Roland Courteau.
\textsuperscript{15} Report no. 4396 registered with the presidency of the Assemblée Nationale on 22 February 2012.
Thus, for breaking and entering and similar crimes, the proportion of persons of Romanian nationality among those implicated has risen from less than 3% in 2008 to 6.5% in 2010, or an increase of almost four points in two years. The most significant increase in volume concerns burglaries, with 406 additional Romanian nationals implicated between 2008 and 2010, or an increase of almost 90% (the italic type is printed as bold in the report).

Romans are the only nationality of a Member State of the EU mentioned in this report.

The penalty of exclusion from French territory should have been applied equally to nationals of Member States of the European Union, unless they could prove legal residence in France for at least 3 years. The burden of this proof should be upon them.
Chapter II
Members of the Family

1. The Definition of Family Members and the Issue of Reverse Discrimination

A new article in the regulatory section of the CESEDA has broadened the definition of family members. An Article R. 121-2-1 has been inserted, which envisages that, under certain conditions, the administrative authority can apply the provisions relating to the Entry and Stay of family members of a Community national to any foreign national, regardless of nationality, who is not covered by the definition of ‘family members’ resulting from points 4 and 5 of Article L. 121-1.

The administrative authority must examine the personal situation of the person in question, who must in all cases be related to a national of the European Union who enjoys a right to stay for more than 3 months. Three enlargement hypotheses are now envisaged:
1. If, in the country of origin, the person in question is a dependent family member or forms part of the household of such a national of the European Union;
2. If, for serious health reasons, the national of the European Union must necessarily and personally take care of this person with whom he has a family relationship;
3. If he confirms long-term private and family relationships, other than through marriage, with this Community national.’

A new Article R. 121-4-1 has been added to the CESEDA, stipulating that,

‘Nationals who fulfil one of the conditions envisaged in Article R. 121-2-1 may be granted the right to stay in France following an examination of their personal situation.’

Circular of 21 November 2011 NOR I0CL1130031C regarding the methods of application of Decree 2011-1049 of 6 September 2011 passed in application of Law no. 2011-672 relating to immigration, integration and nationality and relating to residence cards

It clarifies these provisions. For persons covered by the new cases of broadening of the concept of family members, recognition of the right of residence is not automatic. It will be conditional upon an examination and to an assessment of each individual situation, particularly with respect to the criteria relating to the right to respect for private and family life. The residence card that will be issued to them will bear the words, ‘Residence permit of family member of a Union citizen’.

Two judgments in jurisprudence concern the definition of family members.

Administrative Court of Appeal of Bordeaux, 8 November 2011, no. 10BX03057

The dispute concerned a refusal of residence accompanied by an obligation to leave French territory imposed upon a Malagasy national, the partner of a German national. The judges specify that it is clear from the provisions of Articles 2 and 3 of Directive 2004/38/EC that while the Directive applies directly to the spouse of a national of a Member of the European Union or to a partner with whom this national has entered into a registered partnership under national legislation, it also involves the Member States in favouring the reception of cohabiting partners in cases where the relationship is long-term and duly authenticated. Now, it is evident from the documents in the file that the relationship between M. and Miss Y, a Ger-
man national, did not begin until the month of May 2009, in other words three months before the filing of the application for a residence card and nine months before the date of the disputed order; that, under these conditions, taking into account the short duration of the conjugal life with his partner as of the date of the disputed decision, the applicant cannot be regarded as a family member of a citizen of the European Union within the meaning of the aforementioned provisions of the Directive of 29 April 2004.

Administrative Court of Appeal of Marseilles, 1 December 2011, no. 10MA04089
The Prefect of Alpes-Maritimes lodges an appeal against the judgment dated 13 October 2010 in which the Administrative Court of Nice repealed its order dated 12 July 2010, in which it refused to issue a residence card to Ms. A., of Cape Verdean nationality, ordered the person in question to leave French territory and established Cape Verde as the country of destination.

The judges consider that, contrary to what the Prefect maintains on appeal, the Civil Solidarity Pact must be regarded, with respect to its effects in many legally protected social situations, as the equivalent of marriage within the meaning of the Directive of 29 April 2004; that, consequently, in failing to include persons who have signed a Civil Solidarity Pact within the definition of family members of Community nationals as envisaged by the aforementioned provisions of the Code for the Entry and Stay of Foreigners and the Right of Asylum, the Law of 24 July 2006 disregarded the objectives of this Directive; that, consequently, the first judges lawfully relied on the direct application to the situation of Ms. A. of the aforementioned stipulations of the Directive of 29 April 2004; that the person in question, who signed a Civil Solidarity Pact with Mr. De Horta Pereira, of Portuguese nationality, registered with the Regional Court of Nice on 25 March 2010, was as a result one of the family members of a citizen of the Union within the meaning of Article 2 point 2 b of the Directive, as was incidentally admitted by the Prefect in the grounds for the challenged order. Consequently, in applying to the situation of Ms. A. the provisions of Article 3 point 2 b of this same Directive, relating to partnerships entered into between a citizen of the Union and a citizen of a third-party State that are not equivalent to marriage under the legislation of the host Member State, and Article L. 313-11-7 of the Code for the Entry and Stay of Foreigners and the Right of Asylum, the Prefect has committed an error of law.

Administrative Court of Appeal of Marseilles, 13 March 2012, Cholewinska vs. Prefect of the Region of Provence, Alpes, Côte d’Azur and Prefect of Bouches-du-Rhône, no. 10MA01524
Ms. A. appeals the judgment dated 16 March 2010 in which the Administrative Court of Marseilles rejected her action against the order of 25 November 2009 by the Prefect of Bouches-du-Rhône, denying her a residence card and ordering her to leave the national territory. The judges recall the content of the provisions of Directive 2004/38/EC. As a result, while the Directive applies directly to the spouse of a national of a Member of the European Union or to a partner with whom this national has entered into a registered partnership based on the national legislation, it also involves the Member States in favouring the reception of cohabiting partners in cases where the relationship is ‘long-term’ and ‘duly authenticated’.

The certificate of cohabitation with an Irish national was not signed until 20 July 2009 for a conjugal life dating from 1 July 2009, or a little over 4 months from the date of the disputed decision. While the person in question alleges that she lived conjugally with her partner in Ireland since 2005, she does not establish the reality of this conjugal life; conse-
quently, the person in question cannot be regarded as a family member of a citizen of the European Union within the meaning of the aforementioned provisions of the Directive of 29 April 2004; that, under these conditions, the ground that the Prefect disregarded the Directive of 29 April 2004 must be dismissed.

2. ENTRY AND RESIDENCE RIGHTS

As a reminder, Article L. 121-3 of the CESEDA (legislative section) stipulates that, unless his presence poses a threat to law and order, a family member of a Community national, depending on the situation of the person he is accompanying or joining, who is a national of a third-party State, has the right to reside anywhere on French territory for a period longer than three months.

If he is aged over eighteen, or at least sixteen if he wants to practise a professional activity, he must hold a residence permit. This permit, the term of which corresponds to the planned length of stay of the citizen of the Union, up to a maximum of five years, bears the words, ‘residence permit of family member of a citizen of the Union’. This permit gives its holder the right to practise a professional activity, subject to the transitional measures envisaged by the treaty of accession to the European Union of the State of which he is a national’.

The new Article R. 121-1 of the CESEDA, resulting from the decree of 6 September 2011,16 explains this legislation in stipulating that a national of a third-party State who is a family member of a Community national is admitted to French territory, ‘on condition that he does not pose a threat to law and order and that he hold, in the absence of a valid residence card issued by a Member State of the European Union bearing the words, ‘residence permit of family member of a citizen of the Union’, a valid passport, a visa or, if issued, a document establishing his family relationship’. The consular authority must issue, free of charge, ‘as quickly as possible and as part of an accelerated procedure’, the required visa upon proof of his family relationship. He must be given every opportunity to acquire this visa.

As a result of the particular nature of French overseas law, the decree envisages that this article of the CESEDA is applicable to Saint Barthélemy and Saint Martin.

Decree 2011-1049 of September 2011 grants new powers to the Prefects in terms of verifying compliance with the residence conditions of family members of an EU national. Firstly, they can check that the family members satisfy the legal definition of Article L. 121-1 points 4 and 5 of the CESEDA. Then, the new paragraph of Article R. 121-4 CESEDA enables them to check that the conditions for the retention of residence of family members envisaged in Article R. 121-7 CESEDA are observed, in other words in the event of the death of the national being accompanied or joined or if this person leaves France; or in the event of divorce or annulment of marriage with the national being accompanied or joined.

The decree does not specify the inspection methods or the framework for this inspection given to Prefects.

Article R. 121-14 CESEDA also introduces a new method of inspection. Family members receive a residence card bearing the words, ‘residence permit of family member of a

citizen of the Union’ with the same period of validity as that to which the national mentioned in Article L. 121-1 whom they are accompanying or joining is entitled, up to a maximum of five years. During this period and in the event of doubt, the administrative authority can, without acting systematically, check that the conditions mentioned in Articles L. 121-3 and R. 121-8 for the right to stay for more than 3 months and for maintaining this right to stay are satisfied. Recognition of their right to stay is not subject to possession of the residence card nor the receipt of the application for a residence card.

The decree of September 2011 also introduces inspection mechanisms for the continuation of the stay of EU citizens beyond 3 months. The new Article R. 121-14-1 stipulates that the provisions of Articles R. 121-13 and R. 121-14 also apply to the nationals referred to in Article L. 121-4-1 when they stay in France for longer than three months. Now, Articles R. 121-13 and R. 121-14 envisage that family members of a Community national shall present, in support of their application for a residence card, one of the documents mentioned in the first paragraph of Article R. 121-1, proof of their family relationship as well as of the right of residence of the national they are accompanying or joining.

In cases where the national whom they are accompanying or joining does not practise a professional activity, they shall additionally prove the resources this person possesses to ensure their financial coverage and insurance providing the services mentioned in Articles L. 321-1 and L. 331-2 of the Social Security Code.

They receive a residence card with the same period of validity as that to which the national mentioned in Article L. 121-1 whom they are accompanying or joining is entitled, up to a maximum of five years.

The circular of 21 November 2011 sets forth the conditions for the right of stay of family members who are nationals of third-party countries following adoption of these new regulations:
• No obligation of legal entry to the territory for nationals of third-party countries who are family members of a Community national;
• 3 months instead of 2 months established as the deadline for filing an application for the first residence card of family members of a Community citizen after their entry to the territory. Submission of an application for a residence card after this deadline cannot lead to a denial of residence but will have to give rise to qualification for the right to a visa to regularise the situation. A fine for infringement can be levied under the provisions of Article R. 621-2 CESEDA.

The Law of 16 June 2011 modified an important paragraph of Article L. 511-4 of the CESEDA, which protects Obligations to Leave French Territory: ‘A national of a Member State of the European Union, of another state party to the European Economic Area agreement or the Swiss Confederation, as well as his family members, who enjoy permanent right of residence as envisaged by Article L. 122-1’. One paragraph has been deleted, which protected nationals of third-party countries who are family members of a Community national, even if they could not prove that they entered France legally or if they remained on the territory

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17 Circular of 21 November 2011 NOR IOCI1130031C concerning the methods of implementing Decree 2011-1049 of 6 September 2011, passed in implementation of Law no. 2011-672 relating to immigration, integration and nationality and relating to residence cards.
18 By virtue of Circular NOR IOCV1102492C of 11 March 2011.
19 Article R. 621-2 CESEDA: Family members who are nationals of a third-party State, mentioned in Article L. 121-3 who have failed to apply, within the statutory deadlines, for issue of the residence permit referred to in Article R. 121-14 shall be punished by a fine provided for fifth category offences.
following expiry of the validity of their visa. The latter could not be the subject of a deportation order, regardless of whether or not they had acquired permanent right of residence.

Many judgments concern the entry, residence and removal of family members

Administrative Court of Appeal of Lyons, 12 April 2011, no. 10LY01619
It emerges from the combined provisions of Articles L. 121-1 and L. 121-3 of the CESEDA, as well as those of points 1 and 2 of Article 7 of Directive 2004/38/EC, that a national of a third-party State who is the spouse of a citizen of the European Union only holds the right to stay in France if this citizen of the European Union himself fulfils one of the conditions defined in a), b) or c) of Article 7 of this Directive, reiterated in 1, 2 or 3 of Article L. 121-1 of the CESEDA. Consequently, the ground that the Prefect could not invoke the lack of activity and the inadequate resources of D in order to refuse to issue a residence card to her husband must be dismissed.

Even if the applicant maintains that his wife ceased her activity because of her state of health, it is not evident from the documents in the file that D, who stated that she had completely ceased her non-salaried activity, is affected by a temporary disability resulting from an illness or an accident; that, consequently, the Prefect was justified in referring to the lack of professional activity and the inadequate resources of D for refusing to issue a residence card to her spouse, even though this lack of activity and insufficient resources were associated with the state of health of the person in question.

Administrative Court of Appeal of BORDEAUX, 3 November 2011, Da Costa vs. Prefect of Haute-Garonne, no. 11BX00006
Mr. X., of Angolan nationality, entered France from Portugal in 2007, holding a passport and an expired Portuguese residence permit. On 20 January 2007, he married a Portuguese national and this union produced a daughter named Adriana, born on 11 September 2007 in Toulouse. On 21 December 2009 he applied for award of a residence card, denied by order of 2 April 2010 by the Prefect of Haute-Garonne. Mr. X. properly lodges an appeal against the judgment of 6 December 2010, in which the Administrative Court of Toulouse rejected his application to repeal the aforementioned order.

The judges recall the applicable legislation, i.e. Article L.121-1 of the CESEDA; Article L.121-3 and Article R121-4 of the same Code. Thus, the adequate nature of resources is assessed, taking into account the personal situation of the person in question. On no account can the amount required exceed the flat-rate amount of the Workers Solidarity Income mentioned under point 2 of Article L. 262-2 of the Social Action and Families Code (…). The burden imposed on the social security system by a national mentioned in Article L. 121-1 is assessed, specifically taking into account the amount of non-contributory social security allowances that are granted to him, the length of his difficulties and of his stay.

Mr. X. maintains that his wife, a Community national, is within the category of foreigners envisaged under point 1 of Article L.212-1 who practise a professional activity in France and consequently have the right to remain on the territory for a period of more than three months. However, it is evident from the documents in the file that the applicant’s wife can only prove a part-time unlimited term contract based on 13 hours per month as a cleaning lady at a salary of 148.85 euros, this reduced professional activity being of a purely secondary nature that cannot be regarded as a professional activity. It is not established that Ms. X. would have health insurance or sufficient resources so as not to become a burden on the social security system within the meaning of the aforementioned provisions of point 1 of Arti-
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cle L.121-1 of the CESEDA. Consequently, the Prefect was able to decide, without making an error of judgment, that the wife of Mr. X. did not meet any of the alternative conditions envisaged by the aforementioned provisions of the CESEDA.

Based on Article 3-1 of the International Convention on the Rights of the Child, the higher interests of the child must be the chief consideration. Mr. X. does not establish that the family unit could not be reformed either in Portugal, the country of nationality of Adriana’s mother and where he lived for 10 years, or in Angola, where he maintains family relationships.

Administrative Court of Appeal of Nantes, 8 April 2011, no. 10NT00410
The applicant, of Turkish nationality, is requesting repeal of the judgment dated 25 January 2010, in which the Administrative Court of Orléans rejected his request for repeal of the order of 22 September 2009 by the Prefect of Loiret, regarding denial of a residence card and the obligation to leave French territory.

The applicant has been married since 17 January 2009 to Ms. Salvina Y., of Portuguese nationality. The latter has lived in France for more than five years and holds, in application of the provisions of Article L. 122-1 of the CESEDA, permanent right of residence. Ms. Y., who had to terminate all professional activity following a traffic accident, is the recipient of the handicapped adult allowance referred to in Article L. 821-1 of the Social Security Code; on this basis, the spouse of Mr. X. received, for the month of August 2009, an allowance of 666.96 euros, an amount more than 200 euros higher than that of the Workers Solidarity Income, to which is to be added in the form of non-contributory social security allowances, 388.26 euros in housing allowance and 158.78 euros in family allowances. With regard to these circumstances. Ms. Y. must be regarded as satisfying the requirements of point 2 of Article L. 121-1 of the aforementioned Code since, on the date of the disputed decision, she possessed, within the meaning of the rules fixed by the aforementioned provisions of Article R. 121-4 of the CESEDA, for herself and her family, sufficient resources so as not to become a burden on the social security system. The judges find that Mr. X., in his capacity as spouse of a citizen of the European Union falling within the scope of Article L. 121-1 of the CESEDA, could take advantage of the provisions of point 4 of Article L. 121-1 of the CESEDA and thus fulfilled the conditions envisaged by the aforementioned provisions of Article L. 121-3 of the same code; that, in denying him the card he applied for, on 22 September 2009, on the grounds that he could not take advantage of the provisions of Article L. 121-1 of this Code, the Prefect of Loiret committed a manifest error of judgment.

The judgment is therefore repealed, the Prefect is directed to issue a residence permit to the applicant, bearing the words ‘residence permit of family member of a citizen of the EU’.

Administrative Court of Appeal of Versailles, 18 October 2011, no. 11VE00943
Mr. A., a Beninese national, who entered French territory for the last time in December 2009 at the age of 28, applied for a residence card on 22 April 2010 based on Article L. 121-3 of the CESEDA in the capacity as spouse of a citizen of the European Union, which the Prefect of Val-d’Oise refused to issue by order of 30 June 2010, ordering him to leave French territory and establishing the country of destination.

It is evident from the combined provisions of Articles L. 121-1 and L. 121-3 of the CESEDA, as well as those of points 1 and 2 of Article 7 of Directive 2004/38/EC, that a national of a third-party State, married to a citizen of the European Union, only has a right of residence if this citizen of the European Union himself fulfils one of the conditions defined
in a), b) or c) of Article 7 of this Directive, reiterated in points 1, 2 or 3 of Article L. 121-1 of the CESEDA; that, consequently, the Prefect of Val-d’Oise could legally cite the inadequate resources of the spouse of Mr. A. to deny him a residence card, without the latter being able usefully to assert that he possesses decent housing and that his wife is actively looking for work.

Mr. A. asserts that he has maintained a stable relationship with a German national since 2008, whom he married on 19 December 2009 and that he cares for his wife’s son; these circumstances do not in themselves establish that the order of the Prefect of Val-d’Oise dated 30 June 2010 represented a disproportionate attack on respect for the right to private and family life with in view of the grounds for his refusal; that it follows from this that the ground of infringement of the stipulations of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms must also be dismissed.

Administrative Court of Appeal of Marseilles, 2 November 2011, Borges Pente vs. Prefect of the Region of Provence, Alpes, Côte d’Azur and Prefect of Bouches du Rhône, no. 09MA03726

Mr. A., of São Toméan nationality, lodges an appeal against judgment no. 0903311 of 22 September 2009 in which the Administrative Court of Marseilles rejected his application to repeal the order dated 4 May 2009, in which the Prefect of Bouches-du-Rhône refused to issue him with a residence card and accompanied his decision by an obligation to leave French territory.

It is evident from the documents in the file that, on 8 September 2007, Mr. A. married a Portuguese national and, on 26 June 2008, applied for issue of a residence card, on the basis of the provisions of Articles L. 121-1 ff. of the CESEDA, in his capacity as family member of a national of the European Union. In the disputed order dated 4 May 1999, the Prefect of Bouches-du-Rhône rejected this application on the grounds, on the one hand, that the applicant did not establish the reality and legality of his entry to the national territory in 1992, after having found that he was very unfavourably known to the police and legal authorities, since the person in question had been sentenced on many occasions, specifically by the Criminal Court of Nice on 22 September 1997, to a ban on entering the national territory for a period of 10 years; on the other hand, that the person in question did not establish that he fulfilled the conditions set forth in Article L. 121-3 of the CESEDA since his wife could not prove that she met the requirements imposed by the provisions of Article L. 121-1 1, 2 and 3 of the same Code, that moreover he could not take advantage of the provisions of Article L. 122-1 of the same Code since he had not resided in France legally and without interruption with his spouse for the five years preceding his marriage, that he did not report any evidence concerning the length or habitual nature of his residence on the national territory and did not assert any exceptional ground or humanitarian considerations to justify his residence under Article L. 313-14 of the CESEDA and, finally, that the person in question did not establish that he was without family ties outside France.

Thus, the applicant does not establish that he has resided in France for more than ten years. Although it is evident from the documents in the file that he is the father of two children from a first marriage, who reside legally in France by virtue of their residence permits, these two children were of majority age on the date of the disputed order. Moreover, while the applicant is the father of a child born on 6 February 2009 from his marriage to a Community national, it is not disputed that the latter did not meet the conditions established by the provisions of Article L. 121-1 of the CESEDA. His conjugal life with this community
national was relatively recent as of the date of the disputed order. Finally, the applicant does not establish that he is without family ties outside France. Consequently, the disputed order cannot be regarded as constituting a disproportionate attack on the right of Mr. A. to respect for his private and family life with regard to the aims to which it was passed. Therefore, the ground of disregard for Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms must be dismissed.

Administrative Court of Appeal of Marseilles, 9 June 2011, Prefect of the Region of Provence, Alpes, Côte d’Azur and Prefect of Bouches-du-Rhône vs. Marir née Mehnane, no. 09MA04680

By order of 1 July 2009, the Prefect refused to issue the residence card applied for on 18 January 2009 by Ms. Chérifa B née A, an Algerian national, and served her with an obligation to leave French territory. The Prefect appeals the judgment of 17 November 2009 in which the Administrative Court of Marseilles repealed the aforementioned order of 1 July 2009.

While the Franco-Algerian Accord of 27 December 1968, modified, entirely governs the conditions under which Algerian nationals can be admitted to and stay in France and practise a professional activity there, as well as the rules concerning the types of residence card that can be issued to them, these stipulations do not however, in the absence of explicit incompatible provisions, pose an obstacle to Algerian nationals, in their capacity as spouse of a citizen of the European Union, taking advantage of the aforementioned provisions of Articles L.121-1 and L.121-3 of the Code for the Entry and Stay of Foreigners and the Right of Asylum, which provide for transposition into internal law of Directive 2004/38/EC.

It emerges from the documents contributed to the debates that Ms. Chérifa B née A married a Belgian national on 27 August 2006; that a child of Belgian nationality was born from the marriage on 14 May 2008; that it is evident from the documents in the file that, on the date of the disputed order of 1 July 2009, her spouse, the holder of a permanent employment contract since 28 May 2009, was practising a professional activity, thus meeting one of the conditions imposed by the provisions of Article L.121-1 of the CESEDA. Consequently, contrary to what is maintained by the Prefect, Ms. Chérifa B née A, who does not pose a burden on the French social security system, can, in her capacity as spouse of a national of the European Union, aspire to the issue of a residence card on the basis of the provisions of Article L.121-3 of the aforementioned Code;

It is evident from the above that the Prefect is not justified in maintaining that, in the disputed judgment, the Administrative Court of Marseilles wrongly repealed its order of 1 July 2009, in which it refused to issue a residence card to Ms. Chérifa B née A and served her with an obligation to leave French territory. The Prefect is therefore instructed to issue Ms. B née A with a residence card bearing the words ‘private and family life’ within a period of two months from notification of the present judgment, subject to her not already having been granted a residence card.

20 The Algerian wife of a Belgian national possesses a right of residence based on the CESEDA, L. Marcovici, AJDA 2011, p. 1486.
Administrative Court of Appeal of Paris, 24 May 2012, Police Headquarters vs. Eugenio Da Silva, no. 11PA02200

In order to repeal, by judgment of 24 March 2011 which the Prefect is appealing, the order of 7 June 2010 in which this authority refused to issue a residence card to Ms. Hellen A. on the basis of point 7 of Article L. 313-11 of the CESEDA, ordered her to leave French territory and established the country of destination, the Administrative Court of Paris considered that this order was passed in disregard for the higher interest of her child.

Ms. A., of Brazilian nationality, asserts that she has cohabited since 13 August 2009 with Mr. Neto B., a Portuguese national with whom she had a child, born in Paris on 23 January 2010, of Portuguese nationality. However, she does not plead any circumstances forming an obstacle to continuing this family life outside France, specifically in Brazil or Portugal; consequently, the disputed order, which has neither the object nor the effect of separating the child from its parents, cannot be regarded as passed in disregard for the stipulations of the convention relating to the rights of the child; that, consequently the Chief of Police is therefore justified in maintaining that the Administrative Court of Paris wrongly used these grounds as a basis for repealing its order of 7 June 2010.

Ms. A. also asserts that her cohabiting partner, of Portuguese nationality, has lived in France for many years, that he has always worked in the catering trade and that he can prove this using employment contracts and payslips. However, the applicant cannot invoke the combined provisions of Article L. 121-3 and of point 4 of Article 121-1 of the CESEDA because she cannot prove the capacity of spouse of a citizen of the European Union.

Ms. A. asserts that, having entered France on 28 August 2008, since 13 August 2009 she has cohabited with a European citizen who enjoys permanent right of residence on French territory and that she is the mother of a child of Portuguese nationality born from this relationship; however, she is not able to demonstrate the length or continuity of her conjugal life with her partner, confining herself to producing electricity bills or recent certificates from the Paris Family Allowances Office, some even dating from after the disputed order; the lease dated 26 May 2009 only mentions the name of her partner and the person in question cannot prove personal or family relationships in France, nor that she has is without ties in her country of origin, where she lived until the age of 24. Consequently, the decision to deny residence of 7 June 2010 did not constitute a disproportionate attack on the right of Ms. A. to respect for her private and family life with respect to the aim for which it was passed and did not therefore disregard the stipulations of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

3. IMPLICATIONS OF THE ECJ JUDGMENTS

Administrative Court of Appeal of Bordeaux, 5th ch., 8 July 2011, no. 10BX01839

By virtue of the stipulations of Article 7 of Directive 2004/38/EC of 29 April 2004, in light of which Article L. 121-1 of the CESEDA must be read, a minor national of a Member State holds a right of residence in a host Member State, other than the State of which he holds nationality, on condition that he is covered by appropriate health insurance and that the parent who is responsible for him, who is a national of a third-party State, has sufficient resources so that the child does not become a burden on the public finances of the host Member State. In such cases, these same provisions open up to the parent who effectively cares for this national the right to stay with the latter in the host Member State. This right can be invoked by an Algerian national who is responsible for a citizen of the European Union,
whose situation in this respect is not governed by the Franco-Algerian Accord of 27 December 1968.

4. ABUSE OF RIGHTS, I.E. MARRIAGES OF CONVENIENCES AND FRAUD

During the discussion of the bill of 2011, a Senator\textsuperscript{21} feared that the wording envisaged by Article 25 of the bill ‘does not authorise the administrative authority to issue an Obligation to Leave French Territory (OQTF) with respect to a foreign national based solely on the fact that he belongs to the family of an immigrant who does not hold or no longer holds a right of residence.

The circular of 21 November 2011\textsuperscript{22} specifies the conditions for monitoring by the Prefects of compliance with the conditions required for permission to reside. Specifically, the Prefectural services must examine the conditions of residence as soon as they become aware of facts constituting a breach of family relationships. This monitoring must not be systematic and based solely on documented doubts concerning specific facts.

Moreover, it is possible for the Prefectural services to monitor, independently of any application for access to permanent right of residence, that the family members whose family relationship with a citizen of the EU has been breached following a divorce, annulment of marriage or death of the latter, personally meet the conditions for right of residence envisaged in these hypotheses\textsuperscript{23} in order to be given the right to remain on French territory. This monitoring can be carried out once the facts constituting the breach of family relationship become known and no longer solely at the time of application for permanent right of residence.

5. ACCESS TO WORK

The circular of 21 November 2011\textsuperscript{24} clarifies the right to work of beneficiaries of the permanent right of residence under the transitional system. The obligation upon family members of a citizen of the EU covered by a transitional system to apply for work authorisation in order to practise a salaried activity is lifted once they fulfil the required conditions for permanent right of residence.

6. THE SITUATION OF FAMILY MEMBERS OF JOB-SEEKERS

Nothing to report.

\textsuperscript{21} Mr. Roland Courteau.
\textsuperscript{22} Circular of 21 November 2011 NOR IOCL1130031C regarding the methods of applying Decree 2011-1049 of 6 September 2011 passed in implementation of Law no. 2011-672 relating to immigration, integration and nationality and relating to residence cards.
\textsuperscript{23} Articles R. 121-7 and R. 121-8 CESEDA.
\textsuperscript{24} Circular of 21 November 2011 NOR IOCL1130031C regarding the methods of applying Decree 2011-1049 of 6 September 2011 passed in implementation of Law no. 2011-672 relating to immigration, integration and nationality and relating to residence cards.
Chapter III
Access to Employment

1. ACCESS TO EMPLOYMENT IN THE PRIVATE SECTOR

1.1. Equal treatment in access to employment

Sports agent
The reform of the profession of sports agent, triggered by law no. 2010-626 of 9 June 2010, was completed by publication of Decree no. 2011-686 of 16 June 2011. Passed in implementation of Articles L. 222-7, L. 222-8 and L. 222-15 to L. 222-19 of the Sports Code, this text replaced the former regulatory section of this Code, devoted to sports agents, with 42 new articles (Art. R. 222-1 to R. 222-42). It includes a number of new aspects with respect to the previous mechanism, while maintaining the guidelines.

From now on, all the delegated federations, the list of which is established by order of the Minister responsible for sport dated 19 September 2011, are obliged to form a committee of sports agents and to draft regulations for sports agents. Fifteen federations are currently affected by these obligations.

As the cornerstone of the mechanism, the committee of sports agents now has extended powers. From now on, it is the committee that issues, suspends and withdraws the sports agent’s licence, although these decisions have until now been the responsibility, not without a certain amount of bureaucracy, of the competent governing body of the federation. The committee also organises, together with the interfederal committee of sports agents, the sports agent examination, it makes decisions on the practice of the activity of sports agent in France by Community nationals, and it exercises disciplinary power with respect to agents, licensees and affiliated clubs.

Another important innovation in the Decree of 2011 concerns the creation, within the French National Olympic and Sports Committee, of an interfederal committee of sports agents responsible in particular for organising the general section of the (annual) examination for sports agents for all the federations in question, while the specific section continues to be organised by the committee of sports agents of each federation.

Also note the possibility given to the federations to provide training, for those admitted to the examination or who are exempt from it, before the issue of the sports agent’s licence, or, for holders of the licence, continuing education aimed at updating their skills.

Moreover, the decree mentioned specifies the conditions under which nationals of member countries of the European Union or party to the European Economic Area agreement can practise the activity of sports agent in France. In accordance with the directives known as ‘Services’ (2006) and ‘Qualifications’ (2005), the text makes a distinction between persons wishing to settle in France to practise this activity there on a permanent basis (free establishment) and persons wishing to practise it on a temporary and casual basis (free provision of services). In both cases, these persons must declare themselves to the relevant committee of sports agents and must prove sufficient knowledge of the French language. If their qualification or their professional experience is recognised, if necessary after implementation of a
compensation measure, the committee can grant them either a licence by equivalence or a certificate mentioning the temporary or casual practice of the activity of sports agent on the national territory.

**For professions associated with internal security**
The framework and programming Law 2011-267 for the exercise of internal security envisages an Article 33-1: with a view to safeguarding law and order, in particular the economic security of the nation and the elements essential to its scientific and economic potential, private security activities are covered by the present article, comprising the research and processing of information on the economic, social, commercial, industrial or financial environment of one or more natural or legal persons, intended either to enable them to protect themselves from risks that could threaten their economic activity, their assets, their intangible assets or their reputation, or to promote their activity by influencing the development of business or the decisions of public or private persons.

The activities of public or ministerial official are not covered by the present article, nor those of officer of the law or newspaper firm.

Article 33-2 completes the preceding article and provides: ‘Only holders of an authorisation issued by the minister of the interior can practise individually, direct, manage or be the associate of a legal entity practising an activity referred to in Article 33-3.

The authorisation is issued to persons who satisfy the following conditions:

1.  Of French nationality or a national of a Member State of the European Union or one of the States party to the European Economic Area agreement;
2.  Not have been sentenced to a term of imprisonment or to a felony penalty registered in bulletin no. 2 of the criminal register or, for foreign nationals, in an equivalent document, on grounds incompatible with the practise of their duties.’

**1.2. Language requirements**

No change in this field.

**2. ACCESS TO EMPLOYMENT IN THE PUBLIC SECTOR**

**2.1. Nationality condition for access to positions in the public sector**

Framework and programming Law 2011-267 for the execution of internal security specifies the conditions for voluntary citizen service. Voluntary citizen service in the national police and gendarmerie is aimed, in order to strengthen the link between the Nation and internal security forces, at solidarity, community mediation, legal education and prevention tasks, to the exclusion of the exercise of state authority.

The law stipulates that candidates who can be admitted to citizen voluntary service shall satisfy the following conditions:

‘ - of French nationality, national of a Member State of the European Union, of another State party to the European Economic Area agreement or of the Swiss Confederation or have resided legally in France for at least five years and meet the integration condition stipulated in Article L. 314-2 of the Code for the Entry and Stay of Foreigners and the Right of Asylum;
- at least seventeen years of age and, if the candidate is a non-emancipated child, provide proof of the agreement of his parents or legal representatives;
- not have been sentenced to a term of imprisonment or to a felony penalty registered in bulletin no. 2 of the criminal register or, for foreign nationals, in an equivalent document, on grounds incompatible with the practise of their duties
- fulfil the aptitude conditions corresponding to the tasks of citizen voluntary service.

2.2. Language requirements

No change in this field.

2.3. Recognition of professional experience for access to the public sector

Law no. 2012-347 of 12 March 2012 relating to access to permanent employment and to the improvement of working conditions of contract civil servants in the public sector, to the fight against discrimination and comprising various provisions relating to the public sector introduced a new Article L. 133-9 Code of Administrative Justice, which provides, ‘Civil servants belonging to a corps recruited through the Ecole nationale d’administration, magistrates in the judiciary, teachers and tenured university lecturers, administrators in the parliamentary assemblies, postal and telecommunications administrators, civil or military officials of the State, or the territorial public sector 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 of extraordinary master of requests, the functions vested in masters of requests for a maximum period of four years’.

An important judgment should be emphasised: Administrative Court of Appeal of Nancy, 5 May 2011, no. 10NC00690, Fortier vs. Centre national de Gestion.

Within the terms of Article R. 6152-15 of the Public Health Code, in its version resulting from Decree no. 2006-717 of 19 June 2006: practitioners appointed under 2, 4 or 5 of Article R. 6152-7 or in accordance with the provisions of Articles R. 6152-10 and R. 6152-11 are classified under employment as hospital practitioner, taking into account… 5. Services performed in public health establishments in the capacity as tenured and non-tenured teaching and hospital staff, hospital physician, part-time hospital physician, visiting physician, hospital assistant, visiting hospital assistant, part-time pharmacist, resident pharmacist, contractual physician, deputy contractual physician, full-time temporary hospital physician, associate and visiting associate, on condition that they have been completed at the rate of six short-term weekly posts in one or more public health establishments, associate physician and visiting associate physician, on condition that they have been completed at the rate of six half-days per week in one or more public health establishments… The provisions of the present article apply to nationals of Member States of the European Community or of another State party to the European Economic Area agreement who can prove services equivalent to those listed above fulfilled within establishments, administrations or bodies of one of these States with missions that are comparable to those of the establishments, administrations or bodies mentioned above. The length of the training required for award of the medical speciality diploma, regardless of the status of the physician during the training and the length of the

training in the country where the speciality qualification is obtained are not taken into account…

The judges recall that it emerges from the aforementioned provisions that, in order to determine the length of the training required to obtain the medical speciality qualification, excluding services taken into account for the grade-related reclassification of a physician in the French hospital public sector, only the regulations applicable in the country of origin of the person in question should be taken into account. Consequently, in specifying that it emerges from the documents in the file that the functions of registrar practised by Mr. A. in the UK from August 1987 to October 1988 are included in the training for British specialist doctors and that, thus, the Minister of Health was legally able not to take them into account on the basis of Article R 6152-15 of the Public Health Code, the first judges have sufficiently justified their decision, without the need for them to explicitly dismiss the arguments, thus ineffective, of Mr. A., according to which the functions of registrar are equivalent to those practised in France by a chef de clinique (chief resident).

Secondly, the Anglo-French Medical Society indicates that a specialist registrar is a specialist doctor in training; the applicant himself submits a letter from the General Medical Council in Manchester, dated 23 March 2006, mentioning that he has completed three years of training as a house physician and one year of training as a chief resident in obstetrics and gynaecology and that the last year ended on 30 September 1988; Mr. A. was then not awarded his specialist studies diploma until 28 March 1989. As a result, the first judges lawfully believed that the disputed ministerial decree dated 28 July 2006 could legally not take into account the services completed in the UK by the applicant for the period from August 1987 to September 1988 at Chester Royal Infirmary; that, supposing it were proven, the circumstance that the function of specialist registrar in the UK might correspond to that of assistant chief resident in French public hospital establishments is in any event ineffective, as has been mentioned above.

The result of the above is that Mr. A. is not justified in maintaining that, in the disputed judgment, the Administrative Court of Nancy wrongly rejected his petition.

3. OTHER ASPECTS OF ACCESS TO EMPLOYMENT

According to Article L. 6221-4 of the Public Health Code resulting from Order no. 2010-49 of 13 January 2010, ‘a medical biology laboratory established in another Member State of the European Union or party to the European Economic Area agreement can carry out the analytical phase of a medical biology examination begun in France, for parties insured under a French social security system, under the following conditions:

1. if the laboratory is based in a Member or party State where the conditions for accreditation have previously been recognised as equivalent to those in the present chapter, it shall make a declaration confirming that it holds accreditation issued by the competent authorities;
2. if the laboratory is established in a Member or party State where the conditions for authorisation or approval have previously been recognised as ensuring standards of operation equivalent to those in the present chapter, it shall make a declaration confirming that it holds authorisation or an approval issued by the competent authorities;
3. if the laboratory does not meet the conditions defined in point 1 or 2, examinations are conditional upon obtaining administrative authorisation, which is issued following verification that its standards of operation are equivalent to those mentioned in Article L. 6221-2’. An order of 15 April 2011 (Official Journal of 23 April 2011) states that the list of Member States of
the European Union or parties to the European Economic Area agreement in which the conditions for authorisation or approval of medical biology laboratories are recognised as equivalent to those imposed on medical biology laboratories established on French territory comprises: Germany, Belgium, Luxembourg, United Kingdom.
Chapter IV  
Equality of Treatment on the Basis of Nationality

1. WORKING CONDITIONS – DIRECT AND INDIRECT DISCRIMINATION

The institution for the Defender of Rights: embodied in the Constitution since 23 July 2008 and created by the organic law and ordinary law of 29 March 2011, it combines the tasks of French Ombudsman, Defender of Children, the French Equal Opportunities and Anti-Discrimination Commission (HALDE), and the National Commission for a Security Code of Conduct (CNDS).

2. SOCIAL AND TAX ADVANTAGES

Judgments to be noted

Administrative Court of Montreuil, 11 March 2011, no. 0908349, Mr. and Mrs. Lukas R.-M.

Mr. and Mrs. R.-M., resident in Belgium, after having stayed in France, took out student loans in 2005 and 2006. Mr. R.-M. is a research assistant at the University of Paris II and his wages for the year 2007 were taxed according to the provisions of Articles 182 A, 197 A and 197 B of the General Tax Code (CGI). The applicants requested that they be able to benefit from the deduction of genuine expenses incurred as well as the consideration of student loan interest as part of the student tax credit envisaged by the provisions of Article 200 13th paragraph of the CGI. The court first examined the question of the determination of fiscal domicile of the applicants with regard to the criteria of the Franco-Belgian fiscal convention signed on 10 March 1964. In 2007, the latter had a permanent home in Belgium and were therefore domiciled in Belgium in implementation of the fiscal convention, which is contrary to the implementation of Article 4 B of the CGI. However, in application of Article 10 of the same convention, stipulating that payments made by a contracting State or by a legal entity under the public law of that State are taxable solely in that State, the payments made to Mr. R.-M. were taxable in France. Mr. R.-M. should therefore have been subject to the provisions of Article 182 A of the CGI, which envisage the application of tax withheld at source for payments, salaries, pensions and life annuities, from a French source, paid to persons not domiciled in France. Now, Mr. R.-M. must be regarded, in implementation of these provisions, as placed in a situation comparable to that of a French resident who practises his activity in France. The court then judges that the provisions of Article 182 A, which prohibit the deduction of professional expenses from the taxable amount of non-residents, represent discrimination with respect to residents in the same situation. Consequently, the impossibility represented by Article 182 A of the CGI, invoked against non-residents, of deducting their genuine professional expenses constitutes a constraint on the free movement of workers.

With respect to the tax credit relating to student loans, the court recalls that, in application of the provisions of Article 200 13th paragraph of the CGI, Mr. and Mrs. R.-M. could not claim this credit. In the area of Community law, the court then considered that taxpayers did not usefully enjoy the freedom of movement of workers guaranteed by the provisions of Article 39 of the EC Treaty, since this tax credit was not linked to the place of exercise of the.

28 http://www.defenseurdesdroits.fr/
professional activity of the taxpayers. Finally, the court judges that the applicants also cannot take advantage of the provisions of Article 25 of the Franco-Belgian convention to request allocation of the tax credit attached to student loan interest, which does not constitute a personal deduction awarded based on the situation or on family expenses enabling the taxpayer’s income to be determined.

This is an unpublished decision. In terms of genuine expenses, Belgium is not in a position, taking into account the situation of the taxpayer, to grant him the benefits to which his personal and family situation should entitle him, specifically the inclusion of expenses incurred by his professional activity practised in France. In terms of the tax credit relating to student loans and the Franco-Belgian convention, in respect of which the applicants take advantage of the equality of treatment clause envisaged by Article 25 of the convention, the judge refers, to interpret the stipulations, to articles and comments of the standard OECD model convention, intended to avoid double taxation.

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

Circulars
Circular DSS/DACI no. 2011-225 of 9 June 2011 relating to the comprehensive health insurance condition that non-working European nationals have to prove, as well as students and persons looking for work, after a stay of more than three months in France

The circular is intended to recall the conditions under which European nationals can benefit from French health insurance with regard to national legislation combined with the provisions of Regulation 883/2004.

In terms of non-workers who are long-term resident in France, Universal Health Coverage (CMU) can be granted to them subject to a case-by-case examination.

Since European nationals are no longer obliged to hold residence cards in order to move to and settle in another Member State, their right to stay in France can be examined by social security agencies when social security services are requested, which are provided under cumulative conditions of residence and the legality of stay. Non-working European nationals thus have a right to stay longer than three months in France if they possess, for themselves and their family members for whom they are responsible, ‘sufficient resources so as not to be come a burden on the social security system, as well as health insurance’ (Article L. 121-1 and, for its application, Article R. 121-4 of the CESEDA).

The circular recalls that this health insurance condition must be comprehensive, in other words it must cover the services envisaged in Articles L. 321-1 and L. 331-2 of the Social Security Code. This condition must be examined on a case-by-case basis.

29 Article L. 321-1 of the Social Security Code: health insurance includes:
1) Coverage for general and special medical costs, costs of dental care and prostheses, pharmaceutical and appliance costs, medical biology examination costs, including coverage for expenses relating to individual examinations, costs of hospitalisation and treatment in care facilities, functional retraining and rehabilitation or vocational training units, as well as the costs of surgical procedures required for the insured and his family members (…);
2) Coverage for transport costs of the insured or beneficiaries who find themselves obliged to travel in order to receive care or to be given the appropriate examinations for their condition, as well as to undergo a prescribed examination in implementation of the social security legislation (…);
3) Coverage, as decided by the committee mentioned in Article L. 146-9 of the Social Action and Families Code, for accommodation and treatment costs for handicapped children or adolescents (…)
4) Coverage of the costs of care and hospitalisation associated with voluntary termination of pregnancy (…)
It also specifies the assessment conditions, on a case-by-case basis, of applications for membership of Universal Health Coverage (CMU) by non-working European nationals provided they are firmly established on the national territory and in possession of health coverage (or possible retention of entitlements) or the means to cover their health expenses. Citizens who have resided in France for more than five years in a stable and legal manner acquire a permanent right of residence and are members of the CMU. In terms of students and persons who entered France to look for work there, although they have no professional activity, they cannot be regarded as ‘non-working’ with respect to the right of residence and access to the CMU.

The condition of ‘comprehensive health insurance’ can therefore be assumed to have been satisfied, beyond three months, in the following situations:

- When the person in question has entitlements, whether direct or in the capacity as dependent, to French health insurance.

With respect to non-working European nationals, their membership can be the result of their capacity as dependent family members of a person working in France or beneficiary of a pension under a French scheme (old-age, disability, survivor). For these persons, the concept of dependent is assessed within the meaning of Articles L.161-14 and L. 313-3 of the Social Security Code.

This may also refer to persons who receive a pension under a French scheme (old-age, disability, survivor). For this reason, depending on whether or not they fulfil the legal age condition for its receipt, it is always appropriate to bear in mind changes in the situation of these persons and, in particular, of those among them who will become retired. In fact, their pension under a French scheme, even minimal, grants them the effective right to services in kind from French health insurance.
The membership can also be the result of their status as permanent resident in France, acquired after five years of stable and legal residence.

- If the person in question, having established his habitual residence in France, receives the services of French health insurance, provided under a legal health insurance scheme of another Member State of the EU-EEA-Switzerland.

This scheme then refunds France for the health care thus provided, in implementation of European Regulation no. 883/2004 regarding the coordination of social security systems.

This coverage by French health insurance on behalf of another State can be permanent (pensioners, for example) or temporary (acquired rights).

The circular reiterates in detail here the methods for implementing Regulation 883/2004, specifically the European forms to be obtained.

- If the person in question confirms possession of private health coverage, taken out in France or abroad.

In this case, it is appropriate to check that the care package is ‘comparable’ to the services in kind offered by French maternity health insurance (Article R. 121-4 of the CESEDA). The essential criterion to be examined is that there must be no category of care, products or services excluded from the coverage taken out by the persons in question when French health insurance does provide cover. By contrast, minor differences may exist regarding the conditions for coverage or reimbursement (for example, age limit for coverage of a treatment to prevent sterility), even some minor and globally insignificant exclusions (for example, lack of coverage for spa treatments). The tariffs for coverage or the reimbursement rates no longer have to be identical; therefore the persons in question should be reassured and informed about the concept of ‘comprehensive’ health insurance.

It must be understood that ‘comparable’ does not mean ‘identical’; the Local Sickness Insurance Funds (CPAM) will be tolerant in assessing slight differences, the principle being to protect the persons themselves to the extent that their health care should be able to be covered by the policy taken out and thus avoid creating a burden on French public finances.

**Concerning Universal Health Coverage (CMU) more specifically**

When a non-working European national applies to the CPAM in his place of residence for French health insurance coverage, it is appropriate to examine whether that person’s situation entitles him to such coverage.

If the person in question ‘is not in any capacity entitled to services in kind from a health and maternity insurance system’, whether French or European, Article L. 380-1 and Article L. 861-1 of the Social Security Code grant access to Universal Health Coverage (CMU) and complementary CMU (CMUc) to persons who can prove ‘stable and legal residence in mainland France or in an overseas département’ (Articles R. 380-1 and R. 115-6 of the Social Security Code).

Citizens of the Union who hold the status of permanent resident, as assessed by the Prefectures and confirmed by possession of a residence permit bearing the words, ‘EC - permanent residence – all professional activities’, are no longer subjected to the conditions imposed upon non-workers (sufficient resources and comprehensive health insurance) referred to in Article L. 121-1 of the CESEDA. They can be members of the CMU and, where appropriate, complementary (CMUc), under the conditions of common law.
Other applications for access to Universal Health Coverage (CMU) on the part of non-working European nationals resident on the territory for less than five years will give rise to a thorough examination of the situation of the person in order to reconcile the conditions of the right of residence with the principle of non-discrimination.

Thus, the object of the present circular is to find a solution to all the situations encountered by nationals facing serious or unforeseeable difficulties beyond their control.

With respect to non-working citizens of the Union whose situation does not correspond to any of the preceding situations (see supra), the CPAM will examine the conditions under which Regulation no. 883/204 can allow access to the basic CMU for nationals who have established their habitual and stable residence on the territory.

Subject to a case-by-case examination of the circumstances under which the health coverage required to reside legally in France has been lost, persons who can prove having established their habitual and stable residence on the territory and who have ‘sufficient’ resources (see infra) can be granted coverage by the CMU. For students aged under 28, membership of the French student social security system takes precedence over membership of the CMU.

In this examination of the person’s situation, the technique of the range of indices can be used, where any useful document can be requested and, if appropriate, the Prefecture can also be questioned.

Elements can also be requested that confirm the current situation of the person, the objective being to avoid abusive conduct by persons who might settle on our territory without planning to pay for their health care.

Several examples can be given of situations in which the absence of abuse of rights is presumed, subject to the case-by-case analysis of the elements of proof:

- if an unforeseeable loss of income makes it impossible to finance private insurance;
- if the cost of this private insurance has obviously been made too expensive by the need to follow an unforeseen course of treatment by the applicant or a member of his family for whom he is responsible;
- in the event of a loss of medical coverage associated with loss of employment by a spouse, in the event of the death of the latter or breakdown of the marriage;
- more generally, if the applicant can establish that unforeseeable events and difficulties beyond his control led to the loss of the health coverage that he enjoyed until now.

Beyond these situations, the reasons for the transfer of residence to France may enable you to check that settlement did not have the sole objective of receiving an intensive course of medical treatment, causing the person in question to be a burden on French public finances (determination of centre of interests). Equally, the reasons why a national has voluntarily terminated his private insurance policy in order to apply for the CMU can be examined, with a view to revealing any abuse of rights.

Finally, I draw your attention to the fact that decisions to refuse access to the CMU must be justified. The written justification must, in order to be valid, be based directly, depending on the case, on the lack of habitual residence in France (see infra) and/or on the basis of an examination of the personal situation, revealing the foreseeable or intentional nature of the event that led to the loss of health coverage.

**Annual examination of rights by Local Sickness Insurance Funds**

In terms of the conditions associated with the provision of services in kind by French health and maternity insurance, you will be sure to check compliance with the conditions relating to
effective residence in France within the meaning of Article R. 115-6 of the Social Security Code, relating to the level of resources.

These conditions are the same for non-working European nationals who have French health insurance via the CMU as for any other person who is a member, subject to the following stipulations.

Article R. 380-1-III of the Social Security Code makes the provision of services in kind by health insurance conditional upon verification by the sickness insurance fund of the stable and effective residence of the recipient.

In terms of non-working nationals of the European Union, in the event of absence from France for a period of longer than two consecutive years or if the person has been the subject of a removal measure from French territory, at the time of his potential return to France as a non-worker, the person will again have to demonstrate legality of residence prior to receiving the CMU.

In terms of non-working European nationals, the examination of the level of resources allows for verification that they possess ‘sufficient resources’ for residence. In fact, until acquisition of the status of permanent resident after five years of continuous and legal residence, non-working European nationals must prove ‘sufficient’ resources within the meaning of Article R. 121-4 of the CESEDA, in other words equivalent to the Workers Solidarity Income (RSA) or the Solidarity Allowance for Elderly People (ASPA) if the person in question is over 65 years of age.

Circular no. DSS/SD2B/2012/164 of 16 April 2012 relating to 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, in particular 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 permits 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.

**Jurisprudence**  
*Administrative Court of Appeal of Paris, 20 October 2011, no. 10PA05222*

On 18 May 2009, Mr. A., a Polish national, filed an application for Workers Solidarity Income (RSA). In a decision dated 1 July 2009, the Paris Family Allowances Office rejected his application on the grounds that he did not fulfil the conditions for access to the right of residence in France. Mr. A. appeals the court order of the administrative court of 26 August 2010, in which his application for repeal of the decision was rejected.

Firstly, the judges recall the applicable law:

‘Within the terms of Article L. 262-2 of the Social Action and Families Code: any person residing in France in a stable and effective manner, whose household possesses resources below a guaranteed income, has the right to Workers Solidarity Income under the conditions defined in the present chapter. Under the terms of Article L. 262-4 of the same Code: receipt of the Workers Solidarity Income is dependent upon compliance by the recipient with the following conditions: (...) / 2. French or holder, for at least five years, of a residence card authorising the person to work. Under the terms of Article L. 262-6 of the same Code: By way of exception to 2. of Article L. 262-4, a national of a Member State of the European Union, of another State party to the European Economic Area agreement of or the Swiss Confederation must fulfil the conditions required in order to enjoy a right of residence and have stayed in France for the three months prior to the application (…). A national of a Member State of the European Union, of another State party to the European Economic Area agreement or the Swiss Confederation who entered France to look for work there and who remains there on this basis does not have the right to the Workers Solidarity Income. Under the terms of Article L. 121-1 of the Code for the Entry and Stay of Foreigners and the Right of Asylum, passed in transposition of Article 7 of Directive 2004/38/EC (…): Unless his presence poses a threat to law and order, any citizen of the European Union, any national of another State party to the European Economic Area agreement or of the Swiss Confederation has the right to stay in France for a period longer than three months if he satisfies one of the following conditions: 1. If he practises a professional activity in France; 2. If he possesses, for himself and for his family members as referred to in point 4, sufficient resources so as to not become a burden on the social security system, as well as health insurance (…).’

The disputed decision is based on the provisions of Article L. 262-6 of the Social Action and Families Code in so far as they stipulate that a national of a Member State of the European Union who entered France to look for work there and remains there on this basis does not have the right to the Workers Solidarity Income. It emerges from the documents in the file that, while Mr. A. claims that he has worked in France, stating that he entered the country in 1998 and has lived there since, although without demonstrating this, he can only establish that he received a flat fee remuneration for services as actor/extra during the years 2008 to 2010. It is also evident from the documents in the file and confirmed by him in his correspondence, that unemployment insurance did not pay him any allowances because he did not have enough periods of employment; that, under these conditions, consequently, on the one
hand because he does not fulfil the conditions required to enjoy right of residence, which are the practice of a professional activity in France and a level of resources so as not to become a burden on the social security system, which he does not dispute, and that, on the other hand, he has only found casual employment since entering France and remains permanently in a job-seeking situation, he does not fulfil the conditions envisaged by the provisions of Article L. 262-6 of the Social Action and Families Code, granting him the right to the RSA. Therefore, the President of the General Council of Paris lawfully rejected his submission for an out-of-court settlement filed against the decision of 1 July 2009, refusing to grant him the right to award of the RSA.

Court of Appeal of Nîmes, 27 September 2011, Ralitsa vs. Caisse d’allocations familiales, no. 10/03550

On 27 August 2009, Ms. Marinova Ralitsa, a Bulgarian national, applied to the Family Allowances Office of Annonay (the Office) for payment of family allowances for her children, Vladimir, born on 4 August 2008 in Annonay, and Alex, born on 9 June 2009 in Annonay. On 8 September 2009, the Office rejected her application on the grounds that the conditions for access to the right of residence are not met.

According to Article L. 512-2 of the Social Security Code, in its version resulting from Law no. 2007-1786 of 19 December 2007, applicable in this case, nationals of Member States of the European Community, of other States party to the European Economic Area agreement and of the Swiss Confederation who satisfy the conditions required to reside legally in France, where residence is assessed under the conditions established in implementation of Article L. 512-1, receive family allowances ipso jure under the conditions established by the present paper.

This new version, required by the transposition into French law of Directive no. 2004/38/EC by Law 2006-911 of 24 July 2006 relating to immigration and integration, now makes the right of Community nationals and similar who do not practise a professional activity to receive family allowances dependent upon two cumulative conditions: on the one hand, they must effectively reside on French territory and, on the other hand, they must reside there legally.

Concerning legal residence, understood within the meaning of lawful stay, the judges recall that reference must be made to Article L. 121-1 of the CESEDA.

It emerges from the non-disputed elements of the file that Ms. Marinova Ralitsa, who has never practised a professional activity in France, has no resources or health insurance and receives State Medical Assistance. She cannot therefore prove a right of residence in France and cannot receive family allowances.

Articles 26 and 27 of the New York Convention, in their generality and in so far as the obligations that they impose on the States are conditional upon the implementation of national legislation, are not directly applicable before the present jurisdiction.

In any event, subjecting the receipt of family allowances to a condition of sufficient resources and the possession of health insurance by a Community national residing in France for more than three months does not represent a disproportionate and illegitimate attack on the right of the child to benefit from social security:

- on the one hand, France provides State Medical Assistance, satisfying the objective of health coverage, which the children Vladimir and Alex Ralitsa do receive;
- on the other hand, such requirements regarding resources and health insurance are formulated in order to guarantee the financial sustainability of the social security system, a clearly stated
objective, as well as in the interests of the child himself by ensuring that the resources of his parents are sufficient to guarantee him an adequate standard of living, enabling him to develop physically, mentally, spiritually, morally and socially, although it is first and foremost the responsibility of the parents to provide, in so far as they are able and as their financial resources allow, the living conditions required for the development of the child.

2.2. Specific issue: the situation of job-seekers

Court of Appeal of Rennes, 29 November 2011, Mr. Ion Iancu vs. Caisse d’allocations familiales of Loire-Atlantique, no. 10/01381

On 16 March 2007, the applicant, of Romanian nationality, applied for the payment of family allowances for his 3 children, born in Germany and in Romania respectively. He was notified of a denial on 5 June 2007 on the grounds that his wife and he could not prove either that their children were attending school or their income.

The Iancu spouses forwarded to the Office a statement of resources for 2006, dated 6 November 2007, mentioning no income, and school attendance certificates for 2 of their children, as well as a certificate of domicile on a reception site managed by an association.

During the period of examination of the file and in the best interests of the children, the back-to-school allowance and the family allowances for October 2007 were paid to the applicant. On 26 May 2008, a definitive denial was notified by the CAF.

Mr. Iancu appealed before the Social Security Affairs Court of Nantes, which dismissed the appeal on 29 January 2010.

The Court of Appeal confirms this judgment. The judges recall first of all that, in order to remain in France for longer than 3 months, nationals of a Member State of the EU must prove that they have sufficient resources so as not to become a burden on the social security system as well as health and maternity insurance.33

Applying this principle to the case, they note that that the statement of resources of Mr. Iancu did not show any means of subsistence and that the Office was able to consider, in view of the personal situation of Mr. IANCU, that he did not prove that he could live in France with his family without becoming a burden on the French social security system. He was thus not in a legal situation in France within the meaning of Article L 512-2 of the Social Security Code and could not therefore claim receipt ipso jure of family allowances for his children.

33 In implementation of Articles L. 321-1 and L. 331-2 of the Social Security Code.
Chapter V
Other Obstacles to Free Movement of Workers

Council of State, 27 May 2011, no. 328905

It emerges from the third paragraph of Article L. 131-6 of the Social Security Code, explained by the preparatory work of Article 22 of Law no. 2008-1330 of 17 December 2008 on financing social security for 2009, that the legislator intended to subject to the payment of social security contributions only the amounts paid by professional companies intended to represent payment for an activity practised within them. Thus, these provisions have the object of subjecting only partners in professional companies who practise their activity within these companies, which are registered in France, to the payment of social security contributions. These provisions are not therefore applicable to those of partners in professional companies who would not practise within them and, on the other hand, would practise a professional activity on the territory of another State. Consequently, the applicants are not justified in asserting that the provisions of the third paragraph of Article L. 131-6 of the Social Security Code disregard Article 13 of Regulation 1408/71 of the Council of 14 June 1971, in so far as they would submit persons who practise a non-salaried activity on the territory of another Member State of the European Union to French legislation.
Chapter VI
Specific Issues

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

   No changes to note.

2. **SPORTSMEN/SPORTSWOMEN**

   No changes to note. However, a very interesting study on sporting nationality was published in the doctrine: ‘L’autonomie de la nationalité sportive’ (The autonomy of sporting nationality), by Joanna Guillaumé, Journal du droit international Clunet no. 2, April 2011, doctrine 5.

3. **THE MARITIME SECTOR**

   No changes to note.

4. **RESEARCHERS/ARTISTS**

   No changes to note.

5. **ACCESS TO STUDY GRANTS**

   No changes to note.

6. **YOUNG WORKERS**

   No changes to note.
Chapter VII
Application of Transitional Measures

1. Entry, residence and removal of Romanian and Bulgarian nationals

The current transitional measures only concern Romanian and Bulgarian nationals.

The question of the lifting of the transitional measures has been raised several times within parliamentary assemblies. An oral question was asked in December 2011 to the Minister responsible for immigration34 on two decisive questions for the living conditions of Roma migrants in France: the question of the lifting of transitional measures for Romanian and Bulgarian Roma and the question of the national strategy for the integration of Roma’. The government replied that the transitional system had been maintained for the years 2012-2013 ‘because of the economic situation, the forecast growth in the unemployment rate and the already high unemployment rate among Romanian nationals […]’. Many associations note that, because of the response time from Prefectures to applications for work authorisation from Romanian and Bulgarian nationals, it is difficult for employers to wait between 2 and 9 months to award legitimate employment to these nationals.

It is recorded that the transitional system will end no later than the end of 2013; the new government could bring this date forward, which has so far not been communicated to us.

A decree dated 6 September 201135 modified Article R. 122-2 of the CESEDA. This article concerns the permanent right of residence. In its previous version, it was specified that family members of a national of a Member State of the European Union subject to a transitional system by its accession treaty were obliged to obtain work authorisation in order to practise a salaried activity if they had not previously been admitted to the French labour market for an uninterrupted period equal to or longer than twelve months. Now, they are simply ‘obliged to apply for a residence permit if they wish to practise a professional activity’, without other conditions.

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 emphasise 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:

35 Article 15 of Decree no. 2011-1049 of 6 September 2011 passed in implementation of Law no. 2011-672 of 16 June 2011 relating to immigration, integration and nationality and relating to residence permits.
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:
Considering that 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 considering that 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 subjected 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 Bulgarian nationals cannot therefore gain access to the services of the government employment agency 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:
Considering, moreover, that 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.

2. FAMILY MEMBERS OF ROMANIAN AND BULGARIAN NATIONALS

Administrative Court of Appeal of Marseilles, 3 October 2011, Stog vs. Prefect of the Region of Provence, Alpes, Côte d’Azur and Prefect of Bouches-du-Rhône no. 09MA02728
Mr. A., of Moldavian nationality, entered France on 17 June 2008 with his wife, of Romanian nationality, and his daughter. On 17 July 2008, Mr. A. applied for a residence card in his capacity as family member of a Romanian national; in an order dated 17 March 2009, the
Prefect of Bouches-du-Rhône refused to issue him with the residence card he applied for, accompanied his decision with an obligation to leave French territory and established the country of destination to which he would be removed. Mr. A. appealed judgment no. 0902400 of 30 June 2009 in which the Administrative Court of Marseilles rejected his application to repeal the said order.

The disputed order was passed on the grounds that Mr. A. did not meet the conditions established by Article L. 121-3 of the CESEDA since his spouse, of Romanian nationality, could not prove that she met the requirements imposed by the provisions of L. 121-1 1, 2 or 3 of the CESEDA in order to be issued with a residence card in her capacity as a national of the European Union.

The result of the combined provisions of Articles L. 121-1 and L. 121-3 of the CESEDA is that a national of a third-party State who is the spouse of a citizen of the European Union has no right to stay in France unless this citizen of the European Union himself meets one of the conditions defined in 1, 2 or 3 of Article L. 121-1 of the CESEDA.

It is a fact that the wife of Mr. A., on the date of the disputed order, had been present in France for more than three months; that it is not disputed that the person in question could not prove the practice of a professional activity or that she was looking for work or was registered at an approved establishment and pursuing studies or vocational training there; that, moreover, it is a fact that Ms. A. was not receiving any payment herself and did not have health insurance; that if, in order to assess the sufficient nature of the resources referred to in point 2 of Article L. 121-1, the Prefect has to take into account all the resources effectively at the disposal of a citizen of the European Union, regardless of their source, Mr. A. does not prove that the administrative authority did, in this case, restrict its assessment to the resources of his spouse of a personal nature and did not take into account the salaried income he himself was receiving; that, in this respect, the income earned by Mr. A. from his salaried activity, which resulted from an activity practised since 20 January 2009 under a contract terminating on 30 March 2009 were not, with respect to the conditions of the employment thus practised, of a sufficient nature; that thus, in believing that Ms. A. did not possess sufficient resources for herself and her family members so as not to become a burden on the social security system of the host country and that her situation was not covered by the provisions of point 2 of Article L. 121-1 of the aforementioned Code, the Prefect did not commit an error in fact or an error of law.

Mr. A. maintains that the Prefect vitiated the decision to deny residence handed down to his wife with an abuse of power, by imposing a condition upon her, in this case the practice of a professional activity, which was in fact impossible since the receipt issued to her prohibited her from working. However, it emerges from the aforementioned provisions of Article R. 121-16 of the CESEDA that nationals of Member States of the European Union subject to transitional measures by their accession treaty, among them Romania, if they wish to practise a professional activity in France, must apply for the work authorisation stipulated in Article L. 341-2 of the Labour Code, now codified in Article L. 5221-2 of the Labour Code. Since Ms. A. did not demonstrate that she had applied for this authorisation, the Prefect was legally able to rely on her lack of professional activity in order to refuse, on the basis of the provisions of Article L. 121-1 of the aforementioned Code, to issue her with a residence card and the circumstance that the receipt for the application for a residence card from Ms. A. stated that she was not authorised to work thus had no effect on the legality of the denial of residence handed down to her.
Chapter VIII
Miscellaneous

1. RELATIONSHIP BETWEEN REGULATION 1408/71-883/04 AND ARTICLE 45 TFEU AND REGULATION 1612/68

A circular of 24 May 2012 36 detailed the conditions under which Regulations 883/2004 and 987/2009 establishing the rules for the coordination of social security enter into force as of 1 April 2012 regarding social security relationships between Switzerland and the Member States of the EU and France in particular. The circular points out specifically that it is probable that Directive 2011/24, intended to facilitate access to cross-border health care of patients, will be extended to Switzerland, which would lead to the lifting of many current obstacles.

It should be emphasised that no particular provision of the social security convention reached between France and Switzerland remains in force.

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 FREE MOVEMENT OF EU WORKERS

3.1. Integration measures

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

In a judgment of 22 June 2012, 37 the Council of State took cognisance of the potential difficulties presented by the coexistence of an ordinary law for foreigners and an exceptional law for the benefit of nationals of Member States of the EU. The argument of the administrative judge will be given in three stages and does not result in a principle of absolute preference in favour of the Community national.

Firstly, for the Council of State, it is not evident from the provisions of the CESEDA 38 that nationals of Member States can take advantage, alternatively, of the provisions applicable to nationals of third-party countries. Thus, a national of a Member State of the European Union who does not fulfil one of the conditions envisaged in Article L. 121-1 of the same Code in order to enjoy the right to stay in France for a period longer than three months, if he can still take advantage of the terms of an international agreement and specifically Article 8 of the

37 Council of State, 22 June 2012, Muntean vs. Minister of the Interior, no. 347545.
38 Code for the Entry and Stay of Foreigners and the Right of Asylum.
European Convention for the Protection of Human Rights and Fundamental Freedoms in order to justify a right of residence, cannot on the other hand rely on the application of generally applicable national provisions to obtain issue of a residence card.

The judge then stipulates that Article 37 of Directive 2004/38 authorises but does not oblige the Member States to maintain or to pass, in favour citizens of the European Union and their family members, provisions more favourable than those referred to in the Directive. Finally, the principle of non-discrimination based on nationality stated in Article 18 of the Treaty on the Functioning of the European Union only concerns situations covered by the scope of the Treaty. This principle is applicable in cases of discrimination suffered by nationals of a Member State with respect to a national of another Member State but it is not intended to be applied to potential differences in treatment between nationals of these Member States and those of third-party countries.

Administrative Court of Appeal of Nancy, 26 April 2012, no. 11NC00855 (same solution in Administrative Court of Appeal of Lyons, 15 September 2011, no. 11LY00025)

The applicant, a Romanian national, invoked the provisions of the CESEDA generally applicable to foreigners. The Prefect asserted, with respect to him, the fact that these provisions could not be applied to him even though they would be more favourable. Since 15 August 2008, the applicant has cohabited with a French national who is the mother of 8 children.

The judges, relying on Article 37 of Directive 2004/38/EC, consider that the Prefect lawfully handed down this refusal.

The applicant is without resources and does not establish that he would provide assistance to his partner in bringing up her children, apart from a certificate from the head mistress of the primary school, according to which he regularly brings and picks up his partner’s daughter. The decision incorporating refusal of a residence card and an obligation to leave French territory did not therefore constitute an attack on his right to private and family life with respect to Article 8 of the European Convention for the Protection of Human Rights.

Court of Appeal of Paris, 23 May 2011, no. 11/02248

The applicant, a Bulgarian national, submitted a plea based on the illegality of the police detention, on the one hand because Community nationals cannot fall within the scope of Article L. 621-1 of the CESEDA and, on the other hand, with respect to the judgment of 28 April 2011 of the European Union Court of Justice:

Ms. Temenuzhka A. was the subject of an obligation to leave French territory dated 14 March 2011 on the grounds, among others, that she could prove no right to stay on the basis of Article L.121-1 of the CESEDA, that since she posed an unreasonable burden on the French State, she could not remain there and that her personal situation was compatible with the proposed removal measure.

The judicial judge finds, even if the legality of the administrative decision is not within his powers, that it is evident, with respect to the elements in the file, that the conditions for staying on French territory resulting from the combination of Articles L. 621-1 and L. 121-1 of the CESEDA, which Community nationals cannot avoid, were not in this case satisfied by the appellant who, in particular, does not work and has no income. Thus, the illegality of residence of the person in question in France is not open to discussion nor is her disregard for the decision obliging her to leave French territory.

Identical solution in Court of Appeal of Paris, 23 May 2011, no. 11/02247.
The judges find that the Court of Justice of the European Union ruled in the aforementioned judgment that European Directive 2008/115/EC should be regarded as opposing, in particular with respect to its Articles 15 and 16, a regulation by a Member State that provides for a term of imprisonment for a national of a third-party State on the sole grounds that the foreigner in question has remained on the territory of a State, without valid reason, in breach of the order to leave that state within a fixed period. The judges add that the aforementioned Directive has the objective of organising the return of nationals of third-party States to the European Union. Ms. Temenuzhka A., who holds Bulgarian nationality, is not a national of a third-party State and cannot therefore take advantage of the provisions of a Directive that does not affect her. Thus, for these judges, jurisprudence of the ECJ in favour of nationals of third-party countries does not seem to benefit nationals of a Member State of the European Union if they are not affected by its legal basis.

3.3 Return of nationals to new EU Member States

No specific provisions exist concerning the return of citizens of the new Member States of the EU. However, it is interesting to highlight that, in fact, these are the persons most affected by the removal measures involving citizens of the EU.

Many judgments concern the return of Romanian and Bulgarian citizens and specifically refer to the treaty signed on 25 April 2005 relating to the accession of the Republic of Bulgaria and of Romania to the European Union.

Administrative Court of Appeal of Bordeaux, 1 June 2011, no. 11BX000964
In an order dated 16 December 2010, the Prefect of l’Allier handed down a decision ordering Ms. A., of Romanian nationality, to be deported. In a decision dated the same day, he designated the country of which she holds nationality as the country of destination to which she is to be deported.

Supposing, as the applicant maintains, that she had not been the subject of proceedings on 6 June 2009 in Aix-en-Provence for receiving stolen legal tender, it is however evident from the documents in the file that Ms. A. was detained on 15 December 2010 in Vichy for gang robbery and charity fraud. With respect to these offences, which she acknowledges having committed, the behaviour of Ms. A., must be regarded as representing a genuine, present and sufficiently serious threat to a fundamental interest of society within the meaning of Article 27 of Directive no. 2004/38 EC of 29 April 2004 aforementioned, such that, on the one hand a deportation measure on the basis of the provisions of point 8 of II of Article L. 511-1 of the CESEDA is justified, as is, on the other hand, the lack of any deadline granted to the person in question to leave French territory.

Administrative Court of appeal of Marseilles, 3 October 2011, no. 09MA027227
Ms. A., of Romanian nationality, entered France on 17 June 2008 accompanied by her spouse and her daughter. On 17 July 2008, Ms. A. applied for a residence card as a member of the European Union. In an order dated 17 March 2009, the Prefect of Bouches-du-Rhône refused to issue the residence card she applied for, accompanied his decision by an obligation to leave French territory and established the country of destination to which she would be removed.

The disputed order was issued on the grounds that Ms. A. could not prove that she practised a professional activity or that she was looking for work with a genuine chance of being
recruited or that she was registered at an approved establishment and pursuing student or vocational training there, that she could not prove that she possessed sufficient resources and health insurance so as not to become a burden on the national social security system and that she thus did not fulfil the conditions set forth in Article L. 121-1 point 1, 2 or 3 of the CESEDA for the award of a residence card in her capacity as a national of the European Union. It is a fact that Ms. A., on the date of the disputed order, had been present in France for more than three months; that the person in question does not dispute that she could not prove that she practised a professional activity, or was looking for work or was registered at an approved establishment and was pursuing studies or vocational training there; that, moreover, it is a fact that Ms. A., was not receiving any payment herself and did not hold health insurance. In order to assess the sufficient nature of the resources mentioned in point 2 of Article L. 121-1, the Prefect must take into account all the resources effectively at the disposal of the citizen of the European Union, regardless of their source. Ms. A. does not demonstrate that in this case the administrative authority did restrict its assessment only to her resources of a personal nature and did not take into account the salaried income of her spouse, a Moldavian national, and who had jointly notified the Prefect of Bouches-du-Rhône of an application for the issue of a residence card. The income earned by the spouse of Ms. A. from his salaried activity, which came from an activity practised since 20 January 2009 under a contract terminating on 30 March 2009, were not of a sufficient character in view of the conditions of the employment thus practised. Thus, in considering that Ms. A. did not possess, for herself and her family members, sufficient resources so as not to become a burden on the social security system of the host country and that her situation was not covered by the provisions of point 2 of Article L. 121-1 of the CESEDA, the Prefect did not commit an error in fact nor an error of law. Even though the applicant maintains that she herself and her spouse have savings available, she does not prove this; also, the circumstance, subsequent to the disputed order, that Ms. A.’s spouse allegedly had an employment agreement in the form of a permanent contract has no influence on its legality.

Ms. A. maintains that the Prefect vitiated his decision with an abuse of power in imposing a condition, in this case the practice of a professional activity, which was in fact impossible since the receipt issued to her prohibited her from working. However, it is evident from the provisions of Article R. 121-16 of the CESEDA that nationals of Member States of the European Union subjected to transitional measures as a result of their accession treaty, which includes Romania, must, if they wish to practise a professional activity in France, apply for work authorisation as envisaged in Article L. 5221-2 of the Labour Code. Ms. A. does not establish or even claim that she applied for this authorisation. Thus, the Prefect was legally able to rely on her lack of professional activity to deny, based on the provisions of Article L. 121-1 of the CESEDA, the issue of a residence card and the circumstance that the receipt for application for the residence card of the person in question mentioned that she was not authorised to work was, thus, without influence on the legality of the disputed order.

The judges add that, since she did not apply for a residence card to practise a professional activity in France, but solely in her capacity as a Community national, the applicant is not justified in invoking Article 39 of the EC Treaty. The judges rejected her application.

Administrative Court of Appeal of Douai, 13 October 2011, Prefecture of Seine Maritime vs. Marinova, no. 10DA01513

In an order dated 7 October 2010, the Prefect of Seine Maritime decided to deport Ms. A., a Bulgarian national, and established the country of her nationality as the country of desti-
tion, relying on point 2 of II of Article L. 511-1 of the CESEDA. This order was repealed by a judgment of the Administrative Court of Rouen dated 13 October 2010, against which the Prefect is appealing.

The judges of the Administrative Court of Appeal of Douai refer to the articles of the CESEDA, as well as the transitional measures applicable to Bulgarian nationals in particular. They emphasise that it is evident from the documents in the file and from Ms. A.’s own statements that she entered France more than ten years ago; that she is without any form of residence card and has resorted habitually, since her entry into France, to prostitution. In that capacity, she claims to hold the status of self-employed person and must be regarded as practicing a professional activity. In implementation of the principles previously recalled, in handing down a deportation order with respect to Ms. A., a Bulgarian national, on 7 October 2010, on the grounds that she had not received a residence card on the basis of Article L. 121-1 of the CESEDA, that she was not the holder of a residence permit and that she had been detained by the police since she was engaging in prostitution and soliciting on the public highway, the Prefect did not commit an error in law. Thus, the judgment of the Administrative Court of Rouen is repealed.

Administrative Court of Appeal of Marseilles, 10 November 2011, Trebse vs. Prefect of Vaucluse, no. 11MA00240

The judges refer here, among others, to Directive 2004/38/EC and the treaty relating to the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Republic of Slovakia to the European Union, signed in Athens on 16 April 2003.

Mr. A., of Slovenian nationality, files an appeal against the judgment dated 17 December 2010, which rejected his application for repeal of the order dated 13 December 2010, in which the Prefect of Vaucluse decided to deport him.

It is evident from the documents in the file that Mr. A., of Slovenian nationality, cannot prove either the legality of his stay in France or that he holds an initial residence card that was legally issued. In addition, it is evident from the documents in the file that Mr. A. was convicted on 7 December 2007 by the Criminal Court of Nice for aggravated theft by two circumstances; that, on 2 December 2008, the same court convicted him of evasion, gang robbery and fraud; that, finally, this court convicted him in a judgment of 11 September 2009 of violence involving the threat or use of a weapon. Thus, in view of the many convictions involving Mr. A., his stay in France represents a genuine, present and sufficiently serious threat to law and order, which constitutes a fundamental interest of society within the meaning of Article 27 of Directive no. 2004/38/EC.

Consequently, Mr. A. was in a situation where, in implementation of the provisions of point 8 of II of Article L. 511-1 of the CESEDA, the Prefect can decide to deport a foreigner, whether or not he is a Community national. Under these conditions and in accordance with the provisions of Article L. 121-4 of the CESEDA40, the Prefect of Vaucluse could, without prejudice to the fundamental right held by citizens of the European Union to freedom of movement and residence on the territory of the Member States of the Union, legally order the deportation of Mr. A. in his disputed order of 13 December 2010 and, the concept of emergency envisaged by the provisions of Article R. 512-1-1 of the same Code being charac-

40 Since modified.
terised by the frequency of the convictions and the increasing gravity of the offences of which the person in question is accused, rule on the absence of any period granted to the person in question to leave French territory voluntarily.

Administrative Court of Appeal of Bordeaux, 6 December 2011, no. 11BX02006

The applicant maintains that he entered France in 1995 and has always returned to France despite removal measures and that, thus, he has habitually resided in France for 15 years. It is evident from the terms of the disputed order, and is not contested, that on 30 June 2006 the applicant was served with a deportation order, which was executed on 13 July 2006. The Prefect was then legally able to consider, without committing an error of fact, that the applicant could not come back to France until after this date and on an undetermined date. It is also evident from the documents in the file that Mr. X. did not then submit an application for a residence card until 12 January 2009.

It is a fact that the applicant does not possess resources, apart from the French Solidarity Allowance for Elderly People that is paid monthly, and a retirement pension of €225 paid monthly by the Romanian national pension fund. Thus, he could not be regarded as possessing sufficient resources. Equally, the fact of receiving French Universal Health Coverage does not constitute the condition of health insurance required in order to be granted a right of residence.

The judges therefore ratify the order of the Prefect denying permission to reside, accompanied by an obligation to leave French territory.

Administrative Court of Appeal of Nantes, 5 January 2012, no. 11NT01143 (identical solution for spouse of the applicant in order of the same day no. 11NT01147)

Ms. X., a Romanian national, files an appeal against the judgment of 15 March 2011 in which the Administrative Court of Caen rejected her application to repeal the order of 2 December 2010 of the Prefect of Calvados, regarding a denial of residence card and an obligation to leave French territory.

The interested person maintains that she cannot be accused of not holding stable employment since she takes responsibility for the maintenance and upbringing of her five children, who attend school, and her partner is employed as a painter on a recurrent basis. However, it is a fact that Ms. X. does not practise a professional activity and does not possess health insurance; that, in this respect, it is evident from the documents in the file that the household of Ms. X., composed of two adults and five children, lives on family allowances, personalised housing assistance and universal health coverage; that the person in question does not therefore possess sufficient resources so as not to become a burden on the French social security system; that thus, in believing that Ms. X. did not fulfil the condition intended in point 2 of Article L. 121-1 of the CESEDA, the Prefect of Calvados did not incorrectly implement these provisions.

Administrative Court of Appeal of Versailles, 23 February 2012, Enea vs. Prefecture of Val d’Oise, no. 11VE01361

Mr. A., a Romanian national, appeals the judgment of 1 March 2011 in which the Administrative Court of Cergy-Pontoise rejected his application to repeal the order of the Prefect of Val-d’Oise of 28 September 2010, refusing to maintain the right of residence of the person in question and ordering him to leave French territory. Under the provisions of the CESEDA, it is up to the administration, in the event of a dispute concerning the duration of stay of the
citizen of the European Union whom it has decided to remove, to assert the elements on which it relies in order to find that he no longer fulfils the conditions to stay in France and it shall be for the foreigner who is requesting repeal of this decision to provide any elements that contest the merits of the case, according to the habitual methods of the administration of proof.

In order to assess that Mr. A. had stayed in France for more than three months, the Prefect of Val-d’Oise relied on the statements taken by the gendarmerie when the person in question was apprehended; now, Mr. A. disputes that he stated at the time of this police check that he entered France on the date stated in the disputed decision. The Prefect of Val-d’Oise did not maintain, either before the first judges or on appeal, and has not, notwithstanding the preparatory inquiry ordered by the Court, produced any elements confirming that the person in question stated that he entered France on 20 June 2010. Thus, the Prefect of Val-d’Oise does not establish that Mr. A had entered France more than three months before the date of the disputed order. Consequently, Mr. A. is justified in maintaining that, in the disputed judgment, the Administrative Court of Cergy-Pontoise unlawfully rejected his application.

Administrative Court of Appeal of Versailles, 27 March 2012, no. 10VE00220
Ms. A., a Romanian national, files an appeal against the judgment dated 17 December 2009 in which the Administrative Court of Cergy-Pontoise rejected her application to repeal the order of the Prefect of Seine-Saint-Denis dated 11 March 2009, refusing to maintain the right to stay of the person in question and ordering her to leave French territory.

The Prefect of Seine-Saint-Denis believed that Ms. A. had been in France for more than three months although the latter maintained that she entered France for the last time on 6 January 2009, in other words less than three months before the disputed order. Since the Prefect of Seine-Saint-Denis did not produce any documents to establish that the duration of Ms. A.’s presence in France exceeded three months on the date of the disputed order, he was not justified in applying the provisions of Article L. 121-1 of the CESEDA to Ms. A. The judgment of the administrative court and the order of the Prefect are therefore repealed.

Finally, one last, recent judgment is worth noting, although it does not directly concern nationals of Member States of the European Union. In a judgment of 6 June 2012, the first Civil Chamber of the Court of Cassation declared that Article L. 611-1, paragraph 1 of the CESEDA was not in compliance with the law of the European Union. This judgment follows the judgment of the ECJ in the Melki case. The Court of Cassation concludes that, according to the Court of Cassation, ‘in so far as it grants the police the power, throughout the national territory and outside any identity check, to require persons of foreign nationality, regardless of their behaviour or of particular circumstances establishing the risk of an attack on law and order, to produce documents authorising them to move or to reside in France, Article L. 611-1, paragraph 1 of the CESEDA does not meet the requirements [of Union law] since it is not accompanied by any provision that guarantees that the use of this power could not have an effect equivalent to that of border controls’. Thus, the identity checks will have to be

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41 Court of Cassation, First Civil Chamber, judgment of 6 June 2012, no. 10-25.233; for an analysis of this judgment, see Olivier Bachelet, ‘Contrariété au droit de l’Union européenne des contrôles directs des titres de séjour et de circulation des étrangers’ [PDF] in Lettre » Actualités Droits-Libertés » du CREDOF, 25 July 2012.
42 ECJ, 22 June 2010, Aziz Melki and Sélim Abdedi, C-188/10 and C-189/10.
better justified and regulated. Now, in recent years, these random checks have led to the removal of many Romanian nationals, specifically from among the Roma population. Once again, the period studied would seem to herald significant changes in the coming months.

4 NATIONAL ORGANISATIONS OR NON-JUDICIAL BODIES TO WHICH COMPLAINTS FOR VIOLATION OF COMMUNITY LAW CAN BE MADE

5. SEMINARS, REPORTS AND ARTICLES

Relevant articles
- J. Guillaumé, ‘L’autonomie de la nationalité sportive’ (The autonomy of sporting nationality), Journal du droit international Clunet no. 2, April 2011, doctrine 5. Here is a summary of the article:

‘In their regulations, Olympic Committees and sports federations refer to the sporting nationality of athletes. This constitutes both a selection criterion for the national team and a criterion allowing quotas to be established within clubs. Does sporting nationality present any special features with respect to state nationality, in the sense of a legal tie between an individual and a State? Two theories are in direct opposition to one another: that of the Council of State, which denies the autonomy of sporting nationality, and that of the Court of Arbitration for Sport, which confirms it. The aim of the article is to defend the latter position, since the autonomy of sporting nationality can be justified by the objectives inherent in the world of sport. Both the conditions of allocation and the effects of sporting nationality must be distinguished from those of state nationality. It is observed that if the autonomy of sporting nationality exists, it faces many limits’.

- C. Meiller, ‘What are the criteria for the specific examination of the personal situation of a national of the European Union who is the subject of an OQTF (Obligation to Leave French Territory)?’, AJDA 2011, p. 1153

The article develops the following themes: ‘In a case brought before it by Romanian nationals of Roma origin who had all been the subject, on the same day, of rulings obliging them to leave French territory (OQTF), worded identically, the Administrative Court of Lyons judges, relying on a range of indices, that the Prefect, who did not possess sufficient details to issue a ruling, did not carry out a specific examination of the personal situation of the persons in question’.

Sites

The web site www.data.gouv.fr provides new statistical information on many facts, specifically labour force participation, unemployment, percentage of immigrant population by origin and, specifically, by making distinctions between nationals of the EU and nationals of third-party countries.