

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT **C**

CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS



Constitutional Affairs

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Obstacles to the right of free movement and residence for EU citizens and their families: Country report for France

Study for the LIBE and PETI Committees



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**POLICY DEPARTMENT C: CITIZENS' RIGHTS AND
CONSTITUTIONAL AFFAIRS**

**CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS
PETITIONS**

**Obstacles to the right of free movement
and residence for EU citizens and their
families:
Country report for France**

STUDY

Abstract

This study, commissioned by the European Parliament's Policy Department for Citizen's Rights and Constitutional Affairs at the request of the LIBE and PETI Committees, analyses the current status of transposition of selected provisions of Directive 2004/38/EC in France and identifies the main persisting barriers to free movement for EU citizens and their family members in French law and practice. The study also examines discriminatory restrictions to free movement, measures to counter abuse of rights and refusals of entry and residence rights, in addition to expulsions.

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LIST OF ABBREVIATIONS

- CESEDA** Code de l'Entrée et du Séjour des Etrangers et du Droit d'Asile (Code on the entry and stay of foreigners and the right to asylum)
- CJEU** Court of Justice of the European Union
- ECHR** European Court of Human Rights
- EHIC** European Health Insurance Card
- ERRC** European Roma Rights Centre
- GITSI** Groupe d'information et de soutien des immigrés (Immigrant Information and Support Group)
- OQTF** Obligation de Quitter le Territoire Français (Obligation to Leave the French Territory)
- PACS** Pacte Civil de Solidarité (Civil Solidarity Pact – Civil Partnership)
- RSA** Revenu de Solidarité Active (Active Solidarity Income – minimum income for people with limited resources)

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EXECUTIVE SUMMARY

In 2008 and 2009 the European Commission's report and the European Parliament's study indicated that France had **not respected the deadline for transposition** of Directive 2004/38/EC into national law. This resulted in **several Articles** of the Directive **not being transposed** at the time of the deadline. The majority of Directive 2004/38/EC has **now** been **effectively** transposed into French law. In addition, some of the issues identified as problematic have now been resolved, such as the recognition of full rights of free movement and residence in France for same-sex couples, and a distinction made between third country nationals and non-EU family members of EU citizens. However, other concerns have yet to be addressed, such as the definition of **partnership, delays** in registering with the authorities and the **proportionality** of related sanctions, **documents** attesting the right of residence for EU citizens and their non-EU family members, **access** to permanent residence, protection against expulsion and the situation of Union citizens from new Member States. Under the French legislation, the condition of 'sufficient resources' is met by reference to the amount of resources in relation to the fixed amount of the Revenu de Solidarité Active (RSA – a minimum income for people with low resources) or the amount of the solidarity allowance for the elderly (ASPA). French law adopts a more restrictive approach than the Directive, as it requires the amount of the resources and their continuity in time must be proven with a degree of certainty.

There is **little evidence** of problematic trends in relation to **entry rights of EU citizens** in France. However, a number of **persisting barriers** remain with respect to residence rights, such as the systematic failure by local authorities in France to deliver, or to deliver within a reasonable timeframe, a certificate of registration. French legislation includes restrictions on equal treatment for certain **social benefits**, and restrictions continue to be placed on EU citizens in registering for healthcare. Finally, EU citizens face additional obstacles with respect to **access to employment, recognition of professional qualifications, and taxes**.

Family members of EU citizens experience considerable difficulties in exercising their free movement and residence rights in France. In terms of gaining **entry**, they face high **administrative burdens**, excessive bureaucracy and **unreasonable delays**. With regard to **residence rights**, they face **obstacles** such as securing timely appointments in prefectures, the requirement to provide extensive evidence / material, and the constant suspicion about the legitimacy of marriages. In terms of **social security and healthcare**, there is a certain amount of confusion in the determination of the applicable legislation for additional health insurance contributions or for non-coverage. In addition, cooperation with institutions from other Member States could be improved.

With regard to **discrimination** on the basis of nationality, EU citizens are excluded from a number of public office jobs in France. In particular, **Bulgarians and Romanians** face difficulties in accessing the labour market because of their nationality. Roma from Bulgaria and Romania face particular discrimination, and have been expelled from the country without proper individual assessment. They also experience greater difficulties in accessing health, education and social benefits.

Measures to combat **marriages of convenience** are provided primarily in the Civil Code and in the CESEDA (Code on the entry and stay of foreigners and the right to asylum). French law imposes **criminal penalties** on the offence of contracting a marriage or making a false declaration of parenthood for the sole purpose of obtaining, or causing to

obtain, a residence permit or a protection against removal, or for the sole purpose of acquiring, or causing to acquire, French nationality.

French legislation lays down the criteria according to which an EU/EEA national or a member of his /her family can be **ordered to leave the French territory** (Obligation de Quitter le Territoire Français – OQTF). This occurs where the EU/EEA national, or his/her family member, no longer fulfils the conditions for residence rights as laid down in the CESEDA, or if the stay constitutes an abuse of such a right, or if the individual's personal conduct poses a serious threat to the fundamental interests of French society. According to French law, an OQTF can be issued to an EU/EEA citizen, or a member of his/her family, on the assumption that they may one day benefit from social security, thereby contravening the wording of Directive 2004/38/EC.

French law provides that French authorities may **refuse** the entry and residence of EU citizens, or members of their families, where they cannot provide evidence of the right of residence, or if their presence on French territory poses a **threat** to public order. Public health is not included as a ground for expulsion under French law.

1. OVERVIEW OF THE TRANSPOSITION OF DIRECTIVE 2004/38/EC AND RECENT DEVELOPMENTS

KEY FINDINGS

- In 2008 and 2009 the European Commission and the European Parliament reported that France had **not respected** the **deadline for transposition** of Directive 2004/38/EC into national law. This resulted in **several Articles** of the Directive **not being transposed** into French legislation.
- Many provisions of Directive 2004/38/EC have **now** been **effectively** transposed into French law. France has introduced or amended provisions to the Code on the entry and stay of foreigners and the right to asylum (CESEDA) to comply with Directive 2004/38/EC.
- Some of the issues identified as problematic have now been resolved, such as the recognition of full rights of free movement and residence in France for same-sex couples, and making a distinction between third country nationals and non-EU family members of EU citizens.
- However, some concerns have yet to be addressed, such as the definition of **partnership**, **delays** in registering with the authorities and the **proportionality** of related sanctions, **documents** attesting the right of residence for EU citizens and their non-EU family members, **access** to permanent residence, protection against expulsion and the situation of Union citizens from new Member States.

1.1. Transposition context

1.1.1. Transposition overview as assessed by the European Parliament and the Commission in 2008

According to the 2008 Commission Report, the transposition of Directive 2004/38/EC in France was incomplete and late. The Commission initiated infringement proceedings under Article 226 of the EC Treaty against France for failure to communicate the text of the transposing measures by the transposition deadline (30 April 2006)¹. A number of Articles were incorrectly/incompletely transposed (about 20%), while some others were ambiguously transposed (about 11%) or not transposed at all (about 9%)². The Study commissioned by the European Parliament reiterated that the transposition of the Directive into French law was 'imperfect' and 'incomplete'³. The most important gaps and compliance issues generally **related to family members** and concerned:

- Article 2(2)(b) (situation of registered partners): Registered partners are defined as 'family members' of the Union citizen who can benefit from the rights contained in Directive 2004/38/EC. This provision has not been transposed into national law.

¹ European Commission, Report on the application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, COM(2008) 840 final, p. 3.

² Ibid, p. 12.

³ European Parliament, The Right of Citizens to move and reside freely within the territory of the European Union, 2009, p. ix.

- Article 3(1) (beneficiaries): At the time the EC report and the study commissioned by the European Parliament were drafted, same-sex couples could not exercise their full rights of free movement and residence in France⁴.
- Article 3(2)(b) (non-registered partners): Non-registered partners are entitled to have their entry and residence rights facilitated even if they do not qualify as 'family members'. This provision has not been transposed into national law.
- Article 5(1)(2) (right of entry): This has not been effectively transposed into CESEDA, as Article R121-1 CESEDA does not explicitly state that no entry visa or equivalent formality may be imposed on Union citizens. In addition, it requires third country family members to present a valid passport, a residence permit or visa for family members, a document establishing his/her family ties. No 'accelerated procedure' is mentioned, with the French provision (R121-1 CESEDA) specifying only that the visa should be issued 'as soon as possible' (*dans les meilleurs délais*). The requirement to grant such persons every facility to obtain the visa is not clearly stated. However, the person concerned is only required to justify his/her family link in order to obtain the visa, which is a simplified procedure compared to the procedure for foreigners not covered by the present provision.
- Article 6 (right of residence up to three months without any conditions or any formalities other than ID): Article 6 has not been effectively transposed, with the French transposition measures placing conditions on the right of residence up to three months, i.e. that the individual must not become an unreasonable burden on the social assistance system, and must not represent a threat to public policy. In addition, the CESEDA requires non-EU family members to apply for a residence card if they are more than 18 years of age. Such an application must take place within two months, in breach of the Directive's provision that Union citizens and their family members have a right of residence for up to three months with no formalities required other than valid identification⁵.
- Article 7(3) (status of worker or self-employed person): This Article has not been correctly transposed in France.
- Article 7(4) (derogation to the right of residence): France restricts the scope only to the spouse and dependent children concerning family members of students.
- Article 8 (registration with the competent authorities): France has chosen to apply the option under Article 8(1) of the Directive allowing for the requirement to register with the competent authorities for a stay of more than three months⁶. In France, the prefectures are the competent authorities in this regard. In addition, France requires non-EU family members of EU citizens to apply for a residence card if they are more than 18 years of age. The application must be lodged within the first three months. The obligation to register within three months of entry into French territory is not in line with Article 8(2) of the Directive which stipulates that registration is not mandatory in the first three months. Non-EU family members of EU citizens who have not registered with a prefecture are liable for a fine of between EUR 450 and EUR 750. They are also then considered to have stayed on the French territory for less than three months, a presumption which could deprive them of their right of residence (i.e. the right to receive social benefits), and it could also

⁴ European Commission, Report on the application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, COM(2008) 840 final, p. 4.

⁵ CESEDA, Article R121-14.

⁶ CESEDA, Article L121-2.

constitute a violation of the principle of equal treatment. Such a presumption may contradict the principle of proportionality of penalties laid down in Article 8(2) of the Directive.

- Another gap in the transposition of Article 8 of the Directive was identified, where a registration certificate delivered to the applicant does not confer the right to stay.
- Articles 9 to 11 (issue and renewal of residence card): Article 10(1) of the Directive provides that a certificate of application for a residence card for third country national family members must be issued 'immediately.' Article R121-15, par. 1 of the CESEDA simply says that it must be issued.
- Some issues were identified in relation to the renewal of the residence card, with family members who are third country nationals required to apply 'at least two months before expiry' of the previous card (and not just 'before expiry', as set out in the Directive). The same rule applies if they eventually acquire a permanent right of residence, whereby, according to Article R122-2, par. 1, of the CESEDA, they must request their first permanent residence card two months before expiry of the five-year continuous residence (and not just 'before the expiry of the previous residence card', as stated in the Directive).
- Conformity issues also arose in connection with the renewal of the permanent residence card. According to Article R122-2 of the CESEDA, such a renewal must be requested two months before expiry of the current residence card (whereas the Directive provides that it is automatically renewable every 10 years).
- Article 14 (retention of residence rights as long as they do not become an unreasonable burden on the social assistance system): According to the 2008 Commission assessment report, France does not exclude expulsion as an automatic consequence of recourse to the social assistance system⁷.
- Articles 16 to 21 (right of permanent residence): Article 17 of the Directive lists the cases in which the conditions on the length of stay may be waived for workers who have ceased their occupational activity in France if their spouse is French, or if he/she lost French nationality following the marriage. The CESEDA made no reference to situations where a professional activity ceases due to permanent incapacity for work.
- Articles L122-1 to 3 of the CESEDA did not expressly provide that the conditions for the right of residence for a period of more than three months no longer apply, although it can be inferred from the writing of Article L122-1 that the right of residence may be granted 'unless presence constitutes a threat to public order'. This point must be clarified.
- Article 19(2) of the Directive provides that the document certifying permanent residence shall be issued 'as soon as possible', but this is not specified in the French legislation⁸.
- The CESEDA provided that the document proving the right of residence shall be a 'residence permit'. For EU citizens and their non-EU family members, the permit included a reference 'CE - permanent residence', whereas under Article 19 of the Directive, a 'document certifying permanent residence' is to be issued to EU citizens and, according to Article 20, a 'permanent residence card' shall be issued to third

⁷ European Commission, Report on the application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, COM(2008) 840 final, p. 7.

⁸CESEDA, Article R122-1.

country nationals. By assigning the document a different name to that provided in the Directive, the CESEDA did not ensure that the document would be recognised as proof of permanent residence.

- Article 25 (general provisions concerning residence documents): Article 25(2) of the Directive provides that residence documents must be issued free of charge or at a cost not exceeding that imposed on nationals for the issuing of similar documents. This is not specified in the CESEDA.
- Article 27 (restriction on the freedom of movement and residence of Union citizens and their family members, on grounds of public policy, public security or public health): The 2008 Commission Report stated that France had not correctly transposed the conditions under which it might restrict the right of free movement. In particular, the following are not mentioned in the CESEDA: Article 27(1): 'These grounds shall not be invoked to serve economic ends'; Article 27(2): 'Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted'; Article 27(3): 'Such enquiries shall not be made as a matter of routine'; Article 27(4): 'public health'.
- Article 28 (protection against expulsion): In accordance with the EC report of 2008, France had not correctly transposed the safeguards that lay down the conditions under which Member States may restrict the right of free movement⁹.
- Article 35 (abuse of rights): The European Commission requested more precise information on the conditions under which an abuse of rights might lead to an expulsion order.
- Article 36 (sanctions): The fines, as defined by the Penal Code, range from EUR 450-750 for EU citizens who fail to register (a 'class 4 offence'), and from EUR 750-1500 for non-EU nationals who did not request or renew a residence permit (a 'class 5 offence')¹⁰. The level of these fines was considered excessive.

1.1.2. What has changed since

Since 2008, France has adopted new regulations to address some of the gaps in transposition, namely the Law of 16 June 2011 on immigration, integration and nationality¹¹, Decree No 2011-10 of 6 September 2011¹² and Law No 2013-404 of 17 May 2013 on marriages for same-sex couples¹³. While these changes have addressed some of the transposition issues highlighted in the 2008 Commission Report and the 2009 Study commissioned by the European Parliament, it seems that some other **transposition**

⁹ European Commission, Report on the application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, COM(2008) 840 final, p. 8.

¹⁰ French Penal Code, Articles R621-1 and R621-2.

¹¹ Loi 2011-672 relative à l'immigration, à l'intégration et à la nationalité (Law 2011-672 related to immigration, integration and nationality), 17 June 2011, available at: <https://www.legifrance.gouv.fr/affichTexte.do?categorieLien=id&cidTexte=JORFTEXT000024191380>

¹² Décret 2011-1049 du 6 septembre 2011 pris pour l'application de la loi n° 2011-672 du 16 juin 2011 relative à l'immigration, l'intégration et la nationalité et relatif aux titres de séjour (Decree 2011-1049 for the application of the Law 2011-672 of 16 June 2011 related to immigration, integration and nationality and related to residence permits) 7 September 2011, available at: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000024537138&categorieLien=id>

¹³ Loi n° 2013-404 du 17 mai 2013 ouvrant le mariage aux couples de personnes de même sexe (Law No. 2013-404 of 17 May 2013 allowing for the marriage of same-sex couples), available at <https://web.archive.org/web/20160115130840/http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000027414540&dateTexte=&categorieLien=id>

issues remain. Conformity issues still arise in relation to Article 3(1), Articles 5(1) and 5(2), Article 8, Article 14 and Article 27 of the Directive.

With regard to Article 3 on beneficiaries, in 2008, same-sex couples did not enjoy full rights of free movement and residence in France¹⁴. This has changed with the adoption of Law No. 2013-404 of 17 May 2013, which gave equal rights to same-sex and different sex married couples¹⁵. However, France has still not explicitly transposed the obligation to justify any denial of entry or residence.

With respect to the right of entry laid down under Articles 5(1) and 5(2) of the Directive, France previously made no distinction between the right of entry of third country nationals and third country family members as to the right of entry¹⁶. This was remedied by providing specific facilities for such family members for entry visas (i.e. exemption and accelerated procedure). In addition, the visa must be provided to non-EU family members free of charge. However, transposition issues remain as French legislation does not explicitly state that no entry visa or equivalent formality may be imposed on Union citizens. Additionally, and contrary to the Directive, it obliges third country national family members to present a valid passport, a residence permit or visa for family members, or, alternatively, a document establishing their family ties.

Article 7(3) has now been effectively transposed by Article 8 of Decree No 2011-1049 amending Article R121-6 of the CESEDA. France still makes use of the option under Article 7(4) of the Directive

Concerning Article 8 relating to registration with the competent authorities, French legislation still requires registration within the first three months for a stay of more than three months in France, contrary to what is provided for in the Directive.

In relation to Article 14 on the retention of residence rights as long as the EU citizen does not become an unreasonable burden on the social assistance system, the 2008 Commission Report mentioned that France does not exclude expulsion as an automatic consequence of recourse to the social assistance system¹⁷. This situation has not changed since¹⁸.

Article 27 of the Directive concerning the restriction on the freedom of movement and residence of Union citizens and their family members on the grounds of public policy, public security or public health was integrated into the CESEDA by Law No. 2011-672 of 16 June 2011, reflecting a new commitment undertaken by French authorities, following the controversy in summer 2010 over the mass expulsion of Romanian and Bulgarian nationals of Roma origin¹⁹. Transposition issues, however, remain, as French law does not refer to the fact that the grounds must not be invoked to serve economic ends. Moreover, Article

¹⁴ European Commission, Report on the application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, COM(2008) 840 final, p. 4.

¹⁵ Loi n° 2013-404 du 17 mai 2013 ouvrant le mariage aux couples de personnes de même sexe (Law No.2013-404 of 17 May 2013 allowing for the marriage of same-sex couples), available at: <https://web.archive.org/web/20160115130840/http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000027414540&dateTexte=&categorieLien=id>

¹⁶ European Commission, Report on the application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, COM(2008) 840 final, p. 5.

¹⁷ Ibid, p. 7.

¹⁸ Gisti, *Entrée, séjour et éloignement. Ce que change la loi du 16 juin 2011 (Entry, stay and expulsion. What the law of 16 June 2011 changes)*, p. 50, available at: http://www.gisti.org/IMG/pdf/2011-09_cj_entree_sejour_apres_loi_besson.pdf.

¹⁹ Ibid, p. 51.

27(2), Article 27(3) and Article 27(4) of the Directive have not been transposed into national law.

Moreover, as regards Article 24 of the Directive, on equal treatment, France removed all restrictions on access to the employment market for employees who are nationals of States that acceded to the European Union on 1 May 2004 with effect from 1 July 2008²⁰. The transition period for Romanian and Bulgarian workers to access the labour market ended on 1 January 2014. Nationals of Croatia, which acceded to the European Union on 1 July 2013, may freely access the employment market in France²¹.

France has also introduced safeguards against the expulsion of foreign nationals in Law No 2011-672 of 16 June 2011 (in line with Article 28 of the Directive)²². Only the grounds listed in the national legislation may lead to the issuing of an expulsion order to an EU/EEA national and his/her family members by the competent administrative authority.

1.2. Current transposition status

1.2.1. Overall assessment of the current transposition status in France

Directive 2004/38/EC has been almost entirely transposed into French national law. Despite amendments to the CESEDA in 2011 and 2013, however, some transposition issues remain (see Section 1.1.2 above).

The requirement of '**sufficient resources**' is transposed under Article L121-1 of the CESEDA. An assessment of sufficient resources for an EU citizen and the members of his/her family to be able to reside in France for a period exceeding three months must be undertaken in accordance with Article R121-4 of the CESEDA, taking into account the personal situation of the Union citizen and his/her family members. This can be understood as meaning that, even if an EU citizen does not meet the formal conditions of sufficient resources, he or she can meet the condition of sufficient resources by dint of his/her personal situation.

The ministerial circular of 10 September 2010²³ requires valuing the amount of resources by reference to the fixed amount of the Revenu de Solidarité Active (RSA – a minimum income for people with low resources) or the amount of the solidarity allowance for the elderly (ASP). French law adopts a more restrictive approach and is in breach of the Directive, as it requires the amount of resources and their continuity in time to be proven with a degree of certainty, which is more restrictive than intended by the Directive²⁴.

An '**unreasonable burden** on the social assistance system' is assessed by considering the amount of non-contributory social security benefits that have been granted to the person concerned, whether the economic difficulties are temporary or not, and the length of his/her stay.

French law does not exclude expulsion as an automatic consequence of recourse to the

²⁰ Ministerial circular No NOR IMIM1000116C of 10 September 2010, para. 1.4.

²¹ Enlargement – transitional provisions, available at: <http://ec.europa.eu/social/main.jsp?catId=466&langId=en>.

²² CESEDA, Article L521-2 to L521-5.

²³ Circular No NOR IMIM1000116C, available at: http://circulaire.legifrance.gouv.fr/pdf/2011/04/cir_32884.pdf

²⁴ CJEU, Commission of the European Communities v Kingdom of the Netherlands (C-398/06), 10 April 2008, available at: <http://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=C-398/06&td=ALL>

social assistance system, which is contrary to the Directive²⁵.

The Council of State (Conseil d'État), in an opinion of 26 November 2008, concluded that even if a person is not yet covered by the social assistance system in France, a lack of resources can mean that an EU citizen living in France for less than three years has no right of residence in France²⁶. In addition, according to this opinion from the Council of State, the administration may rely on data from organisations providing aid when it invokes the unreasonable burden rule, or on the statements previously made by the person concerned.

Bulgarian and Romanian nationals of Roma origin, in particular, have been expelled from France, as they were considered to represent an unreasonable burden on the French social assistance system.

Specific issues are discussed below.

1.2.2. Additional conditions in law or practice for family members (especially third country national family members) to exercise their free movement rights

Under French law, there are no additional conditions for family members (especially third country family members) to exercise their free movement and residence rights.

1.2.3. France's approach towards the partners of EU citizens

In France, marriages between same-sex couples are permitted under Law No. 2013-404 of 17 May 2013²⁷. Civil partnerships between same-sex couples (PACS) are permitted under Law No. 99-944 of 15 November 1999²⁸.

A difference in treatment remains between married couples, registered partnerships and relationships characterised by continuous private or family ties. With regard to the latter, while entry and residence are facilitated, they are not guaranteed (this is, however, in line with the Directive).

For the demonstration of such a family tie with the Union citizen – which corresponds to the durable relationship, duly attested that is required by the Directive – one of two conditions must be satisfied: he/she is dependent on, or part of the household of, the EU citizen in the country of origin. This dependence is assessed on a case-by-case basis to determine if, given their financial and social situation, they require material support in order to meet their basic needs in their country of origin or the country they came from

²⁵ GISTI, *Entrée, séjour et éloignement Ce que change la loi du 16 juin 2011 (Entry, stay and expulsion. What the law of 16 June 2011 changes)*, p. 50, available at: http://www.gisti.org/IMG/pdf/2011-09_cj_entree_sejour_apres_loi_besson.pdf.

²⁶ Conseil d'État, avis (Council of State, opinion) 26 novembre 2008, available at: https://www.legifrance.gouv.fr/affichJuriAdmin.do?oldAction=rechJuriAdmin&idTexte=CETATEXT00001983194_0&fastReqId=1501735865&fastPos=3.

²⁷ Loi No. 2013-404 du 17 mai 2013 ouvrant le mariage aux couples de personnes de même sexe (Law No. 2013-404 of 17 May 2013 allowing for marriage of same-sex couples), available at: https://www.legifrance.gouv.fr/affichTexte.do;jsessionid=E80707EF297FF7F2BEB3BA96BAD010CF.tpdila20v_1?cidTexte=JORFTEXT000027414540&dateTexte=20130519.

²⁸ Loi No. 99-944 du 15 novembre 1999 relative au pacte civil de solidarité (Law No. 99-944 of 15 November 1999 on the Civil Solidarity Pact), available at: https://www.legifrance.gouv.fr/affichTexte.do;jsessionid=E80707EF297FF7F2BEB3BA96BAD010CF.tpdila20v_1?cidTexte=JORFTEXT000000761717&dateTexte=19991116.

when they applied to join the EU citizen. Alternatively, evidence must be provided of serious health problems requiring the imperative and personal support of the Union citizen. Advice may be sought from the doctor of the Regional Health Agency (formerly the public health inspector) or, in Paris, the chief doctor of the medical department of the Préfecture de police²⁹. France has not transposed the obligation to justify denial of entry/residence.

1.2.4. France's implementation of the Metock ruling

With regard to the right of residence of third country family members, no specific conditions (such as those dealt with in the CJEU Metock case) are set out in French national law or practice.

1.2.5. Requirements for obtaining the right of residence beyond those contained in Article 7(1) and (2) of the Directive

France still makes use of the Article 7(4) option, restricting the scope of students' family members to the spouse and dependent children. Registered partners engaged in a PACS remain unentitled to this right.

1.2.6. Conditions attached to the right of permanent residence beyond Article 16 of the Directive

France attaches conditions to the right of permanent residence beyond five years that may be considered to be contrary to the Directive. The French transposing measure requires foreign nationals to be covered by health insurance in order to obtain the right of permanent residence in France. This goes beyond Directive 2004/38/EC, which only requires the possession of an identity card.

Contrary to the Directive that lays down exceptions to the continuous period of five years (absence for less than six months, military obligations, serious illness, studies abroad, etc.), the national legislation makes no reference to any exceptions to the continuous period of five years.

²⁹ Ministerial Circular No NOR IMIM1000116C of 10 September 2010, Para. 3.5.5 .

2. IMPLEMENTATION OF THE DIRECTIVE: DESCRIPTION OF THE MAIN PERSISTING BARRIERS

KEY FINDINGS

- Administrative practices have added **obstacles** for non-EU family members of EU citizens to obtain an entry visa. In particular, a large number of documents are requested by the national authorities, thereby creating additional **administrative burdens**. Visas are very often delivered after four weeks, which could be considered an unreasonable delay. French authorities also ask third country family members of EU citizens to apply for long-term visas, although a short-term visa should be enough to enter the country.
- The most common trends in respect of the residence rights of the EU citizen are recurrent **failures** by local authorities in France to deliver, or to deliver within a reasonable timeframe, a certificate of registration, and the continuing difficulties experienced by self-employed persons in the recognition of their right to stay.
- The primary issues for the residence rights of family members of Union citizens are the **difficulty** in having a residence card issued by the competent administrative authority. Delays in obtaining appointments at prefectures are common, as is a high degree of **bureaucracy**. Finally, there is frequent **suspicion** about the legitimacy of marriages.
- French legislation includes **restrictions on equal treatment** for certain social benefits for some EU citizens. These restrictions are usually limited to the first three months of residence in France. There are restrictions on the ability of EU citizens to register for healthcare. Finally, some pieces of national legislation also require referral to the prefectures before any social benefit will be granted.
- Non-EU family members of EU citizens encounter **confusion** in the determination of the applicable legislation, leading to extra payment of health insurance contributions or to non-coverage. In addition, cooperation with institutions from other Member States could be improved.
- Other persisting barriers for EU citizens relate mainly to access to **employment, recognition of professional qualifications, and taxes**.

2.1. Main barriers for EU citizens

2.1.1. Entry

As an EU citizen or citizen of the EEA, individuals are free to travel and live in France for a period not exceeding three months. The right of entry and stay in France is recognised regardless of the reason (short-term employment, internship, leisure, etc.)³⁰.

³⁰ Circulaire No NOR IMIM1000116C sur les conditions d'exercice du droit de séjour des ressortissants de l'Union Européenne, des autres Etats parties à l'Espace économique européen et de la Confédération suisse, ainsi que des membres de leur famille (Circular No. NOR IMIM1000116C on the conditions for exercising the right of residence for citizens of the European Union, the other States party to the European Economic Area and the Swiss Confederation, and their family members), 10 September 2010, available at: http://circulaire.legifrance.gouv.fr/pdf/2011/04/cir_32884.pdf

There is little evidence of problematic trends in relation to entry rights of EU citizens in France.

2.1.2. Residence

An EU citizen wishing to stay in France must be in possession of his/her identity card or a valid passport, have sickness and maternity insurance, and have sufficient resources to avoid becoming a burden on the French social assistance system³¹.

Several obstacles to free movement of EU citizens are noted with respect to students. Some family allowance bodies have concluded that the 'sufficient resources' condition required for the right of residence has not been fulfilled, leading them to refuse the benefits, as neither support from the family or relatives of the student nor aid in cash and kind were included in the calculation of housing benefits and did not have to be declared for the application for benefits³².

In terms of the pre-application phase during which EU citizens and their family members seek information on the application procedures, it has been pointed out that the information can be difficult to find and requires a lot of time investment by the individual concerned³³.

The quarterly reports of the Your Europe Advice service include several cases of difficulties for EU citizens in obtaining a certificate of registration, for example, where French local authorities did not issue a certificate of registration after three months. This has created difficulties for migrant EU citizens who need to prove that they reside in France³⁴. In addition, concerns have been raised that self-employed persons encounter difficulties in the recognition of their right to stay, where such individuals have been required to prove not only their status but also their income³⁵.

Complaints have been made by EU nationals on the recurring failure by local authorities in France to deliver, or to deliver within a reasonable timeframe, a certificate of registration. This has been identified as a large-scale and systematic problem in France. Consequently, EU citizens who need such a certificate to show that they legally reside in France are unable to do so³⁶.

2.1.3. Access to social security and healthcare

The underpinning principle of French law is that of equal treatment, i.e. if an EU citizen lives in a legal administrative situation in France, he/she shall benefit from social benefits in the same manner as French nationals.

³¹ CESEDA, Article L121-1 and R121-11.

³² GISTI – Accès aux droits sociaux et droit au séjour des citoyens de l'Union (UE) et des membres de leur famille (Access to social rights and right of residence of EU citizens and of their family members), available at: http://www.gisti.org/IMG/pdf/note_comede_9-situations-egalitedetraitemet_2016-02.pdf

³³ ICF GHK, Evaluation of EU rules on free movement of EU citizens and their family members and their practical implementation, available at: http://ec.europa.eu/justice/citizen/document/files/evaluation_of_eu_rules_on_free_movement-final_report.pdf

³⁴ Your Europe Advice, Quarterly Feedback Report, October – December 2015, p.30.

³⁵ Your Europe Advice, Quarterly Feedback Report, April – June 2014, p.21.

³⁶ Your Europe Advice, Quarterly Feedback Report, July – September 2013.

Although this interpretation is in line with the Directive, some persisting obstacles can be identified in its implementation in practice by the French authorities.

In practice, social security benefits are denied on the basis of a lack of proof of legal residence, despite the fact that the EU citizen and his/her family members should be considered to be legally resident and entitled to such benefits.

Some cases have been brought to the attention of the Your Europe Advice service, describing restrictions placed on the ability of EU citizens to register for healthcare³⁷. The forms used for registering / benefiting from social security in France are also a source of many complaints to the Your Europe Advice service.

Your Europe Advice highlights considerable confusion in the determination of the applicable legislation, which leads to additional health insurance contributions or to non-coverage. For example, the application of taxes earmarked for social security (CSG 'Contribution sociale généralisée' and CRDS 'Contribution pour le remboursement de la dette sociale') affected the real estate revenue of an Italian citizen who resided in Italy, despite the fact that the citizen was not affiliated to the French social security system³⁸.

In addition, cooperation with institutions from other Member States could be improved³⁹. For example, an unemployed Spanish citizen moved to France with her partner. The French social security authority asked her to provide a specific form (Form S1) in order to receive health assistance in France. Since she has never worked in France nor contributed there, she was unable to obtain the form from the Spanish social security authority⁴⁰.

EU citizens also face difficulties in accessing their pension entitlements after having worked in two Member States. For example, a UK citizen, having worked in the UK and France, and currently living in France, is unable to obtain his pension entitlements from either of the two countries (Petition No 0237/2014)⁴¹.

Applicants describe the procedures as being complex, with aggregation rules for family benefits sometimes ignored. For example, the French family benefit organisation (Caisse d'Allocations Familiales) failed to add up periods of eligibility for a specific type of family benefit falling under the scope of the coordination of social security systems⁴².

The European Health Insurance Card (EHIC) is also not always accepted at national level. For example, an Italian citizen, employed with the local health administration from the Valle d'Aosta Region, and in charge of international healthcare mobility, noticed that French public hospitals almost systematically refuse to recognise the Italian EHIC for even the simplest of medical emergencies, instead demanding that Italian citizens pay their healthcare in France⁴³.

EU citizen jobseekers do not benefit from certain social benefits during their first three months of stay in France. This is in line with Article 24 of the Directive allowing for the possibility to limit access to social benefits in the first three months. These include the allowance for disabled persons (AAH)⁴⁴, solidarity allowance for the elderly (ASPA)⁴⁵,

³⁷ Your Europe Advice, Quarterly Feedback Report, April – June 2015.

³⁸ Your Europe Advice, Quarterly Feedback Report, January – March 2014, p.42.

³⁹ Your Europe Advice, Quarterly Feedback Report, October – December 2015.

⁴⁰ Ibid.

⁴¹ Petition No 0237/2014 to the European Parliament.

⁴² Your Europe Advice, Quarterly Feedback Report, January – March 2014, p.47.

⁴³ Ibid.

⁴⁴ Social Security Code, Article L 821-1.

⁴⁵ Social Security Code, Article L816-1.

additional disability allowance (ASI)⁴⁶, solidarity labour income (RSA)⁴⁷ and support for health costs on residency requirement⁴⁸.

EU citizens are also referred to the prefectures before they can claim any social benefit.

Some legislation allows for the right to family benefits to be interrupted in cases of municipal decisions ordering an expulsion, or following the granting of return support⁴⁹.

Some circulars have taken a restrictive approach compared to the Directive, as they recommend valuing the amount of resources by reference to the amount of the RSA or ASPA. Those circulars also require the amount of resources and their continuity in time to be proved with certainty, which can be considered in breach of the Directive⁵⁰.

2.1.4. Others

A number of frequently arising obstacles to the exercise of free movement rights by Union citizens can be identified across the quarterly reports of the Your Europe Advice service. These obstacles relate primarily to access to employment, professional qualifications, taxes, vehicle issues and social benefits⁵¹.

Firstly, concerning access to employment, EU nationals have reportedly encountered difficulties in having their professional qualifications recognised in France - for example, the case of a Portuguese architect, whose qualifications were not recognised in France. The applicant was not given a chance to demonstrate her qualifications because she had not proved sufficient knowledge of French⁵². In another case - raised in a petition to the European Parliament - the French National Council of Universities has, on two occasions, refused the petitioner's request to be granted an equivalent qualification to the PhD she obtained at university in Madrid (Petition No 1408/2014)⁵³.

Secondly, double taxation of income can occur for family members of EU citizens, and double taxation agreements are sometimes ignored. For example, the Treaty on Avoidance of Double Taxation between Denmark and France has not been applied in practice since 2009. Taxpayers, such as pensioners, who have earned their income from Denmark but who are resident in France, are liable for tax on their Danish income in both countries⁵⁴.

Thirdly, cases have been brought with regard to vehicles, and difficulties in re-registering cars previously registered in another Member State. This creates discrimination based on the nationality of the driver and his/her licence, as well as placing penalties on drivers⁵⁵. The national authorities require unnecessary, time-consuming and expensive technical inspections for vehicles that have been duly accredited in other Member States. Problems

⁴⁶ Social Security Code, Article L816-1.

⁴⁷ Social Action and Family Code, Article L262-6.

⁴⁸ Social Security Code, Article L160-6.

⁴⁹ Circulaire DSS/SD2B/2012/164 relative au benefice des prestations familiales des ressortissants de l'Union Européenne, de l'Espace économique européen et de la Suisse en situation d'inactivité professionnelle sur le territoire français (Circular DSS/SD2B/2012/164 relating to family benefits of nationals of the European Union, the European Economic Area and Switzerland in situations of worklessness on the French territory), 16 April 2012, available at: http://circulaire.legifrance.gouv.fr/pdf/2012/04/cir_35070.pdf.

⁵⁰ Circular No. IMIM1000116C (see also Circular DSS/DACI/2011/225 of 9 June 2011).

⁵¹ Your Europe Advice, Quarterly Feedback Report, July - September 2015.

⁵² Your Europe Advice, Quarterly Feedback Report, July - September 2015, p.50.

⁵³ Petition No 1408/2014 to the European Parliament.

⁵⁴ Your Europe Advice, Quarterly Feedback Report, October - December 2015, p.62.

⁵⁵ Your Europe Advice, Quarterly Feedback Report, April - June 2015.

have also been reported with the acceptance of the roadworthiness test passed in another Member State⁵⁶.

2.2. Main barriers for family members of EU citizens

2.2.1. Entry

French legislation has introduced facilities for family members to acquire an entry visa⁵⁷. Third-country national family members with a valid residence permit obtained in another Member State are exempt from the visa requirement. The consular authority must issue to non-EU family members a visa, free of charge, as soon as possible and as part of an accelerated procedure, upon being provided with proof of family ties with the EU citizen⁵⁸.

France differentiates between third country national family members of EU/EEA citizens and third country nationals (i.e. accelerated procedure for non-EU family members in obtaining a visa; Book I, Title II of the CESEDA relates specifically to the entry and stay of EU/EEA citizens and the stay of their family members)⁵⁹.

In accordance with the main concerns gathered by the Your Europe Advice service, non-EU family members of EU citizens encounter difficulties in obtaining their visa. It has been reported that embassies did not give direct access to visa applicants who are family members of EU citizens⁶⁰. Family members of EU citizens have reported experiencing excessive administrative formalities during their application to enter the country, as well as facing difficulties in obtaining visas.

It has been reported that French authorities ask non-EU family members of EU citizens to apply for long-term visas, while a short-term visa should be considered sufficient in order to enter the country⁶¹.

2.2.2. Residence

Persistent obstacles to the exercise of free movement rights by family members of EU citizens can be identified from the Quarterly Reports of the Your Europe Advice service.

These relate mainly to difficulties with the competent administrative authority issuing residence cards. Cases brought to the attention of the Your Europe Advice service reported the need for extra documentation, in addition to excessive delays for obtaining an appointment in prefectures in order to register in France⁶².

Excessive bureaucracy is reported, with many different documents required, and there is constant suspicion about the legitimacy of marriages. Many problems arise related to the authentication and recognition of foreign acts (administrative acts). Significant delays and costs in issuing residence cards were also identified.

⁵⁶ Your Europe Advice, Quarterly Feedback Report, October – December 2015.

⁵⁷ CESEDA, Article R121.1.

⁵⁸ CESEDA, Article R121-1.

⁵⁹ Partie législative, Livre I, Titre II du CESEDA (Legislative Part, Book 1, Title II of the CESEDA), available at: https://www.legifrance.gouv.fr/affichCode.do;jsessionid=BE036DCFE431BC033B888E377BFB5843.tpdila13v_2?idSectionTA=LEGISCTA000006147746&cidTexte=LEGITEXT000006070158&dateTexte=20160429.

⁶⁰ Your Europe Advice, Quarterly Feedback Report, July – September 2015, p.14.

⁶¹ Your Europe Advice, Quarterly Feedback Report, April – June 2014.

⁶² Your Europe Advice, Quarterly Feedback Report, July – September 2015, p.24.

Non-EU family members are required to present a legally accredited marriage certificate or authentication by another Member State for registration in France, despite the absence of any such obligation under national law. Foreign marriage certificates from a third country are not accepted⁶³.

Some complaints have been made of residence permits being denied to the non-EU family members of frontier workers, on the grounds that these EU citizens are not residents.

Other obstacles relate to the recognition of marriages in France. Authorities require proof of prior registration of the marriage in the Member State of origin of the EU citizen. However, since some countries - such as the UK - no longer register foreign marriages, non-EU family members can encounter difficulties in having their marriage recognised in France⁶⁴.

Finally, in the CESEDA, an individual in a civil partnership (PACS) with an EU citizen or direct descendants or ascendants of the EU citizen, does not have an automatic entitlement to residence in France⁶⁵. These limitations may go against Article 2(2)(b) of the Directive, which expressly recognises the right of residence of a legally registered partner, his descendants and dependent direct ascendants. The Administrative Court of Paris, in its judgement of 12 November 2008, ruled against the omission of this Article from the CESEDA⁶⁶. The Ministerial circulars of 10 September 2010⁶⁷ and 21 November 2011⁶⁸ recognise the right of residence of the partner in a civil partnership (PACS), in principle after having lived together for one year. For individuals sharing a household, this must be proved by cohabitation of more than five years.

2.2.3. Access to social security and healthcare

Access to social security and welfare for family members of Union citizens are largely the same as those described above for the EU citizens themselves.

2.2.4. Others

No other specific obstacles to free movement and residence rights for family members of EU citizens were identified.

⁶³ Your Europe Advice, Quarterly Feedback Report, July – September 2013.

⁶⁴ Your Europe Advice, Quarterly Feedback Report, October – December 2015, p.19.

⁶⁵ More information on the PACS can be found at: <https://www.service-public.fr/particuliers/vosdroits/N144>.

⁶⁶ Cour administrative de Paris, Sélection de jugements rendus de septembre à décembre 2008 (Administrative court of Paris, selection of judgements from September to December 2008) available at: <http://www.cnda.fr/content/download/4356/13198/version/1/file/letap18.pdf>.

⁶⁷ Circulaire No NOR IMIM1000116C sur les conditions d'exercice du droit de séjour des ressortissants de l'Union Européenne, des autres Etats parties à l'Espace économique européen et de la Confédération suisse, ainsi que des membres de leur famille (Circular No. NOR IMIM1000116C on the conditions for exercising the right of residence for citizens of the European Union, the other States party to the European Economic Area and the Swiss Confederation, and their family members), 10 September 2010, available at: http://circulaire.legifrance.gouv.fr/pdf/2011/04/cir_32884.pdf.

⁶⁸ Circulaire No NOR 10CL1130031C sur les modalités d'application du décret No 2011-1049 sur les modalités d'application du décret No 2011-1049 pris pour l'application de la loi No 2011-672 du 16 juin 2011 relative à l'immigration, l'intégration et la nationalité et relative aux titres de séjour (Circular No NOR 10CL1130031C on the implementing rules of Decree No 2011-1049 of 6 September 2011 adopted for the application of the Law No 2011-672 of 16 June 2011 related to immigration, integration and nationality and related to residence permits), 21 November 2011, available at: http://circulaire.legifrance.gouv.fr/pdf/2011/11/cir_34068.pdf.

3. DISCRIMINATORY RESTRICTIONS TO FREE MOVEMENT

KEY FINDINGS

- The transition period for **Romanian and Bulgarian** workers to access the labour market ended on 1 January 2014. However, Bulgarians and Romanians are still excluded from a number of public office jobs, and still face **difficulties** in accessing the labour market in France because of their nationality.
- The right to free movement is particularly **at risk** for Roma groups in France. In summer 2010, a large number of Roma were **expelled** from France without individual assessments being made.
- In addition to the risk of expulsion, Roma face particular discrimination in France, including in relation to **access to health, education and social rights**. This can lead them to leave on their own accord.
- France does not distinguish between same-sex spouses and different sex spouses of foreign EU citizens and their family members for the purposes of entry and residence rights. Married and unmarried same-sex partners are included in the definition of 'family member' for the purposes of free movement.

3.1. Discrimination based on nationality

France applied the maximum period of work restrictions for Bulgarians and Romanians (until 1 January 2014). Prior to that date, Romanians and Bulgarians who wanted to work in some professions in France needed a residence permit and a work permit. However, despite the end of the transition period, Bulgarian and Romanian workers are still excluded from certain jobs, including certain public function jobs (police, taxes, justice, defence).

According to a worker from GISTI (Groupe d'information et de soutien des immigrés – information and support group for immigrants), Bulgarians and Romanians find it more difficult to secure employment because of their nationality⁶⁹.

In 2013 GISTI reported instances of evacuations of Roma from slums without a proper case-by-case assessment, illegal expulsions from the territory without individual assessments, and a lack of access to rights in the areas of health, education or housing⁷⁰.

Cases of discrimination based on the nationality of the EU citizen have been brought before the Defender of Rights (Défenseur des droits). The Primary Sickness Insurance Fund (Caisse primaire d'assurance maladie (CPAM)), for example, refused state medical aid to a Romanian person⁷¹.

⁶⁹ L'OBS, Travailleurs bulgares et roumains: qu'est-ce qui change le 1er janvier? (Bulgarian and Romanian workers, what will change on 1 January 2014?), 31 December 2013, available at: <http://tempsreel.nouvelobs.com/monde/20131230.OBS0941/travailleurs-bulgares-et-roumains-qu-est-ce-qui-change-le-1er-janvier.html>.

⁷⁰ GISTI, Fin de la période transitoire pour les Roumains et les Bulgares en France: quels changements? Une note d'information Gisti et Romeurope (End of the transitional period for Romanians and Bulgarians in France: what changes? A briefing note from Gisti and Romeurope), available at: <http://www.gisti.org/spip.php?article3377>

⁷¹ Decision of the Defender of Rights No. MSP-MLD 2013-130 (Défenseur des droits), available at: http://www.defenseurdesdroits.fr/decisions/ddd/DDD_DEC_MSP-MLD-2013-130.pdf.

The transition period for Croatian workers to access the French labour market ended on 30 June 2015.

3.2. Discrimination based on civil status/sexual orientation

The Law of 18 May 2013 (marriage for everyone) legalised same-sex marriage in France⁷². Prior to the enactment of this law, same-sex couples were not entitled to marry in France, and were therefore unable to meet the conditions required to obtain certain benefits. The Court of Justice of the European Union (CJEU) ruled against such a practice in its judgement of 12 December 2013⁷³.

France does not distinguish between same-sex spouses and different sex spouses of foreign EU citizens and their family members for the purposes of entry and residence rights⁷⁴. Married and unmarried same-sex partners are included in the definition of 'family member' for the purposes of free movement.

There is currently no legislation allowing change of sex in the civil record. However, in line with the jurisprudence from the Court of Cassation (Cour de Cassation), the latter is allowed, although, in practice, the decision remains at the discretion of the individual judge, and expensive forensic tests may be required⁷⁵.

In September 2015 France tabled a bill to allow individuals to change their sex as described in the civil record⁷⁶. At the time of drafting this report, the bill was still before the French parliament⁷⁷.

The prohibition of discrimination on the grounds of sexual orientation in France does not cover all areas mentioned in the Racial Equality Directive⁷⁸.

3.3. Discrimination based on ethnic/racial origin

The mass expulsion of over one thousand Bulgarian and Romanian Roma from France between September and November 2010, together with the evacuation of 'unauthorised' Roma settlements by the French Government, was met with outrage from human rights organisations.

⁷² Loi n° 2013-404 du 17 mai 2013 ouvrant le mariage aux couples de personnes de même sexe (Law No.2013-404 of 17 May 2013 allowing for the marriage of same-sex couples), available at: <https://web.archive.org/web/20160115130840/http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEX000027414540&dateTexte=&categorieLien=id>.

⁷³ CJEU, judgment, 12 December 2013, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62012CJ0267>.

⁷⁴ FRA, 'Protection against discrimination on grounds of sexual orientation, gender identity and sex characteristics in the EU: Comparative legal analysis Update 2015', available at: http://fra.europa.eu/sites/default/files/fra_uploads/protection_against_discrimination_legal_update_2015.pdf.

⁷⁵ Court of Cassation, judgment of 11 December 1992, available at: <https://www.legifrance.gouv.fr/affichJuriJudi.do?idTexte=JURITEXT000007030251>.

⁷⁶ Proposition de loi relative à la modification de la mention du sexe à l'état civil (Bill on the change of sex in the civil record), available at: <http://www.assemblee-nationale.fr/14/propositions/pion3084.asp>.

⁷⁷ National Assembly, legislative dossier, available at: <http://www.assemblee-nationale.fr/14/dossiers/modificationsexeetatcivil.asp>.

⁷⁸ FRA, 'Protection against discrimination on grounds of sexual orientation, gender identity and sex characteristics in the EU: Comparative legal analysis Update 2015', available at: http://fra.europa.eu/sites/default/files/fra_uploads/protection_against_discrimination_legal_update_2015.pdf.

A communication from the Sarkozy cabinet on 28 July 2010 asserted that 'the Republic considers as inadmissible the lawless situation characterising Roma populations from Eastern Europe on the French territory'⁷⁹. A government circular of 24 June 2010 ordered prefectures and police authorities to 'evacuate illegal camps' and 'to take measures to expel their occupants where these are not French nationals and are in an irregular situation'⁸⁰. Another government circular of 5 August 2010 suggested a clear political will to expel Roma in the context of evacuating camps⁸¹.

Human rights organisations denounced these actions by the French government as a violation of the EU freedom of movement legislation (Article 27 of the Free Movement Directive), as well as of Article 19 and 21-1 of the Charter of Fundamental Rights, among others⁸².

The European Parliament reacted strongly to the French authorities' actions and, in a resolution of 9 September 2010⁸³ and a resolution of 29 March 2012 on EU citizenship, indicated that collective expulsions are prohibited under the Charter of Fundamental Rights and the European Convention of Human Rights (ECHR), and that the mass expulsion of Romanians and Bulgarians from France was contrary to Directive 2004/38/EC and to the principles and fundamental values of the European Union⁸⁴.

Following the summer 2010 mass expulsion of Romanian and Bulgarian nationals of Roma origin from France, Law No. 2011-672 was adopted on 16 June 2011, in order to implement the new commitment to equality by French authorities⁸⁵.

Entrenched discrimination against Roma people in France creates a situation whereby Roma people leave of their own accord, due to the difficult living conditions they experience, e.g. limited social rights, access to health, education or voting rights⁸⁶.

⁷⁹ Présidence de la République, Communiqué faisant suite à la réunion ministérielle de ce jour sur la situation des gens de voyage et des Roms (Communication following the ministerial meeting today on the situation of travellers and Roma), available at: <http://www.elysee.fr/president/root/bank/pdf/president-9381.pdf>.

⁸⁰ Ministère de l'intérieur, Circulaire No I0kk1016329J (Ministry of Home Affairs, Circular No I0kk1016329J), 24 June 2010, available at: http://www.lecanardsocial.com/upload/IllustrationsLibres/Circulaire_du_24_juin_2010.pdf.

⁸¹ Ministère de l'intérieur, Circulaire No I0ck1017881J (Ministry of Home Affairs, Circular I0ck1017881J), 5 August 2010, available at: http://www.lecanardsocial.com/upload/IllustrationsLibres/Circulaire_du_5ao%C3%BBt_2010.pdf.

⁸² Human Rights Watch, Le respect par la France de la Directive européenne relative à la liberté de circulation et l'éloignement de ressortissants européens appartenant à la communauté Rom, September 2011 (Compliance by France with the European Directive on the freedom of movement and expulsion of European citizens belonging to the Roma community), available at: https://www.hrw.org/fr/news/2011/09/28/le-respect-par-la-france-de-la-directive-europeenne-relative-la-liberte-de#_ftnref16.

⁸³ European Parliament, Resolution of 9 September 2010, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2010-0312+0+DOC+XML+V0//EN>.

⁸⁴ European Parliament resolution of 29 March 2012 on the EU citizenship Report 2010: Dismantling the obstacles to EU citizens' rights, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2012-0120+0+DOC+XML+V0//EN>.

⁸⁵ GISTI, Entrée, séjour et éloignement Ce que change la loi du 16 juin 2011 (Entry, stay and expulsion. What the law of 16 June 2011 changes), p. 50, available at: http://www.gisti.org/IMG/pdf/2011-09_cj_entree_sejour_apres_loi_besson.pdf.

⁸⁶ Commissioner for Human Rights, the Human rights of Roma and the members of the Traveller community, January 2008, available at: https://www.coe.int/t/commissioner/source/prems/prems212811_FRA_2612_Roma_and_Travellers_Extraits_A_4_web.pdf

The Law of 5 July 2000⁸⁷ requires communes of more than five thousand inhabitants to have dedicated areas for travellers to congregate; however, this is not fully implemented⁸⁸.

The Defender of Rights received complaints from human rights associations, including Roma rights groups, denouncing the situation with respect to sanitation, access to housing, and discrimination in other areas, such as employment⁸⁹.

⁸⁷ Loi 2000-614 du 5 juillet 2000 relative à l'accueil et à l'habitat des gens du voyage (Law No 2000-614 of 5 July 2000 on the hosting and housing of travellers), available at: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000583573&categorieLien=id>.

⁸⁸ Hérisson, Pierre, Rapport au Premier Ministre, le stationnement des gens du voyage, (Report on the encampment of travellers), 2008, available at: http://pierreherisson.typepad.fr/pierre_herisson/files/rapport_qdv_22_mai_1.doc.

⁸⁹ Defender of Rights, Description des situations d'expulsions de campements pour lesquels la circulaire n'a pas été respectée ou ne l'a été que partiellement (Description of expulsion from camps for which the circular was not / partially respected), available at: http://www.defenseurdesdroits.fr/sites/default/files/atoms/files/ddd_r_20130601_evacuation_campement_illicite_annexes.pdf.

4. MEASURES TO COUNTER ABUSE OF RIGHTS

KEY FINDINGS

- French law imposes **criminal penalties** for the offence of contracting a marriage or making a false declaration of parenthood for the sole purpose of obtaining, or causing to obtain, a residence permit or a protection against removal, or for the sole purpose of acquiring, or causing to acquire, French nationality.
- French legislation lays down the circumstances in which an EU/EEA national, or a member of his/her family, can be **ordered to leave the French territory**. These are situations where the EU/EEA national, or his/her family member, no longer fulfils the conditions of residence rights as laid down in the CESEDA, or where his/her stay constitutes an abuse of that right, or where his/her conduct poses a serious threat to the fundamental interests of French society.
- According to French law, an EU/EEA citizen, or a member of his/her family may be ordered to leave France on the **assumption** that they may one day **benefit from social security**, which is contrary to Directive 2004/38/EC.

Article 39 of Law No. 2011-672 of 16 June 2011 establishes the power to impose an order to leave the French territory (OQTF – Obligation de Quitter le Territoire Français) on EU citizens whose stay in France constitutes an ‘abuse of rights’, where an individual remains in France for the fundamental purpose of benefitting from the social assistance system. This provision has been disproportionately used against Romanian and Bulgarian citizens, predominantly Roma.

In line with Article 35 of Directive 2004/38/EC, France applies measures to refuse, terminate or withdraw the right to entry or residence based on abuse of rights. These are discussed in the subsections below.

4.1. Marriage of convenience and false recognition of parenthood

According to French law, a marriage of convenience is an abuse of the right to free movement and residence. French law refers either to ‘mariage de complaisance’, or to ‘mariage blanc’ or even to ‘mariage de convenance’. Those three terms correspond to the same basic notion of a ‘marriage contracted by the parties for the sole purpose of taking advantage of the rights conferred by it’⁹⁰.

The first measure aimed at combatting marriages of convenience was introduced in the French Civil Code in 1993⁹¹. Since then, the legislation has been reinforced, primarily between 2003 and 2011. Law No. 2003-1119 of 26 November 2003 further bolstered the legal framework to tackle sham marriages, including establishing a specific criminal offence (délit de mariage de complaisance)⁹².

⁹⁰ French Ministry of Justice, Legal dictionary, available at: www.justice.gouv.fr/mots-cles/mc_m.html.

⁹¹ Loi n° 93-1417 portant diverses dispositions relatives à la maîtrise de l’immigration et modifiant le code civil (Law No. 93-1417 of 30 December 1993 relating to immigration control), 30 December 1993, available at: www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000362870.

⁹² Loi n° 2003-1119 du 26 novembre 2003 relative à la maîtrise de l’immigration, au séjour des étrangers en France et à la nationalité (Law No. 2003-1119 of 26 November 2003 on immigration control, settlement of foreigners in France and nationality), available at: www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000795635.

Article L623-1 of the CESEDA imposes a punishment of five years' imprisonment and an EUR 15,000 fine for the offence of 'contracting a marriage for the sole purpose of obtaining, or causing to obtain, a residence permit or a protection against removal, or for the sole purpose of acquiring, or causing to acquire, French nationality'. The same penalties are applicable where a person organises, or attempts to organise, a marriage or adoption of a child for the same purposes⁹³.

Both Law No. 2006-911 of 24 July 2006⁹⁴ and Law No. 2006-1376 of 14 November 2006⁹⁵ have reinforced the existing measures to combat sham marriages. More recently, Law No. 2011-672 of 16 June 2011 established a new offence for 'grey marriages' (mariages gris), i.e. a marriage contracted between a French national with a foreigner, where the French national has acted in good faith but where the foreigner has the sole aim of obtaining a residence permit or French nationality⁹⁶. Article L623-2 of the CESEDA provides for supplementary penalties of prohibition of residence, prohibition from France, and prohibition of work or the exercise of any social activity, where such an offence was committed⁹⁷.

Civil officials involved in the preparation of a marriage (mayors, assistant mayors and other registrars) are responsible for the prevention of these abuses and they are required to check and implement measures prior to the marriage ceremony. According to Article 63 of the French Civil Code, the marriage ceremony cannot take place without the joint hearing of the future spouses, conducted out according to a template, and which contains questions on the circumstances of the meeting between the two parties, and their migratory history⁹⁸. During the marriage ceremony, civil officials also play a role in checking the 'validity' of the union. Article 175 of the Civil Code allows for the possibility of investigation by the Public Prosecutor to raise an objection 'in cases where they could ask for the nullity of the marriage'⁹⁹. The Public Prosecutor may therefore request that the marriage be declared null and void by virtue of Articles 180 and 184 of the Civil Code¹⁰⁰. A specific procedure under Article 175-2 of the Civil Code allows the registrar to refer a case to the Public Prosecutor only where there are reliable clues to suggest that the marriage is likely to be one of convenience¹⁰¹.

Such measures may be seen as unfair, as they tend to be selective and to punish foreigners in a stricter manner than nationals. A marriage of convenience can also be contracted between two French nationals (in the case of a civil servant, for instance, for the sole purpose of getting a job in another town/city), but those are rarely monitored. A proven marriage of convenience between two French nationals is declared null and void without

⁹³ CESEDA, Article L623-1.

⁹⁴ Loi n° 2006-911 du 16 juin 2011 relative à l'immigration, à l'intégration et à la nationalité (Law No. 2006-911 of 24 July 2006 relating to immigration and integration), available at: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000266495>.

⁹⁵ Loi n° 2006-1376 du 14 novembre 2006 relative au contrôle de la validité des mariages (Law No. 2006-1376 of 14 November 2006 on checking the validity of marriages), available at: www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000275701.

⁹⁶ Loi n° 2011-672 du 16 juin 2011 relative à l'immigration, à l'intégration et à la nationalité (Law No. 2006-911 of 24 July 2006 relating to immigration and integration), available at: <https://www.legifrance.gouv.fr/affichTexte.do?categorieLien=id&cidTexte=JORFTEXT000024191380>.

⁹⁷ CESEDA, Article L 623-2.

⁹⁸ French Civil Code, Article 63.

⁹⁹ French Civil Code, Article 175(2).

¹⁰⁰ European Migration Network, 'Study on the 'Misuse of the right to family reunification: marriages of convenience and false declarations of parenthood'', by the French contact point of the European migration network, 2012, page 20, available at: ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/family-reunification/09a.france_national_report_misuse_of_the_right_to_fm_final_feb2013_en.pdf.

¹⁰¹ French Civil Code, Article 175(2).

any criminal penalty, while a marriage between a French national and foreigner will lead to criminal penalties for the latter¹⁰². The application of differing criminal penalties is therefore contrary to the constitutional principle of equality and to the European Convention on Human Rights.

The fight against marriages of convenience encompasses a number of controls on the validity of the marriage in circumstances other than those provided for by law. The Public Prosecutor, therefore, is almost always involved by registrars when a foreign national in an irregular situation wishes to marry a French national¹⁰³.

4.2. Obligation to leave the territory in case of abuse of rights

Article L513-3-1 of the CESEDA lays down the circumstances in which an EU/EEA national, or a member of his/her family, can be ordered to leave the French territory (OQTF). These are situations where the EU/EEA national, or his/her family member, no longer fulfils the conditions of residence as laid down in the CESEDA, or where his/her stay constitutes an abuse of that right, or where his/her personal conduct poses a serious threat to the fundamental interests of French society.

An abuse of this right is defined as the act of renewing stays of less than three months in order to remain on the French territory when the conditions for a stay of more than three months are not met. Staying in France with the intention of benefitting from the social assistance system also constitutes an abuse of the right to stay in France.

An order to leave the French territory can therefore be issued against an EU/EEA citizen, or a member of his/her family, on the assumption that they may benefit from social security in the future. This was confirmed by a ruling from France's Council of State in November 2008, which found that a lack of sufficient resources can serve as a justification for a removal order against an EU citizen 'even if the concerned individual has not yet received any benefits from the social assistance system'¹⁰⁴. Human Rights Watch has denounced this as being incompatible with the 2004 Directive, which explicitly states that expulsion should not be an automatic consequence of resorting to the social services of the host Member State¹⁰⁵.

These measures have had a disproportionate impact on Roma from Bulgaria and Romania. In September 2010, for example, 11,000 Romanians and Bulgarians were escorted to the border, compared to a total of 580 individuals from all other EU Member States in the same period¹⁰⁶. Human Rights Watch has examined 198 OQTF orders served on Romanian

¹⁰² Riposseau, Gatien-Hugo, Les politiques de pénalisation de l'immigration clandestine (Policies to criminalise illegal immigration), 2007, available at: <http://droitdesetrangers.blogspot.be/2007/04/les-politiques-de-pnalisation-de.html>.

¹⁰³ Défenseur des droits, les droits fondamentaux des étrangers en France (the fundamental rights of foreign nationals in France), May 2016, available at http://www.defenseurdesdroits.fr/sites/default/files/atoms/files/736160170_ddd_rapport_droits_etrangers.pdf.

¹⁰⁴ Décision No 315441 du Conseil d'État (Decision No 315441 of the Council of State), 26 November 2008, available at: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000019986933>.

¹⁰⁵ Human Rights Watch briefing paper on 'France's compliance with the European Free Movement Directive and the Removal of Ethnic Roma EU Citizens', 2011, available at: https://www.hrw.org/news/2011/09/28/frances-compliance-european-free-movement-directive-and-removal-ethnic-roma-eu#_Legal_Provisions_in.

¹⁰⁶ Audition, Commission des lois de l'Assemblée nationale, (Hearing, Legal Committee of the National Assembly), 8 September 2010, available at: <http://www.assemblee-nationale.fr/13/cr-cloi/09-10/c0910085.asp>.

Roma between August 2010 and May 2011 by six different prefectures across France¹⁰⁷. All prefectures used a standard form and all decisions looked almost identical. Only two cases among those OQTF contained evidence, in the form of statements of the two interested parties, in which it is mentioned that they benefited from some sort of social benefit. None of the other files contained evidence in support of the OQTF.

¹⁰⁷ Human Rights Watch, Le respect par la France de la Directive européenne relative à la liberté de circulation et l'éloignement de ressortissants européens appartenant à la communauté Rom, September 2011 (Compliance by France with the European Directive on the freedom of movement and expulsion of European citizens belonging to the Roma community), available at: https://www.hrw.org/fr/news/2011/09/28/le-respect-par-la-france-de-la-directive-europeenne-relative-la-liberte-de#_ftnref16.

5. REFUSAL OF ENTRY OR RESIDENCE AND EXPULSIONS OF EU CITIZENS AND THEIR FAMILY MEMBERS

KEY FINDINGS

- The national legislation provides that French authorities may refuse the entry and residence of EU/EEA citizens, or members of their family, where they cannot justify their right of residence, or where their presence on the French territory is a threat to **public order**. Public health is not included as a ground for expulsion under French law.
- France **expels** EU citizens and their **family members** who have either insufficient resources after three months of stay in France, or who represent an unreasonable burden on the social assistance system.

5.1. Refusal of entry or residence

While the general principles applicable to the restrictions on the right of entry and the right of residence contained in Articles 27 and 28 of the Directive have now been transposed into French law, the transposition remains incomplete.

Article 27 of the Directive is transposed into French law by virtue of Article L121-4 of the CESEDA, introduced by Law No. 2006-911 of 24 July 2006¹⁰⁸. In accordance with this Article, the French authorities may refuse the entry and residence of EU/EEA citizens, or members of their family, where they cannot justify their right of residence, or where their presence on the French territory poses a threat to public order¹⁰⁹. Public health is not included as a ground for expulsion under French law.

The conditions and procedure for the removal of EU citizens and their family members, including protected individuals, are detailed on the website of the French administration¹¹⁰. Accordingly, EU citizens and their family members may be subject to an OQTF or an expulsion order. An OQTF may be delivered where an EU citizen or his/her family member has no right of stay in France, where there is an abuse of right or where there is a threat to public order during a person's first three months in France. An exclusion decision from the French territory will be issued when EU citizens or their family members represent a current, real and serious threat to a fundamental interest of French society.

In France, public security and public order are integrated into the single area of public policy.

In addition, it is worth highlighting that France does not allow for the automatic expulsion of a person based on his or her criminal record.

The transposition of Article 27 of Directive 2004/38/EC into national law is incomplete, as the prohibition of invoking public policy, public security or public health to serve economic ends has not been transposed.

¹⁰⁸ Loi 2006-911 modifiant l'article L121-4 du CESEDA (Law 2006-911 of 24 July 2006 amending Article L121-4 of the CESEDA).

¹⁰⁹ CESEDA, Article L511-3-1.

¹¹⁰ Un Européen peut-il être expulsé? (Can a European in France be expelled?), available at: <https://www.service-public.fr/particuliers/vosdroits/F13517>.

5.2. Expulsions of EU citizens and their family members

On 15 January 2016 the Ministry of Home Affairs in France published **figures** on the number of **expulsions** of foreign nationals in France, both EU and non-EU citizens¹¹¹. No data could be identified for the number of non-EU family members of EU citizens expelled.

The national barometer differentiates between **forced removals** (characterised by the issuing of an expulsion order and its implementation by force), assisted expulsions (characterised by the issuing and implementation of an expulsion order **without constraint**), **with support** for return, and finally spontaneous returns, **without constraint and without aid** after an expulsion order. The national barometer also mentions that the numbers concerning spontaneous returns may not be entirely accurate.

A foreign national in an illegal situation may also decide to leave the country without being subject to an expulsion order, and may benefit from some support (i.e. assistance for voluntary repatriation).

The expulsion of an EU citizen from France is made on the basis of the threat posed by that person(s) to public order.

Article 63 of the Law of 16 June 2011 on immigration, integration and nationality provides that an expulsion order can be issued against an EU citizen only if his/her personal conduct represents a real, present and sufficiently serious threat to the fundamental interests of society¹¹². This wording is consistent with Article 27 of Directive 2004/38/EC.

However, Article 65 extends the powers of the prefect, under a 'Prefectural Order for escort to the frontier' (arrêté préfectoral de reconduite à la frontière) allowing him/her to expel all foreign nationals, including EU citizens, considered a threat to public order, especially if the person(s) is 'subject to criminal proceedings' for certain offences, such as drug trafficking, trafficking in human beings, pimping, exploitation of begging and illegal occupation of land. Statements of high officials¹¹³ linking the offences of exploitation of begging and illegal occupation of land to Roma suggest that these clauses could target the Roma population.

The wording of Article 65 allows for the expulsion of a foreign national (including EU citizens) who has resided legally in France for less than three months, based on the mere suspicion that he committed one of the offences listed above. No conviction is required. French legislation places a 48-hour time limit on appeals against an expulsion order once it has been issued by a prefect, which is extremely brief. This directly contradicts Directive 2004/38/EC, which sets a high minimum requirement of threats as 'genuine, present and sufficiently serious' to the fundamental interests of society, if an expulsion order is to be issued on the basis of public order and public security concerns. Article 65 thus allows the

¹¹¹ L'éloignement des étrangers en situation irrégulière en 2015 (Report on the removal of foreign nationals in irregular situation in 2015), 15 January 2016, available at: <http://www.immigration.interieur.gouv.fr/content/download/91455/712098/file/Les-eloignements-2015-pour-publication-du-15-janvier-2016.pdf>.

¹¹² Loi 2011-672 relative à l'immigration, à l'intégration et à la nationalité (Law 2011-672 related to immigration, integration and nationality), 17 June 2011, available at: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000024191380&dateTexte=20160502>.

¹¹³ Hortefeux, B, Déclaration sur la mise en oeuvre des mesures d'évacuation des campements illicites des Roms en situation irrégulière (Statement on the implementation of evacuation measures against illegal camps of Roma in an irregular situation), 30 August 2010, available at: <http://discours.vie-publique.fr/notices/103001869.html>.

removal of European citizens for public safety reasons on the basis of minimal proof, a requirement below that established in Directive 2004/38/EC.

French legislation does not include a provision explicitly stating that previous criminal convictions shall not constitute grounds for taking measures to restrict a person's free movement and residence rights. Previous convictions have, therefore, been used to justify some expulsions. According to the figures obtained by the European Roma Rights Centre (ERRC) in 2012, the persons who were 'asked' to leave the French territory had all just been released from prison. No information could be identified on the reasons for imprisonment and on whether such persons posed an ongoing threat to public order and public security.

As detailed above, Roma from Bulgaria and Romania have been disproportionately affected by expulsion orders.

No information could be found on the expulsion of EU citizens (and/or their family members) on purely economic grounds.

6. CONCLUSIONS

Overall, Directive 2004/38/EC is now generally correctly transposed into French law. Some of the potential barriers to EU citizens' free movement rights identified in the past have been removed. However, some transposition issues remain that may hinder the free movement of EU citizens and/or of their non-EU family members in France. In particular, conformity issues arise in relation to Article 3(1), Articles 5(1) and 5(2) Article 8, Article 14 and Article 27 of the Directive.

With regard to Article 3 on beneficiaries, France has still not explicitly transposed the obligation to justify any denial of entry or residence.

With respect to the right of entry laid down under Articles 5(1) and 5(2) of the Directive, French legislation does not explicitly state that no entry visa or equivalent formality may be imposed on Union citizens. Additionally, and contrary to the Directive, it obliges third country national family members to present a valid passport, a residence permit or visa for family members, or, alternatively, a document establishing his/her family ties.

In relation to Articles 7(1) and 7(2) concerning the right of residence for more than three months for EU citizens and their family members based on employment, sufficient resources or student status, France has not transposed the possibility for students to establish that they have sufficient resources through a declaration, or by such equivalent means as they may choose.

As regards Article 8 relating to registration with the competent authorities, French legislation still requires registration within the first three months for a stay of more than three months in France. Concerning the assessment of the condition of 'sufficient resources', French law requires valuing the amount of resources by reference to the fixed amount of the Revenu de Solidarité Active (RSA – a minimum income for people with low resources) or the amount of the solidarity allowance for the elderly (ASPA). French law adopts a more restrictive approach and is in breach of the Directive, as it requires proof of the amount of the resources and their continuity in time¹¹⁴.

In relation to Article 14 on the retention of residence rights as long as the person does not become an unreasonable burden on the social assistance system, the 2008 Commission Report indicated that France does not exclude expulsion as an automatic consequence of recourse to the social assistance system¹¹⁵. This situation has not changed since¹¹⁶.

With regard to Article 27 of the Directive on the restriction on the freedom of movement and residence rights of Union citizens and their family members, French law does not refer to the fact that the grounds must not be invoked to serve economic ends. Moreover, Article 27(2), Article 27(3) and Article 27(4) of the Directive have not been transposed into national law.

In addition, some obstacles must still be addressed, particularly with respect to the definition of partnership, delays in registering with the authorities and the related

¹¹⁴ CJEU, *Commission of the European Communities v Kingdom of the Netherlands* (C-398/06), 10 April 2008, available at: <http://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=C-398/06&td=ALL>

¹¹⁵ *Ibid*, p. 7.

¹¹⁶ GISTI, *Entrée, séjour et éloignement Ce que change la loi du 16 juin 2011* (Entry, stay and expulsion. What the law of 16 June 2011 changes), p. 50, available at: http://www.gisti.org/IMG/pdf/2011-09_cj_entree_sejour_apres_loi_besson.pdf.

proportionality of sanctions, documents attesting the right of residence for EU citizens and their non-EU family members, access to permanent residence, protection against expulsion and the situation of EU citizens from new Member States.

Bulgarians and Romanians still face discrimination on the basis of their nationality, experiencing exclusion from a number of public office jobs and encountering difficulties in accessing the labour market in France.

French legislation imposes criminal penalties for the offence of contracting a marriage or a false declaration of parenthood for the sole purpose of obtaining, or causing to obtain, a residence permit or a protection against removal, or for the sole purpose of acquiring, or causing to acquire, French nationality.

Refusal of entry and residence of an EU citizen, or of his/her family members, can occur where they cannot justify the right of residence, or where his/her presence on the French territory poses a threat to public order.

Expulsions of EU citizens and their non-EU family members are permitted under French law if they no longer fulfil the conditions of residence, or if their stay constitutes an abuse of that right, or if their personal conduct poses a serious threat to the fundamental interests of French society. Contrary to the Directive, EU citizens or a member of their family may be subject to an expulsion order on the sole assumption that they may benefit from social security in the future. Posing a threat to public health is not, however, included as a ground for expulsion under French law.

ANNEX I: TRANSPOSITION OVERVIEW TABLE

Table 1: Transposition overview

Directive's provisions	National provisions	Assessment	Changes since 2008
<p>Article 3(2) Beneficiaries: - Family members - Partners</p>	<p>Article L121-1 (4) CESEDA</p> <p>Law No 2013-404 of 17 May 2013 on same-sex marriages</p>	<p>Incomplete transposition</p> <p>CESEDA excludes the direct descendant of the partner and the dependent direct relative of the partner, giving precedence to the spouse over the partner. However, it includes family members if refusal would limit the exercise of their right to a private and family life in a disproportionate manner, in cases where his/her state of health requires essential medical care, if in the country of origin he/she is a dependent family member or is part of the household, or if he/she demonstrates continuous private and family ties, other than matrimonial ties.</p> <p>France has not explicitly transposed the obligation to justify denial of entry/residence.</p>	<p>A difference in treatment remains between married couples, registered partnerships and a relationship characterised by continuous private or family ties: for the latter, entry and residence are merely facilitated, not guaranteed.</p> <p>In 2008, same-sex couples were not entitled to full rights of free movement and residence in France. This has changed with the adoption of Law No. 2013-404 of 17 May 2013, granting equal rights to all married couples, whether same-sex or different sex.¹¹⁹</p>

¹¹⁹ Loi No. 2013-404 du 17 mai 2013 ouvrant le mariage aux couples de personnes de même sexe (Law No. 2013-404 of 17 May 2013 allowing for the marriage of same-sex couples), available at: <https://web.archive.org/web/20160115130840/http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000027414540&dateTexte=&categorieLien=id>.

		The Law of 18 May 2013 (marriage for everyone) legalises same-sex marriage in France ¹¹⁷ . France does not distinguish between same-sex spouses and heterosexual spouses of foreign EU citizens and their family members for the purposes of entry and residence rights ¹¹⁸ . Married and unmarried same-sex partners are included in the definition of 'family member' for the purposes of free movement.	
Articles 5(1) and 5(2) Right of entry <ul style="list-style-type: none"> No entry visa or equivalent formality may be imposed on Union citizens To facilitate granting third country family members the necessary entry visas 	Article R121-1 of the CESEDA	Incomplete and incorrect transposition Article R121-1 of the CESEDA does not explicitly state that no entry visa or equivalent formality may be imposed on Union citizens. Additionally, and contrary to the Directive, it obliges third country national family members to present a valid passport, a residence permit or visa for family members, or, alternatively, a document establishing his/her family ties.	France remedied the situation according to which no distinction was made between third country nationals and third country family members for the right of entry, by providing specific facilities for family members to acquire entry visas (exemption and accelerated procedure) ¹²⁰ . In addition, the visa must be provided to the non-EU family member(s) free of charge.
Article 6 Right of residence up to three months without any conditions or any formalities other than an ID	Article L121-4-1 of the CESEDA Article R121-1 of the CESEDA Article R121-4 of the CESEDA	Incorrect transposition The French transposition measures impose conditions on the right of residence for up to three months, i.e. a guarantee not to become an unreasonable burden on the social assistance system, and not to present a threat to public policy or public security. The CESEDA also requires	No change since the 2008 Commission Report.

¹¹⁷ Loi No. 2013-404 du 17 mai 2013 ouvrant le mariage aux couples de personnes de même sexe (Law No. 2013-404 of 17 May 2013 allowing for the marriage of same-sex couples), available at: <https://web.archive.org/web/20160115130840/http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000027414540&dateTexte=&categorieLien=id>.

¹¹⁸ FRA, 'Protection against discrimination on grounds of sexual orientation, gender identity and sex characteristics in the EU: Comparative legal analysis update 2015', available at: http://fra.europa.eu/sites/default/files/fra_uploads/protection_against_discrimination_legal_update_2015.pdf.

¹²⁰ European Commission, Report on the application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, COM(2008) 840 final, p. 5.

		non-EU family members to apply for a residence card if they are over 18 years of age. Such an application must take place within two months.	
Articles 7(1) and 7(2) Right of residence more than three months for EU citizens and their family members based on employment, sufficient resources or student status	Article L121-3 of the CESEDA	In line with the Directive	<p>There was no mention in the 2008 Commission assessment report that France had incorrectly transposed Articles 7(1) and 7(2) of the Directive.</p> <p>However, it was mentioned in the 2008 Commission report that Article 7(3) had not been correctly transposed in France. In addition, concerning family members of students, France made use of the option of Article 7(4) to restrict the scope only to the spouse and dependent children.</p> <p>Article 7(3) has now been effectively transposed by Article 8 of Decree No 2011-1049 amending Article R121-6 of the CESEDA.</p> <p>France still makes use of the option under Article 7(4) of the Directive.</p>
Article 14 Retention of residence rights as long as they do not become an unreasonable burden on the social assistance system	<p>Article L121-1 of the CESEDA</p> <p>Article L121-4-1 of the CESEDA</p> <p>Article R121-6 of the CESEDA</p> <p>Article L313-12 of the CESEDA</p>	<p>Incomplete transposition</p> <p>Article 14(1) of the Directive is transposed by Article L121-4-1 of the CESEDA, providing that EU citizens and their family members have the right of residence for up to three months as long as they do not become an unreasonable burden on the French social assistance system.</p> <p>In addition, Article 14(2) of the Directive on the right of EU citizens and their family members to reside in France</p>	<p>The provisions on the retention of residence rights for up to three months so long as one does not become an unreasonable burden on the social assistance system were initially included in the regulatory part of the CESEDA (Art. R121-3).</p> <p>The Law of 16 June 2011 on immigration, integration and nationality gives these provisions</p>

		<p>as long as they meet the related conditions is transposed by Article L121-1 of the CESEDA.</p> <p>Article 14(4) of the Directive is effectively transposed by Article L121-1(1) and R121-6 of the CESEDA.</p> <p>Issues of conformity arise in terms of Article 14(3) of the Directive, as the French legislation does not exclude expulsion as an automatic consequence of recourse to the social assistance system. The condition of not becoming an unreasonable burden on the social assistance system is not required for Union citizens who are workers, self-employed or jobseekers.</p>	<p>legislative status, introducing them into the newly established Article L121-4-1 of the CESEDA.</p> <p>According to the 2008 Commission Report, France does not exclude expulsion as an automatic consequence of recourse to the social assistance system¹²¹. This situation has not changed¹²².</p>
Article 16 Right of permanent residence	Article L314-8, para. 1 of the CESEDA Article L314-8, para. 2 of the CESEDA	<p>Incomplete transposition</p> <p>The French transposing measure requires foreign nationals to be covered by health insurance in order to obtain the right of permanent residence in France.</p> <p>The years of residence under a temporary residence card marked 'private and family life', subsequently withdrawn by the administrative authority on the basis of a marriage which had the sole purpose of obtaining a residence permit or acquire French nationality, cannot be taken into account in order to obtain a residence card.</p> <p>The national legislation does not contain any reference to the exceptions to the continuous period of five years (six months per year, military obligations, etc.).</p>	<p>The 2008 Commission Report made no reference to the transposition of Article 16 in France. No changes since 2008.</p>

¹²¹ Ibid, p. 7.

¹²² GISTI, *Entrée, séjour et éloignement Ce que change la loi du 16 juin 2011 (Entry, stay and expulsion. What the law of 16 June 2011 changes)*, p. 50, available at: http://www.gisti.org/IMG/pdf/2011-09_cj_entree_sejour_apres_loi_besson.pdf.

<p>Article 24(1) Equal treatment</p>	<p>Article L160-1 Social Security Code Article L512-1 and -2 Social Security Code</p>	<p>In line with the Directive</p>	<p>The 2008 Commission Report made no mention of incorrect transposition of Article 24 (1) by France.</p> <p>With effect from 1 July 2008, France removed all restrictions on access to the employment market for employees who are nationals of States that acceded to the European Union on 1 May 2004¹²³.</p> <p>The transition period for Romanian and Bulgarian workers to access the labour market in France ended on 1 January 2014.</p> <p>Nationals of Croatia, which acceded to the European Union on 1 July 2013, are entitled to free access to the employment market in France¹²⁴.</p>
<p>Article 27 Restriction on the freedom of movement and residence of Union citizens and their family members, on grounds of public policy, public security or public health</p>	<p>Article L121-4 of the CESEDA Article L511-3-1 of the CESEDA L521-5 of the CESEDA</p>	<p>Incomplete transposition</p> <p>The national provisions lay down the circumstances under which it is possible to expel Union citizens and their family members.</p> <p>An EU/EEA citizen, or a member of his/her family, may be obliged to leave the French territory if he/she no longer complies with the provisions of the residence permit, if the stay falls within one of the categories of abuse of this right, or if his/her personal conduct poses a</p>	<p>The 2008 Commission Report states that France has not correctly transposed the conditions in which it may restrict the right of free movement. Article 27 was transposed into the CESEDA by Law No. 2011-672 of 16 June 2011, reflecting a new commitment undertaken by French authorities, following the controversy in the summer of 2010 over the mass expulsion of Romanian and Bulgarian</p>

¹²³ Ministerial circular No. NOR IMIM1000116C of 10 September 2010, para. 1.4.

¹²⁴ <http://ec.europa.eu/social/main.jsp?catId=466&langId=fr>.

		<p>serious threat to the fundamental interests of French society.</p> <p>Article L521-5 of the CESEDA provides that EU/EEA nationals, or their family members, may only be expelled from the French territory if their personal conduct represents an actual, real or sufficiently serious threat affecting one of the fundamental interests of French society.</p> <p>There are some gaps in transposition: the CESEDA does not refer to the fact that the grounds must not be invoked to serve economic ends; Article 27(2), Article 27(3) and Article 27(4) of the Directive are not transposed into national law.</p>	<p>nationals of Roma origin. The transposition issues outlined in the adjacent column remain.</p>
<p>Article 28 Protection against expulsion</p>	<p>Article L511-3-1 of the CESEDA Article L511-4 of the CESEDA Article L521-1, -3, -4, -5 of the CESEDA</p>	<p>In line with the Directive</p> <p>The CESEDA lists the categories of persons that can be subject to an expulsion order in France and the reasons that can justify such an order.</p> <p>The administrative authority must take account of all of the circumstances relating to their situation, including the duration of their stay on the national territory, their age, their health, their family and economic situation, social and cultural integration into French society, and the intensity of the links with their country of origin.</p> <p>Article 28(2) of the Directive on the fact that the host Member State may not take an expulsion decision against Union citizens or their family members, irrespective of nationality, who have the right of permanent residence</p>	<p>According to the 2008 Commission Report, France had not correctly transposed the safeguards to be followed by Member States in restricting the right of free movement¹²⁵.</p> <p>France has introduced safeguards against the expulsion of foreign nationals in the Law No. 2011-672 of 16 June 2011¹²⁶.</p> <p>Only the grounds listed in the national legislation may lead to an expulsion order by the competent administrative authority for an</p>

¹²⁵ COM(2008) 840/3, p. 8.

¹²⁶ Article L521-2 to L521-5 of the CESEDA.

		<p>on its territory is properly transposed in Article L511-4 of the CESEDA</p> <p>In addition, in accordance with Article 28(3) of the Directive, the CESEDA provides that an EU citizen cannot be expelled if he or she is a minor or if he or she has resided in France for the previous ten years.</p>	<p>EU/EEA national and his/her family members.</p> <p>The requirement according to which 'the competent administrative authority takes into account all the circumstances related to his/her situation, notably the length of his/her stay in France, his/her age, state of health, family and economic situation, social and cultural integration in France, and the intensity of relationships with his/her country of origin' was included in the CESEDA by Law No. 2011-672 of 16 June 2011, in order to implement the new commitment to equality by French authorities following the summer 2010 mass expulsion of Romanian and Bulgarian nationals of Roma origin¹²⁷.</p>
Article 35 Abuse of rights	<p>Article L511-3-1 of the CESEDA</p> <p>Article L511-1 of the CESEDA</p> <p>Article L512-1 of the CESEDA</p> <p>Article L512-2 of the CESEDA</p>	<p>In line with the Directive</p> <p>In accordance with the CESEDA, an abuse of rights by an EU/EEA citizen, or his/her family members, may require him/her to leave France.</p> <p>French legislation clarifies that abuse of rights includes situations of repeat residence periods of less than three months by aliens who do not satisfy the conditions to legally reside in France for a period exceeding three months, or to enter France with the sole aim of benefitting from its social assistance system. The</p>	<p>The 2008 Commission Report made no reference to France having incorrectly transposed Article 35.</p>

¹²⁷ GISTI, Entrée, séjour et éloignement Ce que change la loi du 16 juin 2011 (Entry, stay and expulsion. What the law of 16 June 2011 changes), p. 50, available at: http://www.gisti.org/IMG/pdf/2011-09_cj_entree_sejour_apres_loi_besson.pdf.

Directive provides that the Member States may adopt measures to refuse/terminate residence rights in cases of abuse of rights or fraud. The question is therefore whether entering France with the sole aim of benefiting from its social assistance system really constitutes an abuse of rights/fraud per se¹²⁸. In practice, this provision seems to have had a disproportionate impact on Bulgarian/Romanian Roma, where this aim is presumed even if they have not received social benefits (and have not practiced any such abuse of rights).

The procedural safeguards as laid down under Articles 30 and 31 of the Directive as cross-referred to in Article 35 of the Directive are effectively transposed in national law.

Article L511-1 of the CESEDA provides that decisions on expulsion from the French territory shall be duly motivated. The reasons of fact and law must be clearly indicated¹²⁹. It should be mentioned that, in cases of absolute urgency, it is possible not to give reasons.

The CESEDA also provides, regarding the timeframe of an expulsion order, that the period granted to EU nationals to leave the country cannot (except in emergency situations) be less than one month. In an emergency situation, the order may be executed from 48 hours after notification, or as soon as the administrative judge, if he had before, was able to vote.

Finally, Articles L. 512-1 and L. 512-2 of the CESEDA guarantee to persons against whom an expulsion

¹²⁸ See the opinion on the reform of the right of aliens of the French Consultative Commission on Human Rights of 21 May 2015, available at: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000030865837>; The CJEU, in its ruling of 14 December 2000, *Emsland-Stärke GmbH v. Hauptzollamt Hamburg-Jonas*, Case C-110/99, defines 'abuse of rights' as the 'benefit from an advantage as a result of the application of the Community rules by artificially creating the conditions for obtaining it', p. 59.

¹²⁹ Conseil d'État (Council of State), *Kairenga*, 17 November 1982

		measure was taken the opportunity to appeal to the administrative court.	
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ANNEX II: DATA ON REFUSALS AND EXPULSIONS

Table 2: Data on refusal of entry, refusal of residence and expulsions

Data	2012	2013	2014	2015	Reasons
Refusal of entry	N/A ¹³⁰	N/A	N/A	N/A	N/A
Refusal of residence	N/A	N/A	N/A	N/A	N/A
Expulsion	2,934 ¹³¹ 1,810 ¹³² 2,983 ¹³³	3,382 1,400 518	3,332 721 82	3,432 597 39	N/A

Source: L'éloignement des étrangers en situation irrégulière en 2015 (Report on the removal of foreign nationals in irregular situation in 2015), 15 January 2016, available at:

<http://www.immigration.interieur.gouv.fr/content/download/91455/712098/file/Les-eloignements-2015-pour-publication-du-15-janvier-2016.pdf>

¹³⁰ 'N/A' - No data found

¹³¹ Number of forced removals of EU citizens.

¹³² Number of spontaneous returns of EU citizens.

¹³³ Number of assisted returns of EU nationals.

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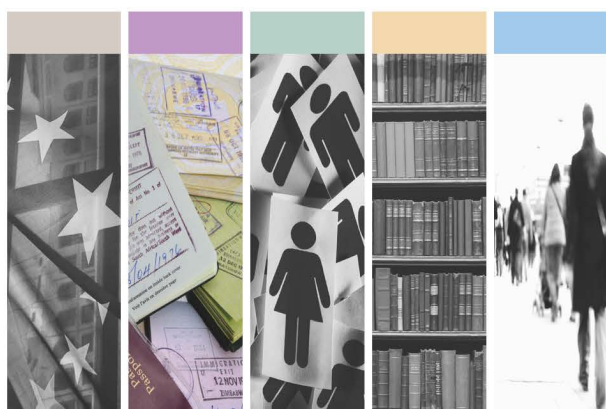
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