Difficulties Experienced by Citizens When Exercising their Mobility Rights in Single Market

A Citizens Signpost Service feedback report

based on the analysis of interesting enquiries from users from July through December 2007

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This report was prepared by ECAS, that provides the Citizens Signpost Service as an external contractor for the Commission. The report is based on concrete life situations raised by the users of the Citizens Signpost Service. The views expressed in the report do not necessarily express the opinion of the Commission's services and do not bind the Commission.

Feedback Report

Analysis of Interesting Enquiries from Citizens

Feedback Reports: Second Series – Report No 1

I- INTRODUCTION

A few words on the Citizens Signpost Service (CSS)

The CSS delivers tailor-made replies to individual enquiries about free movement and more generally citizens' right within the EU and European Economic Area (EEA). Its aim is two-fold:

- by informing enquirers about EU law, the CSS enables them to exercise their European rights in practice, and also to demand them from the appropriate authorities if necessary;
- through the accumulation of enquiries on specific problems or in specific areas, it gives to the Commission a direct feel of the difficulties citizens are experiencing in exercising their rights. This report is part of that process.

Enquiries to the CSS are written directly by individuals (plus some encoded by telephone operators at Europe Direct), so it is their perception of the problem that we analyze. While we can't check and confirm the details, we believe that the statistical spread of enquiries is representative of the EU as a whole (see Annex 2 for the detailed argument) mainly because the CSS is available on the same terms in all countries (web/email/phone). There is no "screening" by national authorities. This makes it unique as a source of problems that ordinary people in all 27 countries encounter in exercising their EU rights.

The CSS is part of a "cascade" system of complementary Commission services to citizens which, through increased coordination, work toward offering a one-stop shop of information and assistance to the public. In this system, the CSS is logically located between Europe Direct (provision of a wide range of basic information about the EU) and SOLVIT (informal problem-solving between national authorities).

Concretely, the CSS acts:

(a) as a remedy to a lack of information or awareness by offering citizens tailor-made information and advice on their rights under internal market rules, and

(b) as a step toward enforcement of rights by directing or "signposting" them to the authority or another body (at local, national or European level) that should be able to solve their particular problems.

It will often be the case that citizens are signposted to the SOLVIT network because national administrations should be directly involved in finding the solution, under the observation of the Commission.

A team of legal experts operating in all official languages of the EU will normally answer questions within three working days. The service is entirely free.

Previous Reports

This feedback report is the first feedback report to the Commission from the CSS under the new contract which commenced on 1 July 2007.

Under the previous contract we produced three feedback reports:
1. “What the Database Tells Us” (a detailed statistical analysis of the enquiries recorded on the CSS database) - January 2007;
2. “Financial Services” (a legal and statistical analysis of enquiries in the financial services sectors - March 2007); and
3. “Signposting Destinations” (an examination of the EU and national bodies to which enquirers are referred by CSS legal experts) - July 2007.

This report covers the first six months of service under the present contract (July to December 2007). On the basis of the experience acquired from previous feedback work, we concentrate now on the purely *legal* analysis of enquiries (it should be noted that report no.1 provided a large amount of statistical data).

Scope of the report

The original suggestion from DGMarkt for the coverage of this report was as follows:

- Possible IM areas: recognition of qualifications, freedom to provide services, importing a car, private pensions schemes...

- Possible Justice areas: third nationals long term residents, implementation of new Directive, atypical residence permit issues, enlargement issues...

- Possible Employment areas: Employment, European Health Card, Early retirement pensions schemes, transitional measures...

As we worked through the raw material it became clear that a degree of reduction in scope was necessary.

In the *first* place, we realized that a wide-ranging horizontal report would mean we had too few cases in several fields from which we could draw a reasonable picture of the issues that citizens are enquiring about. We did, in fact, carry out a first analysis of those enquiries not covered by the three headings above (dealing with matters such as enlargement, car-related matters, third country citizens, etc) but concluded that there was not enough raw material to justify inclusion in this report.[1]

It should be noted that the CSSMT’s monthly reports to the Commission from now on contain an indication of interesting cases picked up each month, including those areas not covered by this report.

[1] An unedited version of this analysis is available on request.

Second, analysis of the data showed that enquiries relating to three major pieces of EU legislation account for **three-quarters of the interesting problems** CSS users are telling us about:

- right of residence: directive 2004/38 on the right EU citizens and members of their families to move and reside freely within the territory of the Member States;
- qualifications: directive 2005/36 on the recognition of professional qualifications; and
- social security: regulation 1408/71 on the coordination of social security schemes for people on the move, and the implementing rules. [2]

Third, beyond the important quantitative reasons for focusing on the three instruments above, we consider they deserve special attention because of their **direct and inter-related impact on the mobility of citizens:**

- not being able to be joined in the host country by family members or to get equal treatment there in a variety of services or benefits, raises crucial questions about mobility; the rights guaranteed by Directive 2004/38 are intimately connected to the concept of citizenship of the EU;

- obstacles to the exercise of one's profession in another Member State also raise big concerns for citizens, whether before they decide to depart from their home country or after they have taken that step. It is intimately connected with free movement of workers, the first notion of individual rights in the original EEC;

- social security also touches upon financial concerns that are apparently perceived as more crucial by citizens than e.g. consumer rights. This is shown by the steadily high number of enquiries in this area ever since the CSS was created. Social security is a landmark of the EU/EEA countries and citizens rightly feel that exercising mobility rights should not affect acquired rights. It should be noted however that, what makes this area of investigation particularly interesting is that it is one where wishful thinking and lack of awareness among concerned citizens accounts for problems as much if not more than problems of implementation.

Fourtly, we consider that it is worthwhile to concentrate on these three areas because they are part of the **new consolidated cross-sectoral approach** of the EU's better legislation agenda. The report therefore tries to see how far this approach really works in practice. This concerns residence and qualifications and, although social security was always consolidated, new implementing rules are expected for a new consolidation text here too. The more horizontal legislation should be advantageous in terms of more readable legislation for citizens, and also easier to apply for administrations. On the other hand, because it is broader in scope, how such legislation is effectively implemented is less predictable, hence the interest in examining the implementation.

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[2] The Annex provides a statistical analysis of the interesting cases used for this report, and compares them to all eligible cases. It shows that these three areas account for 76.8% of all Interesting Cases in the six month period..

As a result the report is structured according to three headings which closely follow those suggested by DG Markt:

- Entry and Residence

- Recognition of Qualifications

- Social Security

Methodology

This first feedback report under the new contract implements an agreement with DGMarkt that the approach should be "horizontal" rather than concentrating on a particular theme, and less statistics-based than the first of our earlier reports (under the previous contract).

We have therefore adopted a case-oriented approach which, importantly, enables us to summarise the concerns raised by enquirers in the terms in which they put them to the CSS.

Out of the 4624 eligible cases received between July and December 2007 we analyzed 356 of them in detail which we considered ***"interesting"*** for feedback purposes.

The specific meaning we give to "interesting" is that an enquiry is likely to reveal problems of potential interest to the Commission:

- information gap for citizens;
- national authorities' lack of awareness or maladministration;
- loopholes and grey areas in EU legislation;
- misinterpretation of EC law and problems of implementation;
- non conformity of national legislation;
- difficulties to enforce EC law.

The methodology we use to identify interesting cases has four steps, designed to make the selection as objective as possible:

1. Before they get a reply, interesting enquiries are spotted by the CSSMT before they are allocated to the CSS experts, or they are flagged by the experts themselves, in particular when the language skills are not available within the management team. The CSSMT has produced guidelines for expert to identify interesting cases.
2. Ex-post, the CSSMT possibly spots more interesting cases thanks to the translations of the question and of the reply contained in each record: (a) through the monthly internal quality control of a random sample of the replies, (b) through a larger screening of records each month, and (c) when a report – such as this one – is prepared.
3. A note is then produced by the CSSMT to pinpoint what are apparently the main problem areas. It is sent to the CSS experts who are invited to elaborate and possibly add new problem areas based on their individual experience of case-handling.

A final stage is to conduct keyword search into the CSS database to find more cases of the type already identified by legal case analysis (see, for example, the second

feedback report on financial services under the previous contract). In the interests of simplicity and timeliness, we have not used keyword search for this report but we could consider this option in future.

II- DESCRIPTION OF THE MAIN PROBLEMS OBSERVED

A- Entry and residence

Directive 2004/38 on the right EU citizens and members of their families to move and reside freely within the territory of the Member States

This directive merges into a single instrument all the legislation on the right of entry and residence for Union citizens directed at particular categories of the population or at particular citizens, and implements the case law of the European Court based on Articles 18 and 12 in the context of EU citizenship. The simplification also lies in the fact that the directive reduces to the minimum the formalities which Union citizens and their families must complete in order to exercise their right of residence. The directive also provides a better definition of the status of family members and limits the scope for refusing entry or terminating the right of residence.

On the other side of the coin, there is the fact that the Commission had to embark on some 19 infringement procedures for late transposition of the Directive (the deadline was 30 April 2006) and is confronted with a number of problems of enforcement which are illustrated hereafter in the CSS' experience.

Travel documents and visas

> Article 5.1:
> *Without prejudice to the provisions on travel documents applicable to national border controls, Member States shall grant Union citizens leave to enter their territory with a valid identity card or passport (…)*

The CSS came across one case (record 47358) of EU citizens denied boarding on an internal flight because they carried national (Portuguese) ID cards instead of passports. This is obviously an exceptional situation, of which we do not have the full picture. As regards ID cards, two main problems persist in the CSS experience:

- Greek nationals are unsure about their ID cards when these are not in Latin characters;
- nationals of the Member States who joined the EU in 2004 and 2007 are unsure about the validity of their cards when these are old models, because some of these states have introduced new models in conjunction with their accession.

In both situations, we are not in a position to tell whether these documents are in practice accepted or not, because enquiries are generally made before departure in this area. But clearly citizens are finding it difficult to get the information from their home authorities, or do not think that they are in a position to inform them, about which documents they have communicated to their European partners as having to be recognized.

> Article 5.2, 2nd paragraph:

Member States shall grant [family members who are not nationals of a Member State] every facility to obtain the necessary visas. Such visas shall be issued free of charge as soon as possible and on the basis of an accelerated procedure.

This does not always translate into practice, apparently. The problem is either that the appointment for an interview is set at a date too far ahead in time, without any fast-tracking (see e.g. records 42407 and 44306+44458 – in the latter case, the UK citizen told us he was unable to secure an appointment in time before the planned trip at the Portuguese consulate, despite going there twice and waiting for a long time in order to explain the situation).

Through two enquiries (44795 and 45578) we were informed that Sweden recently introduced new legislation in application of Directive 2004/38 pursuant to which Swedish nationals are not considered as EU citizens in their own country and therefore the visa facility rules do not apply to them. This is the case for their non-EU family members who have to pay full fees for visa and produce more documents to come over to Sweden. In consequence, Swedish citizens are in a situation which is less favorable when traveling to their own home country than other EU citizens. So-called "reverse discrimination" is seen by the European Court of Justice as a self-correcting situation, because national authorities will normally want to avoid it. But in this case the discrimination is not a result of EU law but, on the contrary, EU law is used to revise national policy in discrimination of nationals. Surely something that is not likely to make the EU very popular among the people concerned… In any case, Article 5.2, 2nd paragraph should apply for family members of a Swede traveling with him to Sweden from another Member State where they are resident – as is the case in the above-mentioned records – because in that case the concerned Swede corresponds to the definition of a migrant EU citizen.

Article 5.4:
Where a Union citizen, or a family member who is not a national of a Member State, does not have the necessary travel documents or, if required, the necessary visas, the Member State concerned shall, before turning them back, give such persons every reasonable opportunity to obtain the necessary documents or have them brought to them within a reasonable period of time or to corroborate or prove by other means that they are covered by the right of free movement and residence.

Many enquiries, ever since the beginning of the CSS, show that it is a common mistake to believe that it is not necessary anymore within the EU, or at least within the Schengen area, to carry a passport or a national ID card. This is largely due to how the media describe the abolition of internal order controls, again recently with the latest Schengen enlargement. It is in fact a rather logical deduction that, if one may move within Schengen like within one's own country, then one may cross internal borders or go to another EU country without travel documents. Nevertheless it is a wrong deduction. The lifting of internal border controls does not affect the right ofMember States to impose the obligation to hold or carry a document. Member States are allowed to verify that this obligation is respected. However, the verification of this obligation is only allowed within the limitations set by Article 21 a) of the Schengen Borders Code. The flexibility foreseen in Article 5.4 of the Directive 2004/38 concerns the Member States, but not carriers. Indeed, carriers are not obliged to accept documents other than travel documents foreseen by the legislation. (The

Commission however invites them to contact the relevant authorities in such cases, to clarify the situation.) In addition, the Schengen Borders Code does not affect the security checks on persons carried out on personsat ports and airports, provided that such checks are also carried out on persons traveling within the Member State. This way, the checks carried out on persons by, e.g. airport officials or police to ensure that only authorized persons are granted access to secure airport zone or by the carrier during the check-in or boarding (or the combination of those kinds of controls) does not contradict the Community legislation as long as they are exercised for safety or commercial reasons. Record 45211 illustrates the sort of very unpleasant situation some people can find themselves inbecause they have failed to grasp the rather complex nuances described above and simply relied on widespread and misleading unofficial information that there will be no more controls of travel documents when moving from one Schengen country to another.

Recognition of non-married partners for the purpose of visa facilities

Article 2.2.(b):
For the purpose of this Directive, "family member" means the partner with whom the Union citizen has contracted a registered partnership, on the basis of the legislation of a Member State, if the legislation of the host Member State treats registered partnerships as equivalent to marriage and in accordance with the conditions laid down in the relevant legislation of the host Member State.

We received some complaints (e.g. records 44074, 44591 and 46702) from EU citizens not obtaining recognition of their partnerships as equivalent to marriage for the purpose of getting a visa from the consular services of a Member State. Enquiry 46702 came from a UK citizen who had tried to get a Belgian Schengen visa for his registered same sex partner: the Belgian consulate had applied without nuance the full conditions of the Common Consular Instructions under the Schengen Agreement (resources, booked travel, accommodation, etc.) although this was not mentioned on the application form for family members of EU citizens or assimilated. Belgian law recognizes same sex marriage, so presumably it should have no problem recognizing same sex partnership.

Note: in the cases mentioned above, the information at hand did not allow to establish whether the conditions set in Article 2 were met. It is in any case likely that the mechanisms for mutual recognition of partnerships are not in place, even less so than for marriage certificates.

Right of residence for third country family members of an EU citizen

Article 7.2:
The right of residence (defined for family members not otherwise specified in paragraph 1) shall extend to family members who are not nationals of a Member State, accompanying or joining the Union citizen in the host Member State, provided that such Union citizen satisfies the conditions (for having himself/herself the right to stay).

We received many cases about Ireland on this matter. In enquiry 44159, a UK national complains that his third country spouse is denied a visa from the Irish

embassy in her country on grounds that they found out she had previously been in the UK illegally. The result is that she is now separated from her husband and her children (also EU citizens) living in Ireland. This case is the symptom of a wider problem: Irish legislation requires non-EU nationals seeking the right to reside in Ireland with their EU-national family members to submit evidence showing 'lawful residence in another EU Member State prior to arrival in Ireland', as appears in the following enquiries: 44958, 45091, 45105, 45129, 45130, 45301. The Irish requirement is not in line with Directive 2004/38, as confirmed by the European Court of Justice's judgment of 25 July 2008 in case C-127/08 Metock. Third country family members' applications for a residence card were not being processed as the Irish authorities waited for the judgment. This raises an interesting general question of whether cases pending in a court justify non application of free movement rights in the meantime.

But the same thing is happening in the UK as well. Numerous enquiries (see records 42117 and successive, 46355, 46112, 44696, 42623+47044) show that UK authorities are refusing applications made by non-EU nationals to join EU family members who exercise free movement rights in the UK unless they have resided in the EEA together before. The restriction is contained in the UK's Immigration (EEA) Regulations 2006 which implement Directive 2004/38. Correspondence with the Home Office indicates that they rely on the European Court of Justice's decision in the case 'Akrich' C-109/01. This ruling, though, concerned a specific situation where Akrich had unlawfully entered and remained in the EU prior to seeking to benefit from the EC rules on free movement (record 40406 is the same type of situation). There have been a number of appeals against the Home Office before the UK Asylum and Immigration Tribunal, which have so far ruled in favor of the Home Office. Requests made to the AIT for a preliminary reference to the ECJ under Article 230 EC appear so far to have been denied. [Note: in enquiry 47044, the citizen tells that his appeal has been admitted by the High Court and that he was advised to request the court to refer the question for preliminary ruling to the ECJ.]

Worth noting, an interesting 'catch-22' situation between Ireland and the UK due to the conjunction of the above practices, in record 41792.

In enquiry (45702) it appears that, even with the condition of previous residence of the couple in the EU satisfied, the right to be joined by one's spouse can sometimes be subject to conditions not foreseen in Article 7 (in this case, the Irish authorities will not let the Nepalese husband join his Portuguese wife in Ireland until she has got an employment contract, a "resident authorization" and a housing contract, whereas it should suffice to submit a registration certificate for the purpose of family reunification).

> Article 10.1:
> *The right of residence of family members of a Union citizen who are not nationals of a Member State shall be evidenced by the issuing of a document called "Residence card of a family member of a Union citizen" no later than six months from the date on which they submit the application. A certificate of application for the residence card shall be issued immediately.*

We received two enquiries (43698 and 43236) with complaints that the six months delay was not respected, with the resulting difficulty that the spouse was kept from traveling out of the host country (the UK in both cases) because his/her passport was withheld. Interestingly, the UK immigration authorities had replied to one of the users that the EU provisions are just 'guidelines'.

There was a similar enquiry (46096) in which, beyond the delay matter (the procedure in Greece could take "up to eight months" allegedly), the problem concerned the renewal of the residence card (not its first delivery) and the applicant had met the conditions to be long-term third country resident autonomously considered under Directive 2003/109.

Registration as resident

Article 8:
1. (…) for periods of residence longer than three months, the host Member State may require Union citizens to register with the relevant authorities.
2. The deadline for registration may not be less than three months from the date of arrival. (…)

Article 8 does not say anything about other national documents which may be imposed on resident foreign EU citizens by the host country. However Sweden imposes a "Swedish ID card" which in practice operates like a residence card to the effect that it is the only ID document accepted by authorities and services alike, and is in fact very frequently requested. The problem is that non-residents are affected in their freedom to purchase services in Sweden (see e.g. record 46679). More worrying, it apparently can sometimes be difficult to get the Swedish ID card even as resident (see record 40036 about an Irish student in Sweden).

There was also a case from Finland (record 44553) of Bulgarian workers getting contradictory information: the local police warned them that they could not register as residents before having remained in Finland for three months (even if they wanted to?) whereas they had read that a person who has an employment contract must register within two weeks of starting to work.

Registration of family members

Article 8.5:
For the registration certificate to be issued to family members of Union citizens, who are themselves Union citizens, Member States may require the following documents to be presented:
(b) a document attesting to the existence of a family relationship (…)

The article is vague in its wording, but there are signs that in practice national authorities can be a lot more demanding in terms of the document that they will accept. For instance, in record 44186, regardless of any translation issue, the French "livret de famille" – which is the normal way to prove family ties in France – was not recognized in Belgium. Is this just one of many similar cases?

Article 9 indicates administrative requirements specifically for family members who are not themselves EU citizens, but it does not add anything to article 8 as regards attesting family ties. And here we suspect that problems are likely to be more frequent, along the example of record 41677, where the Belgian authorities refused to recognize a marriage certificate in a third country eventually legalized by the Dutch consul there (here too, without there being a translation issue).

Registration certificates and residence cards

The directive has abolished residence cards for EU citizens – see Article 8 (*Administrative formalities for Union citizens*) by comparison with previous legislation.

A number of migrant EU citizens have told us, paradoxically, that the abolition of residence cards was not simplifying their lives, namely because it is a convenient alternative to their passport as ID document in the host country, but mostly because residence cards or similar types of documents are still being required in practice (see below). This suggests that this reform needed to be introduced with a lot more effort and planning across different sectors and administrative structures.

From Belgium, we received an enquiry (47134) from a French national, 15 years resident in the country, who is surprised that her Commune is asking her to get her residence card renewed before it expires. Isolated lack of awareness, or the sign of a larger problem?

In France, the obligation to obtain a residence card is maintained for EU citizens subject to transitory measures regarding access to employment (new Member States) in so far as they wish to exercise a professional activity, employed, self-employed or on a free-lance basis. One may wonder if, even in the context of transitional measures – which apply only to employed work – and the need to control undeclared work, this is in conformity with the applicable rules of Directive 2004/38. In any case, it is hardly understood and creates confusion even among local authorities (see e.g. records 44440, 45351, 45389 and 46644 – in the former case, the residence card is imposed on a self-employed worker!) because this information clashes with the need to integrate the main rule that residence cards are abolished for EU citizens (see above). And it contributes to make enlargement nationals feel like "second class EU citizens".

We received no evidence that the residence card requirement is maintained for EU citizens subject to transitory measures in "old" Member States other than France (i.e. among those which have implemented Directive 2004/38, which is not the case of all of them).

Article 8.3:
For the registration certificate to be issued, Member States may only require that [the conditions for the right to stay are met].

From this paragraph, it would seem logical to deduce that holding a registration certificate is evidence of legal residence. However in France, where the requirement foreseen in Article 8.1 exists, we've been receiving ever since 2004 (when French

legislation anticipated the effects of the directive) enquiries indicating that local authorities, and generally all services wanting to verify that one is legally resident in the country, are not properly informed about this change in legislation, or maybe even getting contradictory information. Foreign EU citizens are often still being requested a residence card, which the *préfectures* will not deliver anymore to EU citizens. What is difficult to understand from the information at hand is:

- why is the registration certificate delivered by the local *mairie* not accepted (if it is at all delivered, which is not apparent in the cases we get)? and
- why do the *préfectures* not issue a document to certify legal residence and reassure the stakeholders, in order to allow the concerned citizens to get out of the vicious circle?

Permanent residence status

> Article 16.1:
> *Union citizens who have resided legally for a continuous period of five years in the host Member State shall have the right of permanent residence there. This right shall not be subject to the conditions provided for in Chapter III.*

EU citizens coming from new Member States are facing problems in the UK with the recognition of their right of permanent residence. UK authorities give a restrictive, non retroactive interpretation of this rule and count the five years of continuous residence from the year when the Member State of origin joined the EU. See records 35723, 38081, 43413 and 47084 (in the latter, the user says that the UK interpretation was confirmed by the UK SOLVIT center). As a consequence, permanent residence is granted only under UK law in the meantime, i.e. subject to passing the “Life and Knowledge in the UK test” (see records 35723 and 43447). The UK is adding to article 16 a condition that is not explicitly contained therein, and that cannot be considered implicit either. Indeed, under the UK interpretation, a third country national resident in the UK for over five years (i.e. with a long term resident status under Directive 2003/109) would actually be better off than “enlargement” nationals is some respects, which clearly would not be the legislator’s intention.

> Article 19:
> *1. Upon application Member States shall issue Union citizens entitled to permanent residence, after having verified duration of residence, with a document certifying permanent residence.*
> *2. The document certifying permanent residence shall be issued as soon as possible.*

In the light of this article, the problem described above about France is even more difficult to understand when it is EU citizens who have been living in the country for over five years who experience it. A number of records show that the *préfectures*, not only insist that they do not deliver residence cards to EU citizens anymore, but also fail to say anything about a document certifying permanent residence (see e.g. records 43421 and 46016). In one case (46994) the citizen was obviously well aware of his right under Article 19 and nevertheless did not manage to get the document he was voluntarily applying for.

A long standing Romanian resident in France, after three residence permits in France, when applying for a permanent resident’s card, complained to us that he was told that

he is "not entitled to it (sic) anymore now that Romania is part of the EU" and that he now has "less rights than before" (record 45090). This is going completely against the spirit of the Accession Treaty and the principle that no restrictions can go back on rights acquired before accession.

We were also contacted by a couple of British pensioners asking if it was in conformity with EU law that they were asked, in order to get the card attesting of their permanent resident status, to show sufficient knowledge of the French language.

Concrete exercise of the right of residence and residence documents in general

Article 25:
1. Possession of a registration certificate as referred to in Article 8, of a document certifying permanent residence, of a certificate attesting submission of an application for a family member residence card, of a residence card or of a permanent residence card, may under no circumstances be made a precondition for the exercise of a right or the completion of an administrative formality, as entitlement to rights may be attested by any other means of proof.

This article should normally ensure that administrative formalities around the exercise of the right to stay will not represent an indirect obstacle to the enjoyment of the right to stay in normal conditions. Despite this rule, a Portuguese citizen resident in France was denied access to minimum revenue (RMI) on grounds, not that he did not meet the conditions, but that he did not have a residence card, and it is the civil servant working at the RMI Office that contacted the CSS to question this (record 45109). And a Czech resident in Bulgaria complained (record 44570) that the certificate of registration which he received in replacement of his former residence card, was not accepted by various service providers (e.g. by banks for a loan) and did not entitle him to the same administrative rights; in particular, not having a residence card anymore made him loose his INSE (social security) registration number. Even if this case was isolated, it points to a problem similar as that observed in France.

See also record 43964 about the Swiss unemployment institution denying unemployment benefits to a French worker who has become unemployed after working in Switzerland (to which the EU-Swiss Agreement on free movement of persons applies) on grounds that his residence permit has expired in the meantime.

Right of residence and equal treatment

Article 24.1:
Subject to such specific provisions as are expressly provided for in the Treaty and secondary law, all Union citizens residing on the basis of this Directive in the territory of the host Member State shall enjoy equal treatment with the nationals of that Member State within the scope of the Treaty. (…)

There were three enquiries from three different countries concerning discrimination based on nationality in relation to amateur sport. These cases concerned the access to swimming competitions in Belgium (record 46940), the cost of the hunting licence in Sweden (record 36934) and the access to special responsibilities in any sports federation, association or union in Malta (record 45542).

But most problems concerned the equal treatment with home students. In one case (45019) the discrimination was quite open: a Bulgarian university allegedly raised its tuition fees for foreign students after Bulgaria entered the EU, thus affecting many Greek students there. In another case (46488) a French woman living in Italy and working there in a public hospital, after first being told that as "foreigner" she did not have the right to register to an on-line course leading to a degree in nurse-caring, was eventually admitted, to find at the moment of taking the exams that she is not allowed to attend these for reasons not made clear to her.

In the UK for instance, the problem lies in the definition of "overseas students", which concerns anybody (including UK nationals) who was not resident in the country for the three years before registering as student. The consequences are higher tuition fees (42321 and 43219) or non-entitlement to advantages of the status of student such as reduced fairs in public transport (44362). For the purpose of applying UK legislation, residence anywhere in the EU (or elsewhere in theEEA, under the EEA Agreement) three years before starting studies in the UK should be assimilated to residence in the UK; otherwise there would be an indirect barrier affecting foreign EU/EEA citizens primarily, as these are more likely to have lived in their own countries rather than in the UK before starting studies in the UK. Unfortunately the enquirers did not specify if they had been living in the UK or in any other EU/EEA country in the three years before registering as student in the UK; it is clear to see however that they were not asked about it. And we suspect that this problem is potentially very important in the UK considering the very high number of international students in the country.

Discrimination can touch upon other areas than fees or reduced costs. In enquiry 45929 what is denounced is the fact that a Finnish vocational college does not allow students previously studying in another country (in this case Spain) to register before completing determined "International Baccalaureate" examinations, whereas this is possible for local students. And in enquiry 43501, a Polish student complains that a Norwegian university is requesting her to show proficiency in Norwegian language, even though – she claims – this is not necessary for the purposes of following the courses because she will be following them in English. Note: Norway is part of the EEA but the EEA Agreement applies here and it seems to be violated in this case.

Article 24.2:
By way of derogation from paragraph 1, the host Member State shall not be obliged to confer entitlement to social assistance during the first three months of residence or, where appropriate, the longer period provided for in Article 14(4)(b), nor shall it be obliged, prior to acquisition of the right of permanent residence, to grant maintenance aid for studies, including vocational training, consisting in student grants or student loans to persons other than workers, self-employed persons, persons who retain such status and members of their families.

There were many enquiries from France over a short time-span on fear of loosing access to universal health cover ("CMU"). By far most of the enquiries came from British citizens actually inactive (in early retirement) facing problems concerning their access to CMU in France. The reason is that France recently changed its legislation for the implementation of Directive 2004/38. As a result, inactive foreign

EU citizens are told they will be denied access to CMU if they have not worked in France before and are pushed to contract private health insurance company. This rule was being applied indistinctively to newcomers and already registered residents. These people were requested to transfer their health insurance to a private one by 31 March 2008 at the latest or leave French territory. They are not allowed to continue to pay into the CMU system. They denounce this as discrimination because French citizens and – interestingly – also non-EU citizens who are inactive and have not contributed to the French social security remain entitled to be covered by CMU. See for example records 44827 and 46775.

What is even more surprising is that the above also concerned EU citizens who had resided in France for over five years and had thus gained the status of permanent residents under Directive 2004/38 (see 46748). In one case (46260) the citizen, well aware of his rights under Article 24, had asked for a residence card as such in order to consolidate his claim for CMU but could not get it.

This became so much of an issue in the UK – although other EU citizens are affected as well, see e.g. enquiry 46252 from a Dutch citizen – that the French embassy to the UK published on its website an information note to explain the new legislation to the British public. In order to be able to react consistently to incoming enquiries, the CSS requested and received instructions from the relevant Commission unit instruction, i.e. to say that the Commission was in contact with the French authorities about this problem, and that its view (based on the elements at hand) was that France could be in breach of Directive 2004/38 and Regulation 1408/71 combined; and that in any case it did not see how applying the new French legislation to EU citizens who had been resident in France for over five years could be compatible with the directive. ECAS – the provider of the CSS – was also informed of the official position through the Commission's reply to a complaint ECAS had submitted in its own right to the Commission on behalf of users of its 'hotline'. Note: about French CMU policy in consideration of Regulation 1408/71, see section C on social security.

At the moment of writing this report, we received information from media sources as well as from SOLVIT that France apparently has decided to apply its new legislation only to newcomers. This of course is good news, but it would not entirely solve the problem if it meant that newcomers would also, in the future, be excluded from CMU if they had in the meantime acquired the status of permanent resident (let alone assessment of whether the new French rules are compatible with EU law before a five year residence in the country – see what is said about this issue under part C of this report, on social security coordination).

The French government's current efforts to redress the social budget deficit are likely to raise problems similar to those described above, about the CMU, in the closely related area of the "minimum revenue of insertion" (RMI). Signs of this are found in two cases:

- Enquiry 46930: an Italian resident in France since 1998 who was working in the country till February 2006 before loosing his employment, received unemployment benefits till February 2007, and then, like any French worker in the same circumstances, applied for RMI. This was first refused him on grounds that he needed a "titre de séjour" [unfortunately it is not made clear if it is a card of permanent resident which is needed in particular], document

which he eventually obtained. Then another argument was opposed him: Law nr 2007-290 of 5 March 2007, Article L262-9-1, states: "*Les ressortissants des Etats membres de la Communauté européenne et des autres Etats parties à l'accord sur l'Espace économique européen, entrés en France pour y chercher un emploi et qui s'y maintiennent à ce titre, ne bénéficient pas de revenu minimum d'insertion"*. But he was previously working in France – which is clearly a distinct situation than that of an inactive newcomer – and has even resided in the country more than five years, thus meeting the conditions to be considered permanent resident;

- Enquiry 47269: a French woman and her British husband returned to France after having both resigned from their jobs in Scotland. They have (logically) been refused French unemployment benefits. She was allocated RMI, but her husband not, under the argument that he does not hold a permanent resident card. The fact is that Directive 2004/38 does not require that one is legally resident in the host country for five years before being entitled to equal treatment with regard to welfare benefits. It is sufficient to have legally resided in the country for three months. Therefore, unless the French authorities contest the right to stay in France of the husband – which is apparently not the case and is unlikely given that they meet the conditions for family reunification under French law – he should be entitled to apply for RMI.

Note: as we drafted this report, we have become aware that French legislation of 23 March 2006 introduced new conditions for EU/EEA nationals, namely on length of residence in France before applying for RMI (see article 9) which is in conformity with Directive 2004/38, although details still need to be brought through implementing decrees.

B- Recognition of professional qualifications
Directive 2005/36 on the recognition of professional qualifications

This directive also forms part of the process of legislative consolidation. It combines in a single text the twelve sectoral directives which provide harmonisation and a system of "automatic" recognition for seven specific professions (doctor, nurse, dental practitioner, veterinary surgeon, midwife, pharmacist and architect) along with the three directives which have set up a general system for the recognition of professional qualifications and cover most other regulated professions. The directive applies to all Member State nationals wishing to practise a regulated profession in a Member State other than that in which they obtained their professional qualifications, on either a self-employed or employed basis, except lawyers who remain governed by a separate directive in as far as the authorisation to practice is concerned. Beyond consolidation, it brings in some new features of general recognition in order to help make labour markets more flexible, further liberalise the provision of services, encourage more automatic recognition of qualifications, and simplify administrative procedures.

It is difficult to draw a general picture from the enquiries received by the CSS, because they show a great variety of situations. It is fair though to say that they all point to the same observation: there is still a lot of protectionism going on, more or less disguised, or at least a degree of reluctance of competent national authorities to consider qualifications they are not familiar with. In any case, here again, some Member States are clearly late in implementing the new directive (the transposition deadline was 20 October 2007), and they are also late in implementing Directive 2006/100 which updates it to take into account the enlargement of the EU to Bulgaria and Romania (deadline for transposition: 1st January 2007).

Incidentally, it is worth mentioning that a lot of citizens ignore the distinction to be made between academic recognition and professional recognition. See for instance record 44165 in which a French citizen established in Italy is surprised that her French diploma is recognized to undertake post-graduate studies in Italy, but not if she wants to apply for a position as a French language teacher. From her question, it is not even clear that she is aware that she needs to ask for professional recognition. A similar problem is found in record 46293 although here it is clear that professional recognition was asked and eventually denied. This is a fairly general problem going well beyond the interesting cases. From the information at hand in the records, we are unable to tell whether the competent authorities redirected citizens to the professional recognition route, and more generally why they are not well informed.

General system for the recognition of professional qualifications

Article 13.1:
1. If access to or pursuit of a regulated profession in a host Member State is contingent upon possession of specific professional qualifications, the competent authority of that Member State shall permit access to and pursuit of that profession, under the same conditions as apply to its nationals, to applicants possessing the attestation of competence or evidence of formal qualifications required by another Member State in order to gain access to and pursue that profession on its territory.

There were two enquiries (46969 and 42508, concerning respectively work as ski instructor and as mountain-bike guide) showing persistent defiance in France toward sports instructors qualifications acquired in another country. The Commission is well aware of problems in the professional recognition of qualifications namely for ski instructors in France, which had led it to address the matter with the French authorities back in 1999. But apparently the problem is still there, in a less transparent way though: the applicant's letters are not being answered and he is told verbally that he cannot practice his profession because he is not French.

> Article 14.1:
> *Article 13 does not preclude the host Member State from requiring the applicant to complete an adaptation period of up to three years or to take an aptitude test if:*
> *(a) the duration of the training of which he provides evidence under the terms of Article 13, paragraph 1 or 2, is at least one year shorter than that required by the host Member State;*
> *(b) the training he has received covers substantially different matters than those covered by the evidence of formal qualifications required in the host Member State;*
> *(c) the regulated profession in the host Member State comprises one or more regulated professional activities which do not exist in the corresponding profession in the applicant's home Member State within the meaning of Article 4(2), and that difference consists in specific training which is required in the host Member State and which covers substantially different matters from those covered by the applicant's attestation of competence or evidence of formal qualifications.*

In record 43226 (about Spain) a UK national (who describes himself as employed and is therefore presumably seeking recognition of his professional qualifications, although he does not explicitly say so) complains that the comparison between academic curricula in Spain is based exclusively on the number of years, disregarding the intensity (i.e. number of hours of the training). However this is in conformity with Article 14.1.(a).

Article 14.1.(b) instead concerns the content of the training. In record 43502, the citizen complains that her professional qualifications in clinical psychology are not recognized in Ireland because the compulsory vocational training took place in her second year of studies in Italy (as is compulsory there) instead of in the last year. In this case, it may be right that automatic recognition does not apply due to this difference, but surely the Irish authorities should use arguments based on the concrete comparison of the content of training, as requested under the general system, which apparently they fail to do.

> Article 14.5:
> *(…) if the host Member State intends to require the applicant to complete an adaptation period or take an aptitude test, it must first ascertain whether the knowledge acquired by the applicant in the course of his professional experience in a Member State or in a third country, is of a nature to cover, in full or in part, the substantial difference (in length or content of the training).*

Despite this article, it seems that the taking into consideration of post-diploma professional experience is sometimes overlooked. For example, in enquiry 45565, an Italian engineer complains about a gap in the relevant directive because it only covers

the most recent engineer degree, therefore leaving out a wide proportion of exercising engineers qualified under a previous academic training programme ("*ingegnere edile, vecchio ordinamento*"). In examining his qualifications, the UK Architectural Registration Board did not concretely examine the differences between the former Italian training programme and the one in force in the UK, and eventually take into account his professional experience to compensate for possible differences in content or length of studies.

Another similar symptom is found about Italy in records 46990 (11 years of professional experience as librarian in another Member State are disregarded for the purpose of taking part in an open competition giving access to the same post in the Italian public administration) and 45120 (14 years of professional experience as dietician and the applicant still needs to pass an exam in 19 subjects or go through an 18-month period of additional training…). Regarding the first case, it should be noted that this is not an issue of professional recognition of qualifications for the purpose of access to a profession, but rather a problem of how professional experience is taken into account for the purpose of access to a certain post in the public sector. However, it shows that the problem recognition of professional experience is wider than that of access to regulated professions strictly speaking.

One enquiry (47297) particularly interesting although it does not concern Directive 2005/36. An experienced British truck and bus driver living in France, who deplored having to take a local training course (FIMO) of 156 hours for truck drivers as a pre-condition imposed by the local employment agencies for access to employment. We drew his attention to Council Directive 96/26/EC of 29 April 1996 which harmonizes admission to the occupation of road transport operator in national and international transport and to facilitate the effective exercise of the right of establishment of those operators, entered into force on 1 January 1999 and its latest amendment entered into force on 1 January 2007.

Article 14.2:
If the host Member State makes use of the option provided for in paragraph 1, it must offer the applicant the choice between an adaptation period and an aptitude test.
Where a Member State considers, with respect to a given profession, that it is necessary to derogate from the (above) requirement, it shall inform the other Member States and the Commission in advance and provide sufficient justification for the derogation.

What is interesting in all the cases we received about compensation measures (whether apparently justified or not) is that there is hardly ever an indication that the applicants who are denied recognition have been informed of the possibility of passing an aptitude test, as an alternative to undergoing time-consuming additional training). Nor do we get complaints about having to take such a test.

System of automatic recognition of qualifications for specific professions

Article 21
1. Each Member State shall recognise evidence of formal qualifications as doctor giving access to the professional activities of doctor with basic training and specialised doctor, as nurse responsible for general care, as dental practitioner, as

specialised dental practitioner, as veterinary surgeon, as pharmacist and as architect, listed in Annex V (…) which satisfy the minimum training conditions referred to in (other articles), and shall, for the purposes of access to and pursuit of the professional activities, give such evidence the same effect on its territory as the evidence of formal qualifications which it itself issues.
Such evidence of formal qualifications must be issued by the competent bodies in the Member States and accompanied, where appropriate, by the certificates listed in Annex V (…).

In this area we observed two major problems: procedural difficulties in general and problems with Bulgarian and Romanian diplomas in particular – see hereafter.

Procedural guarantees, contact points and administrative cooperation

Article 51:
1. The competent authority of the host Member State shall acknowledge receipt of the application within one month of receipt and inform the applicant of any missing document.
2. The procedure for examining an application for authorisation to practise a regulated profession must be completed as quickly as possible and lead to a duly substantiated decision by the competent authority in the host Member State in any case within three months after the date on which the applicant's complete file was submitted. However, this deadline may be extended by one month in (other than automatic recognition for specific sectors).
3. The decision, or failure to reach a decision within the deadline, shall be subject to appeal under national law.

Article 56
1. The competent authorities of the host Member State and of the home Member State shall work in close collaboration and shall provide mutual assistance in order to facilitate application of this Directive. (…)
3. Each Member State shall, no later than 20 October 2007, designate the authorities and bodies competent to award or receive evidence of formal qualifications and other documents or information, and those competent to receive applications and take the decisions referred to in this Directive, and shall forthwith inform the other Member States and the Commission thereof.

Article 57
Each Member State shall designate, no later than 20 October 2007, a contact point whose remit shall be:
(a) to provide the citizens and contact points of the other Member States with such information as is necessary concerning the recognition of professional qualifications provided for in this Directive, such as information on the national legislation governing the professions and the pursuit of those professions, including social legislation, and, where appropriate, the rules of ethics;
(b) to assist citizens in realising the rights conferred on them by this Directive, in cooperation, where appropriate, with the other contact points and the competent authorities in the host Member State.

Not surprisingly, there were submissions to complain about excessive delays or about the difficulty to find the right contact for information on the procedure, with applicants feeling left to find their own way. Presumably delays could be caused by poor submission by citizens, but could also be by bad will on the part of the administration. These things need to be separated out but we are not in a good position to do so on a one question-one answer basis.

In enquiry 42636, a qualified nurse from Portugal points out that the three months delay – interestingly presented by Spanish authorities as a normal delay for the procedure – is not compatible with her potential employer's need, and indeed this deserves attention. She asks why the procedure is so complicated. It is worth noting that the new Directive opens the possibility for temporary provision of services without prior control of qualifications, based on a declaration by the migrant worker; this should respond to the "urgent" needs of employers. Enquiry 46678 is also from a qualified nurse, this time from Germany, who would like to move to Ireland and work there in her profession. It's been a year since she first contacted the Nursing Board in Dublin. They required certain forms (not otherwise specified by the citizen unfortunately) which could not be delivered by the offices in charge in Germany; the latter insist that her certificates and reports should be enough to get the approval in Ireland. Given the circumstances, the Nursing Board requires her to undergo additional internship in Ireland. This indicates a worrying lack of direct co-operation between the two administrations concerned.

An example of difficulty to find the right contact point is found in record 44028: the enquirer has apparently gone to the right places in Italy, but did not seem to find they were competent. Could it be that it was because the applicant is not an EU citizen, even though his qualifications were acquired in the EU? Directive 2005/36 benefits only to EU citizens, but the rights are extended to third country citizens if a specific act so foresees (long term resident or spouse of EU citizen). The concerned citizen in this case is both married to an Italian woman and has been resident in Italy since 2002, therefore he should be covered. Record 46783 provides another example: not only did it take the Hungarian authority one year to reply to a German plumber's application, but it was only to send him to German authorities for additional evidence, and in Germany he was apparently signposted to the wrong contact and advised to contact the EU institutions for assistance.

In enquiries 45532 and 44856, both concerning recognition in Germany, we find the difficulty for applicants to be confronted with two geographical levels of competence; in the first case coupled with the Land's authorities requesting additional exams or training to grant the latter. See also 45600 also mentioned further below about third country diplomas. It is worth investigating if the same problem exists in other States with a federal structure. See also record 45600 mentioned below about the recognition of third country diplomas.

All the above are just some examples of many over time, similar and yet always very different in details, showing that the complex rules in recognition of professional recognition will not mean much if national authorities choose to focus on reasons not to grant recognition rather than the contrary. Also, from where we stand, it is not clear to see if the contact points in Member States actually exist and really play the role defined in Article 57, and if they are sufficiently advertised. (Note: a full list is now

on the Commission's website). Surely Articles 56 and 57 will greatly help to improve the situation by raising applicants' information about contact points and by pushing national authorities to communicate directly (a bit like SOLVIT?) but these articles still need to develop their effects.

Enlargement

The recognition of qualifications obtained in Romania and Bulgaria faces obstacles due to the failure of many Member States to implement in their national legislations Directive 2006/100, which updates the list of qualifications benefiting of automatic recognition by adding the corresponding Bulgarian and Romanian qualifications. See for example enquiries 45900 and 43492 from Greece, 44163 from Italy, 43632 I Hungary and 45532, 44856 and 44918 from Germany. In the latter case, the enquiry comes from a German dentist just qualified in Romania (so presumably under the new harmonised training scheme) who is told he must have worked actively as a dentist in Romania for three years before being able to exercise his profession in Germany. Enquiry 46690 from France is significant because it comes from a professional structure (non-specified) which would be willing to recruit recently qualified Romanian dentists and is frustrated that this proves impossible in practice, because the French order of dentists requests, either a "certificate of conformity" from Romanian authorities or a "certificate of acquired rights" (i.e. professional experience to compensate for a deficit in training, if the training took place before Romania's accession). Why it is impossible in practice to satisfy these conditions is not stated by the would-be employer, but they are foreseen in the accession treaty and in the directive.

In record 46396, it is in a second stage, in another "old" Member State, that the problem appears, after the diploma had been recognized by a first "old" Member State. And in record 46396 the situation is further complicated for Romanian holders of diplomas from a third country (Moldova) who obtained the recognition of those diplomas in Romania and worker there before Romania's accession and eventually – in 2004 – moved to France, where apparently neither the Romanian recognition nor the professional experience in Romania are recognised – see below, third country diplomas.

In other cases, the problem described is unnecessary red tape. See e.g. record 44365 in which the applicant had to re-start the procedure just because, in the process of examining her application, one of the documents had become invalid.

Third country diplomas

Article 3.3:
Evidence of formal qualifications issued by a third country shall be regarded as evidence of formal qualifications if the holder has three years' professional experience in the profession concerned on the territory of the Member State which recognised that evidence of formal qualifications in accordance with Article 2(2), certified by that Member State.

Article 2.2:

Each Member State may permit Member State nationals in possession of evidence of professional qualifications not obtained in a Member State to pursue a regulated profession within the meaning of Article 3(1)(a) on its territory in accordance with its rules.

We received one interesting case from Germany (45600) which showed that the rule under Article 3.3 is sometimes overlooked. In this case, the recognition by the UK and Cyprus of a Turkish diploma was disregarded by the competent Land, in direct contradiction of the federal authority who seemed well aware of the rule.

C- Social security coordination

Regulation 1408/71 on the application of social security schemes to employed persons and their families moving within the Community

Regulation 1408/71 coordinates national social security legislation in order to protect the social security rights of persons moving within the European Union. It guarantees equal treatment and social security benefits to all workers who are Member State nationals, regardless of their place of employment or residence. It is accompanied by implementing Regulation 574/72 , which covers the practical implementation (competent national authorities, administrative formalities, etc.).

With a view to simplifying and clarifying the rules governing the coordination of the Member States' social security systems, Regulation 883/2004 was adopted. It consolidates the many amendments to Regulation 1408/71, themselves inspired by evolving trends in national legislation and the case-law of the European Court. It aims to rationalise the concepts, rules and procedures concerning the coordination of the Member States' social security systems, and it also brings changes, in particular the introduction of the principle of good administration and the reinforcement of the cooperation obligations between the administrations in the field of social security.

Regulation 883/2004 is therefore the new point of reference for the coordination of the Member States' social security systems. Regulation 1408/71 will remain valid only for the purposes of some acts (those covering third country nationals, Switzerland and Greenland, and supplementary pension rights). However, though it entered into force on 20 May 2004, the new Regulation shall not be applicable until the date of entry into force of the new implementing Regulation (which is still currently the object of a proposal). So, again, there is a question of delay here, due to a strange case of a regulation not being directly applicable and having to wait a long time before implementing texts are put in place.

Equality of treatment

Article 3.1:
Subject to the special provisions of this Regulation, persons to whom this Regulation applies shall be subject to the same obligations and enjoy the same benefits under the legislation of any Member State as the nationals of that State.

See section A, the CMU issue in France: one may question that it is in conformity with Article 3 to exclude EU citizens, whatever their length of rightful residence (over three months) from voluntary access to the CMU scheme, if this possibility is offered to French (and also third country nationals) based on residence only. The reply – currently under consideration at the Commission – possibly depends on whether the CMU is considered part of the French social security scheme under Regulation 1408/71 – see below, Article 4, "Matters covered":

Article 4
1. This Regulation shall apply to all legislation concerning the following branches of social security:

(a) sickness and maternity benefits;
(…)
2. This Regulation shall apply to all general and special social security schemes, whether contributory or non-contributory(…).
(…)
4. This Regulation shall not apply to social and medical assistance (…)

Is the CMU social security or social and medical assistance? It is the Commission's position that it is social security. It is also the Commission's analysis at this point that, even if the condition of staying continuously for three months in France before being able to join the CMU is not a "qualifying period" in the meaning of the regulation, and therefore not subject to aggregation with periods undergone in another Member State, it can be questioned whether the said condition is in conformity with Regulation more generally. Indeed, it could be discrimination toward migrant persons and the members of their family for the French social security to impose a three-months-residence period to a migrant worker before s/he is able to get a social insurance card and enjoy the benefits of the "normal" health insurance scheme, or of CMU for that matter if his professional revenue is below a determined threshold. The information contained in enquiry 46872 does not allow to see if this is really what happened to the enquirer – a short term German worker in France, not otherwise defined.

Single country of insurance

Article 13.1:
1. [Except in special situations identified in the Regulation] persons to whom this Regulation applies shall be subject to the legislation of a single Member State only.

There is worrying information from Hungary through three enquiries (47429, 47464 and 47623) about ignorance of the rule that there can be only one country of insurance: from January 2008, Hungarian authorities apparently require all citizens working abroad to pay a certain amount to the national health insurance scheme, regardless whether they are being employed in Hungary or not, or if they use health services in Hungary or not. From those people who do not live in Hungary and claim to be insured abroad, authorities request an E106 form. And, of course, the authorities of the country of work are reluctant to deliver an E106 because this is not what this form is meant for – as a matter of fact, there doesn't seem to be a specific form for that purpose. But Hungarian authorities apparently do not accept employment contracts or pay slips as proof of social insurance in another Member State.

See section A, the CMU issue in France:
Since the CMU is part of social security (see above) then Article 15,1 applies:

Article 15
1. Articles 13 to 14d shall not apply to voluntary insurance or to optional continued insurance unless, in respect of one of the branches [of social security], there exists in any Member State only a voluntary scheme of insurance.

2. Where application of the legislations of two or more Member States entails overlapping of insurance:
- under a compulsory insurance scheme and one or more voluntary or optional continued insurance schemes, the person concerned shall be subject exclusively to the compulsory insurance schemes;
(…)

This would apparently answer the question about e.g. Dutch pensioners resident in France who would like to drop out of the compulsory scheme in their country and rather contribute voluntarily to CMU in France, less costly. And, by exclusion, that of UK pre-retired workers in France who have no alternative to CMU other than to take private health insurance.

In fact, there were also a few cases (see e.g. 46691 and 47159) apparently similar to those described in Part A (residence – equal treatment) but in reality distinct, where the claim for CMU was not legitimate because the concerned citizens were in fact covered with an "E" form under the public health insurance scheme of their home country and were just finding it more convenient to rely on the CMU. An argument was that more recent residents in France could have and keep access to CMU just because they did not have e.g. an E 106 form (for people resident in country other than the one competent for health insurance), which made E forms look like a disadvantage… However we had to point out that the CMU is a secondary "safety net" system of access to the French health care system for people who are not already insured elsewhere and reside in France, and that the purpose of Regulation 1408/71 was not to offer a possibility of forum shopping.

Opening of rights (aggregation of insurance periods)

Article 45.1:
Where the legislation of a Member State makes the acquisition, retention or recovery of the right to [pension] benefits, under a scheme which is not a special scheme […] subject to the completion of periods of insurance or of residence, the competent institution of that Member State shall take account, where necessary, of the periods of insurance or of residence completed under the legislation of any Member State […] as if they had been completed under its own legislation.

Enquiry 45048 is an example of authorities failing to take into account the 40 years insurance record in the UK when this is necessary to qualify for an invalidity pension in Hungary, where the worker has become unfit for work. Unless it is the counterpart in the UK who fails to reply in a reasonable delay? The situation is not entirely clear. The same sort of issue appears, also in France, in enquiry 47483 about access to the benefit of retiring at an earlier age.

In enquiry 40495, the insurance record of a professor in another Member State is not validated in France on grounds that he had been working "for a foreign state" – which he denies since the university he was working for was not state-owned. But in any case this argument is not admissible, because the scope of Regulation 1408/71 has been extended long since to apply to work in the public sector.

But there are many signs that concerned workers of how EU coordination works in the area of pensions are not aware until they want to claim their rights, as is shown in enquiry 44907: apparently the user believes that he is entitled to get a pension corresponding to his full career in either of the two countries in which it splits.

Article 18.1:
The competent institution of a Member State whose legislation makes the acquisition, retention or recovery of the right to (sickness and maternity) benefits conditional upon the completion of periods of insurance, employment or residence shall, to the extent necessary, take account of periods of insurance, employment or residence completed under the legislation of any other Member State as if they were periods completed under the legislation which it administers.

Hungarian authorities apparently violate this rule in record 45329. The enquiry comes from a woman who worked in different EU Member States over the last seven years, before returning to Hungary. Now she is expecting a baby and she is dismayed to learn from the Hungarian social security institution that she is not entitled to contributory-based childcare allowance because she didn't complete the minimum insurance period for this benefit and that insurance periods she completed in other EU countries cannot be taken into consideration. She can only claim a very low non-contributory benefit in cash.

Calculation of pension rights

Article 37.1:
An employed person or a self-employed person who has been successively or alternately subject to the legislations of two or more Member States and who has completed insurance periods exclusively under legislations according to which the amount of invalidity benefits is independent of the duration of insurance periods, shall receive benefits in accordance with Article 39. […]

Article 39
1. The institution of a Member State whose legislation was applicable at the time when incapacity for work followed by invalidity occurred, shall determine, in accordance with that legislation, whether the person concerned satisfies the conditions for entitlement to benefits (…)
2. A person who satisfies the conditions referred to in paragraph 1 shall receive the benefits only from the said institution, in accordance with the provisions of the legislation which it administers.

In enquiry 44560, the user complains that the amount of her invalidity pension in France is calculated on the basis of her average yearly salary of the "10 best paid years", considering only her career in France (and not in Belgium where her best years were). This practice however is in conformity with Article 47:

The user's complaint arises because, in the situation contemplated by Article 37.1, there is entitlement to an invalidity pension from one Member State only, contrary to what happens with old-age pensions in general, or with invalidity pensions when the countries concerned are not all of the type described in Article 37.1. Best years in a Member State other than the one paying the pension are therefore really lost. In these

circumstances, should the fact that there is not for invalidity benefits a provision like Article 47 for old-age and survivor's pensions (see below) not be interpreted *a contrario*, to mean that salaries earned in another Member State should also be taken in consideration for the calculation of invalidity benefits, at least in the situation contemplated under Article 37.1? If not, there would be room for improvement in the coordination of invalidity benefits in this respect.

Article 47
Additional provisions for the calculation of (pension benefits in general)
(d) where, under the legislation of a Member State, benefits are calculated on the basis of the amount of earnings, contributions or increases, the competent institution of the State shall determine the earnings, contributions and increases to be taken into account in respect of the periods of insurance or residence completed under the legislations of other Member States on the basis of the average earnings, contributions or increases recorded in respect of the periods of insurance completed under the legislation which it administers;

By comparison with the situation described above, the complaint found in record 46854, which concerns old age pensions, is less justified even though it touches upon the same issue: the citizen complains that even though her number of years of work in the EU had to be aggregated in order to get a French pension, its amount is very low because the yearly average on which the pension is calculate is based only on salaries (presumably lower) earned in France.

Health care in kind in another Member State

Health care during a temporary stay in a country other than that of insurance

Article 22
1. An employed or self-employed person who satisfies the conditions of the legislation of the competent State for entitlement to benefits (…) and:
(a) whose condition requires benefits in kind which become necessary on medical grounds during a stay in the territory of another Member State, taking into account the nature of the benefits and the expected length of stay;
(…) or
(c) who is authorised by the competent institution to go to the territory of another Member State to receive there the treatment appropriate to his condition,
shall be entitled:
(i) to benefits in kind provided on behalf of the competent institution by the institution of the place of stay or residence in accordance with the legislation which it administers, as though he were insured with it; the length of the period during which benefits are provided shall be governed, however, by the legislation of the competent State;
2. (…) The authorisation required under paragraph 1 (c) may not be refused where the treatment in question is among the benefits provided for by the legislation of the Member State on whose territory the person concerned resided and where he cannot be given such treatment within the time normally necessary for obtaining the treatment in question in the Member State of residence taking into account his current state of health and the probable course of the disease.

(a) Necessary treatment and the EHIC (Article 22.1 (a))

Decision No 189 of 18 June 2003 introduced the European health insurance card (EHIC) to replace the "E" forms necessary as regards access to health care during a temporary stay in a Member State other than the competent State or the State of residence. Its Article 2.1 reads: "*The period of validity of the European card shall be determined by the issuing institution*". The fact that EHIC are delivered with a longer validity than for instance the former E 111 forms makes citizens think that they can use it for stays in another Member State longer than a "temporary" stay. National authorities do not give sufficient information to preventively clarify that it has to be temporary. Examples of this are found in records 44995 (about one year au pair work abroad) and 45185 (from a worker starting to working in another Member State). In both cases, the enquirers do not see the point of entering the local health insurance scheme or purchasing private health insurance since the worker already hold an EHIC from another Member State. The fact that here is no defined maximum length of "temporary" stay and that temporary stay is not limited to touristic stay probably does not help to avoid the confusion.

Even strictly in the context of a temporary stay abroad, holders are not warned that the EHIC is not a passport for programmed care in other Member States – which is the impression that is given with such a card. The result, as in record 43374, is that they are frustrated that they are asked to pay for the cost of care and eventually have to request reimbursement once they have returned home. Users also largely ignore (see e.g. record 42720) that the EHIC cannot be used for private sector health care providers, or at least to those who are not covered by the health insurance of the host country – and besides, with the variety of systems, they don't really know if they are. They then question the utility of the EHIC, and maybe even complain that this had led them to support unforeseen costs due to how the care is reimbursed (if at all) in their home country.

It is interesting to note that, in both cases mentioned here above, the EHIC had apparently been accepted and it was only later that the care seekers were invoiced by the care provider for the full amount, much to their surprise. This type of situation also appears even in cases where the conditions of validity of the EHIC are apparently met. See for example record 45358, where the Greek patient in a French hospital was explicitly told that, since he had the EHIC, he didn't have to pay anything, but nevertheless later received repeated invoices from that hospital.

There are also submissions that have to do with the fact that a lot of people still haven't heard of the EHIC (or the former E111 form for that matter) and then are confronted with unexpected sums to pay when they have returned to their country of insurance. They are then worried that they may not seek reimbursement by their health insurance (45427). They should not: if they have borne the full costs of the treatment, if the conditions of article 22(1)(a) are met and if they are able to present the necessary invoices, the competent institution is obliged to reimburse, as if they had presented the EHIC to the doctor abroad. However this principle does not always apply easily in practice. In record 44158, it is the translation in French of a description of the care received in Germany which poses problem. It is in fact surprising that such issues do not arise more often, considering that a lot of people still travel to other Member States without taking the precaution of using the EHIC.

(b) Programmed care and the authorisation procedure (Article 22.1 (c) and 2)

The jurisprudence of the European Court of Justice applying free movement of services to health care is now established. However it is complex and health care seekers are very confused about when they are entitled to reimbursement and under which conditions. Enquiry 45412 is an example of this: the user refers to a judgement of the Court to ask confirmation that he can seek hospital care in another Member State without prior authorisation from his health insurance, and still be entitled to reimbursement from it. He denounces the fact that the insurance would not confirm this. But the user is either ill-informed or has failed to note that the Court's jurisprudence does not apply to hospital care and that it is therefore strongly advised to stick to the rule of prior authorization under Directive 1408/71 if one does not want to risk not being reimbursed when returning to the country of insurance. DG Employment and Social Affairs has published on its website a remarkable 'flow-chart', rather unique in its kind, on health care abroad: is it reaching the citizens concerned?

Another error, very common and which is more a result of wishful thinking, is to believe that you can be covered in your country of insurance for health care received in another Member State, if the specific health care is covered under the latter's legislation, even if it is not in the legislation of the country of insurance. See for example record 45870. This mistake is probably provoked by information that one will be covered in the country where the care is received 'in application of the legislation of that country'. This of course applies to reimbursement rates, the rationale being that it would be too complicated for health providers or institutions in the host country to apply the legislation of over 27 Member States in this area. But it does not mean that the competent Member State looses control over what health care is contemplated in its social security legislation or not, otherwise Member States would be exposed to forum-shopping and be unable to control the financial balance of their systems.

Enquiry 44187 raises a different issue: the enquirer asks if he is right to complain about denied reimbursement of the costs for an operation in the Netherlands without prior authorisation, considering that the surgery could not be done in Malta (presumably for technical reasons or because the operation was not available within a reasonable delay in light of his state of health). It is not clear if he had simply ignored the authorisation procedure or gone through it in vain. In the latter case, the health insurance would have ignored paragraph 2 of Article 22 as interpreted by the Court.

Enquiry 45772 also touches upon a problem which surprisingly has not appeared in more cases in the period covered by this report (other than through general enquiries): the mutual recognition – ignored in this case – of medical prescriptions issued by qualified doctors established in another Member State, which is a well established principle by the combination of Directive 93/16 (to facilitate the free movement of doctors and the mutual recognition of their diplomas, certificates and other evidence of formal qualifications) and Directive 92/26 (on the labelling of medicinal products for human use and on package leaflets) and the related interpretation by the Commission. See also record 45772 about a frontier worker.

Enquiry 45773 is one of many cases (looking back to the past) which concern what can be considered a loophole in the system of Regulation 1408/71: the philosophy of the E112 authorisation procedure does not take into account the special needs – not strictly medical – of pregnant women who want to give birth to their child in their home country, for instance for understandable family reasons, or because of consequences on nationality. In this case, the legal uncertainty around hospital care (cf. the evolving case-law, still largely not integrated in the practice of Member States) and the costs involved are a real barrier. Surely this is a situation where free movement of services in the healthcare area finds a strong expression, beyond "market" related concerns. Shouldn't it be possible to have a baby anywhere in the EU?

The borderline between 'programmed' care requiring authorisation and 'necessary' care is not clear, and the implications are important: it will determine if you will be covered in the host country in case of hospital care, and if you can claim possible additional reimbursement in the country of insurance. Regulation 631/2004 generalised for all insured persons the concept that authorisation is not necessary and the EHIC suffices for health care "which becomes necessary on medical grounds during a stay in the territory of another Member State, taking into account the nature of the benefits and the expected length of the stay". But this does not give patients and healthcare providers clear criteria for determining what is 'necessary'. Enquiry 39952 illustrates the difficulty: a Romanian woman is taken to hospital due to a heart stroke whilst on temporary stay in Finland. Eventually she is dismissed from the hospital and then called in again four times for treatment. The Romanian institution refuses to send an E 112 form which at some point – not specified – is required by the Finnish hospital, on grounds that it should have been requested before going to Finland. Obviously the concerned citizen had not planned the strokes and therefore could not anticipate the need for surgical treatment, and surely the initial care should be considered necessary. But up to what point does Romania have to accept to cover continued treatment in Finland?

Enquiry 41782 is a very interesting though isolated case: it concerns 'necessary' care (in fact emergency care) sought by a French frontier resident in the nearest hospital which happens to be just across the border in Germany. Indeed, the care was not strictly speaking necessary during a stay in Germany, and indeed it was the care seeker's intention to cross the border in order to obtain care in another Member State. But surely it doesn't seem right to consider it 'programmed' care instead of 'necessary' care for that reason. Nevertheless the French health insurance refuses to reimburse due to lack of prior authorization, even though allegedly the operation cost less in Germany then it would have in France.

<u>Residence in a country other than that of insurance</u>

> Article 19
> *1. An employed or self-employed person residing in the territory of a Member State other than the competent State, who satisfies the conditions of the legislation of the competent State for entitlement to benefits, taking account where appropriate of the provisions of Article 18, shall receive in the State in which he is resident:*

(a) benefits in kind provided on behalf of the competent institution by the institution of the place of residence in accordance with the provisions of the legislation administered by that institution as though he were insured with it;
(b) cash benefits provided by the competent institution in accordance with the legislation which it administers. However, by agreement between the competent institution and the institution of the place of residence, such benefits may be provided by the latter institution on behalf of the former, in accordance with the legislation of the competent State.
2. The provisions of paragraph 1 shall apply by analogy to members of the family who reside in the territory of a Member State other than the competent State in so far as they are not entitled to such benefits under the legislation of the State in whose territory they reside.
[The same rules are found elsewhere for non-workers, as long as they are insured in a Member State.]

The following enquiries deserve to be pinpointed although they came alone for the period covered by this report (but are they isolated?):

Enquiry 44835 is from a retired German worker whose residence is effectively split during the year between Germany and Hungary. He applied for the form E121 at his German health insurance, but they wouldn't deliver it to him unless he has a steady permanent address in Hungary. Isn't there a gap in the coordination system in this situation? Indeed, the EHIC cannot be used for stays outside the country of insurance other than "temporary", but this notion is not defined (see above). So, the extent to which treatment that does not qualify as "necessary" and is nevertheless important (especially for elderly persons) is covered is uncertain.

The enquirer in 46034 – an Italian worker who moved to Rhodes after retiring – complains that the Greek social security institution does not recognize the E120 form released by the Italian equivalent, but only the E121 (for pensioners). The E120 is released specifically to allow a pensioner to get health care in another Member State while waiting to get a pension. Refusing to recognise the E120 amounts to denying health care to someone who is most in need of it, because in a transition phase without either professional or replacement revenue.

Enquiry 46125 instead is apparently a case where lack of awareness of the insured person about the E121 procedure, combined possibly with lack of proactive information by the institution of the host country, leads someone to believe that nothing is covered in Ireland for a pensioner from the UK who requires medical attention on a regular basis.

Article 20
A frontier worker may also obtain benefits in the territory of the competent State. Such benefits shall be provided by the competent institution in accordance with the legislation of that State, as though the person concerned were resident in that state. (…)

The special rules for frontier workers generate some difficulties. In enquiry 45517, the German insurer would not allow the enquirer, working in Germany, to go to a doctor in Belgium where she lives "most of the time". It is not clear though if she qualifies as

frontier worker in the meaning of Regulation 1408/71. In records 45772, the enquirer is clearly recognised as a cross-border worker (living in Germany but working in France) but his possibility to get healthcare in kind on both sides of the border is complicated by the fact that the French institution and its German counterpart are finger-pointing at each other on the competence for a specific reimbursement, here on grounds that the care was received in Germany (fair enough), there on grounds that it was a French doctor handing the medical prescription. The German institution's argument is not acceptable, considering the Commission's position on the recognition of medical prescriptions (see above).

Though without necessarily being aware of how reimbursement works depending on whether it is hospital care or non-, with or without prior authorisation, the enquirer in record 44860 raises an interesting point: since as a frontier worker in Germany he is allowed to get health care in France, why then can he not be covered in France under the more advantageous reimbursement in application of German law for care sought in France? The obvious reply is: because he freely chose to get the care in France and therefore must accept the local rules. But what is the difference in logic with someone who is not a frontier worker and goes to another Member State with an E112 authorisation for programmed care? In that case, the costs are met with additional reimbursement from the competent institution if the legislation it applies is more favourable. Could the option granted by Article 20 not be considered a general 'authorisation'? If the answer is negative – and it presumably is – this triggers another question: could a frontier worker ask 'authorisation' to seek programmed care in his country of residence just for the purpose of preserving his entitlement to a more complete reimbursement under the legislation of the country of his insurance?

Unemployment benefits

Article 69.1:
An employed or self-employed person who is wholly unemployed and who satisfies the conditions of the legislation of a Member State for entitlement to benefits and who goes to one or more other Member States in order to seek employment there shall retain his entitlement to such benefits under the following conditions and within the following limits.
(…)
(b) he must register as a person seeking work with the employment services of each of the Member States to which he goes and be subject to the control procedure organised therein. (…)

Three enquiries pointed at a gap in EU legislation: 42841, 43220 and 44085. If the unemployed worker moves to another country for a short period, not strictly speaking to look for work there, but rather to attend a vocational training course, s/he risks loosing the unemployment benefits. Indeed, attending a course is not directly in the scope of social coordination, but it doesn't seem compatible with Article 69, or at least with the spirit of that provision, to allow a job-seeker to follow vocational training and nevertheless keep unemployment benefits provided that the training takes place in the country of insurance. The possibilities of delegating to the employment services of the host country the control that one is really unemployed should be possible under the E 303 procedure even in that situation.

Otherwise the E303 system did not generate complaints, at least not over the concerned period – but we know from past records that many users complain that the three months period, too short, is largely eaten up by the time taken in related formalities, a situation that the new Regulation 883/2004 is going to improve, when it comes into force, with the possibility for the competent institution to extend the form's validity to up to six months maximum,. Another improvement will be the possibility to make use of export several times in between two periods of employment to find a job in another Member State, as long as the overall maximum period of expert is respected.

There was only one complaint (43964) concerning Switzerland – which participates in the Community coordination of social security schemes. The enquirer is a French woman who has been made redundant in Switzerland and requested the E303 authorisation to transfer her unemployment benefits to France for the purpose of looking for work there. Despite meeting all the conditions, she says, she is denied the E303 form on grounds that her Swiss residence permit has expired in the meantime. If the facts are as they seem, she was deprived of her acquired rights by using arguments that are inadmissible under Directive 2004/38 which defines the right to remain for workers who become unemployed in the host country.

Family benefits and the residence of family members

Article 73:
An employed or self-employed person subject to the legislation of a Member State shall be entitled, in respect of the members of his family who are residing in another Member State, to the family benefits provided for by the legislation of the former State, as if they were residing in that State (…).

The exemption for France from the general rule of Article 73 has not been valid since 1989, after the ECJ had declared it incompatible with Article 42 of the EC Treaty in 1986. However we received five enquiries (42160, 42826, 44446, 45657 and 45813) in which the user complains about denied recognition by the French *Caisse des allocations familiales* of entitlement to family benefits for children who are resident in another Member State.

Good administration

Article 84:
2. For the purposes of implementing this Regulation, the authorities and institutions of Member States shall lend their good offices and act as though implementing their own legislation. (…)
3. The authorities and institutions of Member States may, for the purpose of implementing this Regulation, communicate directly with one another and with the persons concerned or their representatives.

Article 84a.1:
The institutions and persons covered by this Regulation shall have a duty of mutual information and cooperation to ensure the correct implementation of this Regulation.
The institutions, in accordance with the principle of good administration, shall respond to all queries within a reasonable period of time and shall in this connection

provide the persons concerned with any information required for exercising the rights conferred on them by this Regulation.

In practice, it is often the case that we can observe through enquiries that social security institutions have not communicated directly when this could have greatly simplified the life of the concerned citizens. See e.g. records 45048, 47429, 47464 and 47623. In this respect, Regulation 883/2004 will bring progress by explicitly providing, under the principle of good administration, that in the event of difficulties in the interpretation or application of this Regulation, the institutions involved must contact one another in order to find a solution for the person concerned.

As regards lending their good offices, we observed many cases where, on the contrary, the authorities and institutions are not being proactive in informing citizens about their rights, namely by making them aware of the possibilities offered by the variety of “E” forms. See e.g. records 45329, 46034, 46125 and 46258. There were even some cases where they were not themselves willing to release a determined “E” form although the circumstances lent themselves to the request (see 46034).

Other enquiries (e.g. 46239 and 45048) also concern “E” forms, more specifically the excessive delay to release these. Four concern Romanian institutions (42754, 43114, 43634 and 46343). It is worth noting that the new Regulation 883/2004, when it comes into force, will replace old “E” forms by electronic exchange of information, which is likely to greatly improve this type of situation.

Enquiry 46252 raises an interesting question in relation to the calculation of pension rights in application of the coordination rules contained in Regulation 1408/71: the user complains that he is unable to obtain from the concerned institution a full breakdown of his French state pension. In view of the complexity of the French state pension calculations, he says, he wants to be able to check with all the relevant factors that he has really been offered the more advantageous of two calculations as provided by Regulation 1408/71. This citizen may appear somewhat excessively defiant, but he has a point about having the right to be informed about how his pension was calculated; if only to check that his rights have been respected. In fact, article 48 of Regulation 574/72 provides that the investigating institution communicates all decisions on pensions to the claimant in his/her own language by means of a summarized statement to which the decisions are appended.

III- CONCLUSIONS:

PERSISTENT LACK OF AWARENESS OF EXISTING SOURCES OF INFORMATION AT EU LEVEL

Despite great effort by the Commission, there is apparently still a considerable lack of awareness of available legal information tools at EU level. More or less one out of two enquiries appears to be primarily a request for legal information without direct reference to the underlying problem. In these circumstances, raising awareness about first-hand information on EU law available at EU level had to be considered an essential part of enabling citizens to exercise and enforce their rights. This observation led the CSS to use an extensive interpretation of its "signposting" mission, to include the flagging of the variety of existing sources of information at EU and national level[3].

It is understandable that citizens need guidance e.g. about EU dedicated services in the national context, and the CSS is particularly important in this respect. It is however more difficult to believe that active searchers do not sooner or lmater become aware of "europa" and its variety of useful information and documentary features (EURES, Your Europe, SOLVIT, ScadPlus, Eur-Lex, etc.) Citizens are probably happy to find a service such as the CSS which offers a way through the minefield.

PROBLEMS ENCOUNTERED BY CITIZENS: SOME WORRYING POINTERS

It is difficult to really conclude on the evidence of this report but it tends to point in the following direction: there is a growing gap between the case law of the European Court, the much improved legislative framework and the way it is being applied on the ground by Member States. Some Member States are using the opportunity of the introduction of new legislation, not to simplify the exercise of their European rights by EU citizens, but rather to introduce new national measures that rather serve restrictive purposes, whether to control immigration or to protect their home market of services and workers. This sometimes goes as far as going back on acquired rights under the old rules in general, or by "enlargement" nationals before their countries entered the EU. New types of barriers are creeping here and there, such as language tests and different administrative positions on one same issue at national and regional level in federal states.

ADDING VALUE TO THE ANALYSIS OF ENQUIRIES

This feedback report is based on the information received through enquiries which take place mostly at the early stages of experiencing problems. Unless the user comes back to us with a follow-up enquiry – which is seldom the case – the CSS is not able to see if s/he eventually managed to overcome the problem at one level or another.

[3] For more detail of signposting destinations, see the third feedback report under the first series.

For all these reasons, this report is to be considered more as a “feel” than as a description of the existing problems.

The CSS welcomes the modifications which DG Markt will shortly make in how the records are organized in the CSS database. Indeed, the revised classification by subject-matter, combined with a compulsory request to define an enquiry as interesting or not, will greatly improve our interesting cases-based approach to feedback, namely to identify problem areas. In the future, we would recommend going one step further and adding a drop-down menu to classify records by type of problem, e.g.: none (general advice); access to information; quality of information; awareness of national authorities; conformity of national provisions; gaps and grey areas in EU legislation; enforcement; other.

For the CSS to provide even more valuable feedback, it would be very interesting to get feedback from SOLVIT of follow-up and possible outcome of complaints that came to them through CSS signposting.

ANNEX: STATISTICS

A- Interesting Cases **covered by three main topics**

1. The CSSDB contains 380 (ICs) for the period 1 July to 31 December 2007. They account for 8.2% of all (ECs) in that period (4624).

2. The legal analysis in the body of the report concentrates on three areas:
- entry and residence;
- recognition of qualifications; and
- social security.

3. The table below shows the number of replies found on the CSSDB which related to these three areas for the period 1 July to 31 December 2007. For each of the three areas we have grouped together data recorded under the relevant subtopics on the CSS database. The detailed subtopic data from which this table is drawn is attached at the end of the Appendix (we take this opportunity to restate our finding, contained in report no.1 under the previous contract, that it is not easy to analyse the subtopic data because a considerable proportion of enquiries are recorded under "other" subtopics).

4. It shows that the legal analysis covers over three-quarters of all Interesting Cases. This is to be expected, as the first feedback report under the previous contract had already identified right of residence and social security as the two subtopics most frequently chosen by experts to classify enquiries.

5. We are therefore satisfied that the analysis in the report deals with problems in the application of EU law which reflect a very substantial part of the Interesting Cases handled by CSS experts.

6. We note that right of residence gives rise to a more than proportionate share of ICs as compared to all eligible cases.

Table: Share of Interesting Cases by Subtopic

	All eligible		Interesting Cases	
Subtopic	no	%	no	%
Right of residence[4]	1024	22.1	142	37.4
Qualifications[5]	706	15.3	54	14.2
Social security[6]	1085	23.5	96	25.3
Total above[7]	2815	60.8	292	76.8
All cases	4624	100	380	100

B- General characteristics of Interesting Cases

7. The appendix contains six charts giving an overview of the characteristics of the 380 ICs, together with a comparison between them and the 4624 ECs.

8. There are some characteristics for which there is little difference. The ICs and ECs are very similar as regards *economic category* (nearly half come from employed people – chart A) and *gender* (about three-fifths from men - charts B). As for *age groups*, slightly more ICs come from the 45-64 age group than AECs although most cases still come from the 24-44 age group (chart C).

9. The *"country"* characteristics show much more variation, as shown by the charts on:
- the country where the problem lies (chart D).
- country of residence of the enquirer (chart E)
- the nationality of the enquirer (chart F)

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[4] Right of residence subtopic appears under three topics - living, studying, and working. Also included are subtopics "obtaining a visa" and "notifying the authorities of your presence".

[5] Qualifications covers subtopics
architects
dentists
engineers
general and specialist doctors
general care nurses
lawyers
midwives
other regulated professions (general system)
paramedical professions
pharmacists
teachers
vets
Also included is subtopic "right of access to employment" as cases concerning qualifications often present as a precondition to securing employment
[6] Also included is subtopic "welfare benefits" as social security cases often appear here.
[7] Note: as cases can be recorded under more than one subtopic, the there may a slight degree of double counting in this total

Country to which problem relates

10. France is the country to which the problem relates for over a third of ICs, well above its share of AECs. Other countries where the share of ICs is greater than that for ECs are Greece, Finland and Bulgaria. Many countries, like Germany and Spain, have a lower share.

11. The following table encapsulates the picture for those countries which account for over half of ECs.

Country of problem	ICs %	ECs %	Population%
France	35.3	16.3	13.2
Germany	7.9	14.5	18.7
UK	11.6	13.0	13.2
Spain	5.3	11.5	8.8

Country of Residence

12. France accounts for 32.6% of ICs for country of residence of the enquirer compared to 12.5% for ECs. The only other countries where there are relatively more ICs compared to ECs are Greece, Finland, Ireland, Hungary and the UK. Countries with relatively few ICs compared to their share of ECs are Germany, Spain, Portugal and the Netherlands.

Nationality

13. The British account for the largest share of ICs by nationality – 27.9%, compared to their share of ECs, 11.5%. The Germans, by contrast, account for most ECs (13.5%) but only 4.7% of ICs. Other nationalities with a relatively high share of ICs compared to ECs include Romania, France and Finland, while those with a relatively low share include Spain, Portugal, Lithuania, Italy, Ireland, Netherlands and Austria.

Summary

14 This examination of the characteristics of Interesting Cases can be summarized as follows:

- the identification of France as a country where relatively more ICs are sent by residents and where it is also the country of problem. This is reflected in several parts of the legal analysis. It also interesting that the French as a nationality have a greater share of ICs than their share of eligible cases (ECs)[8];

[8] We recall a finding of the first report:
"Nearly three-quarters of enquiries about individual countries ('country to which problem relates') are made by non-nationals; and over a half of enquiries about individual countries are made by non-residents. This suggests that *most migrants' enquiries are made before a move is made or after a move back.* There is also a sizeable minority of enquiries from resident nationals, showing that the CSS also deals with *non-migrant* issues."

- it may be that, taking account of their size, a similar identification could be made in respect of Greece, Finland and Bulgaria;
- nonetheless, it is worth remembering that, as regards the country to which problem relates, 64.7% of ICs concern countries other than France: no country is exempt;
- the British are identified as the origin of a far greater share of ICs than their share of ECs, while for Germans, Spanish, Portuguese and Poles the opposite is the case.

C Relationship of the data to mobility in general

15. In the first feedback report of January 2007 (entitled "What the database tells us"), which examined all 7000 eligible cases handled between January and October 2006, we concluded that

"The picture given by the analysis provides a surprisingly detailed reflection of the current patterns of mobility in the EU and the preoccupations which accompany them."

16. This conclusion was based on an intensive examination of the characteristics of these 7000 cases, in particular their distribution by age, gender, economic category, nationality, country of residence and country to which problem relates.

17. We have looked at the same characteristics of Eligible Cases (ECs) for the period under study for this report (the second half of 2007), and compared them to the results found for the 10 month period studied for the first report: whilst, naturally, there are differences, they are quantitatively small.

18. We therefore see no reason why the 4624 enquiries replied to between July and December 2007 (from which the interesting cases are drawn) should not represent a fair cross-section of the current issues being raised by EU citizens as regards their single market rights.

19. Nonetheless, we hesitate to draw further conclusions of a statistical nature in a report which is designed to elucidate the legal issues raised by enquiries to the CSS. There are many factors involving migration patterns which would need to be considered in a deeper analysis, in particular those concerning smaller countries[9].

[9] For example the first report showed that, in terms of nationalities, the larger ones (by size) dominate the share of enquiries, but many smaller nationalities make relatively more enquiries than their share of EU population.

Appendix

Chart A: Economic Category

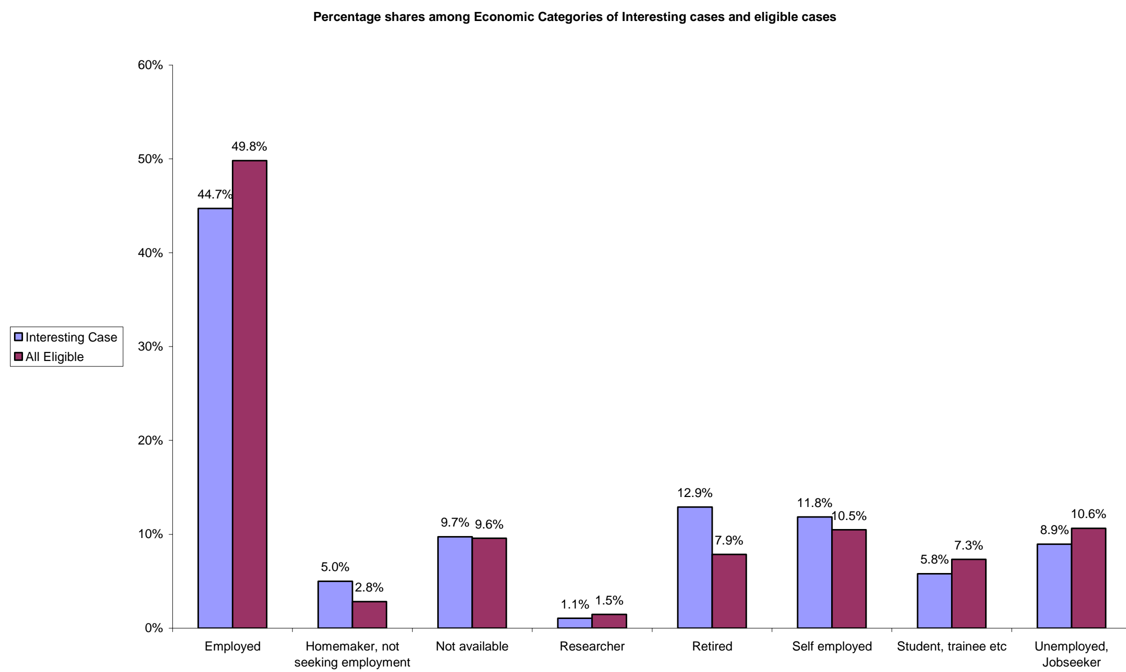


Chart B: Gender

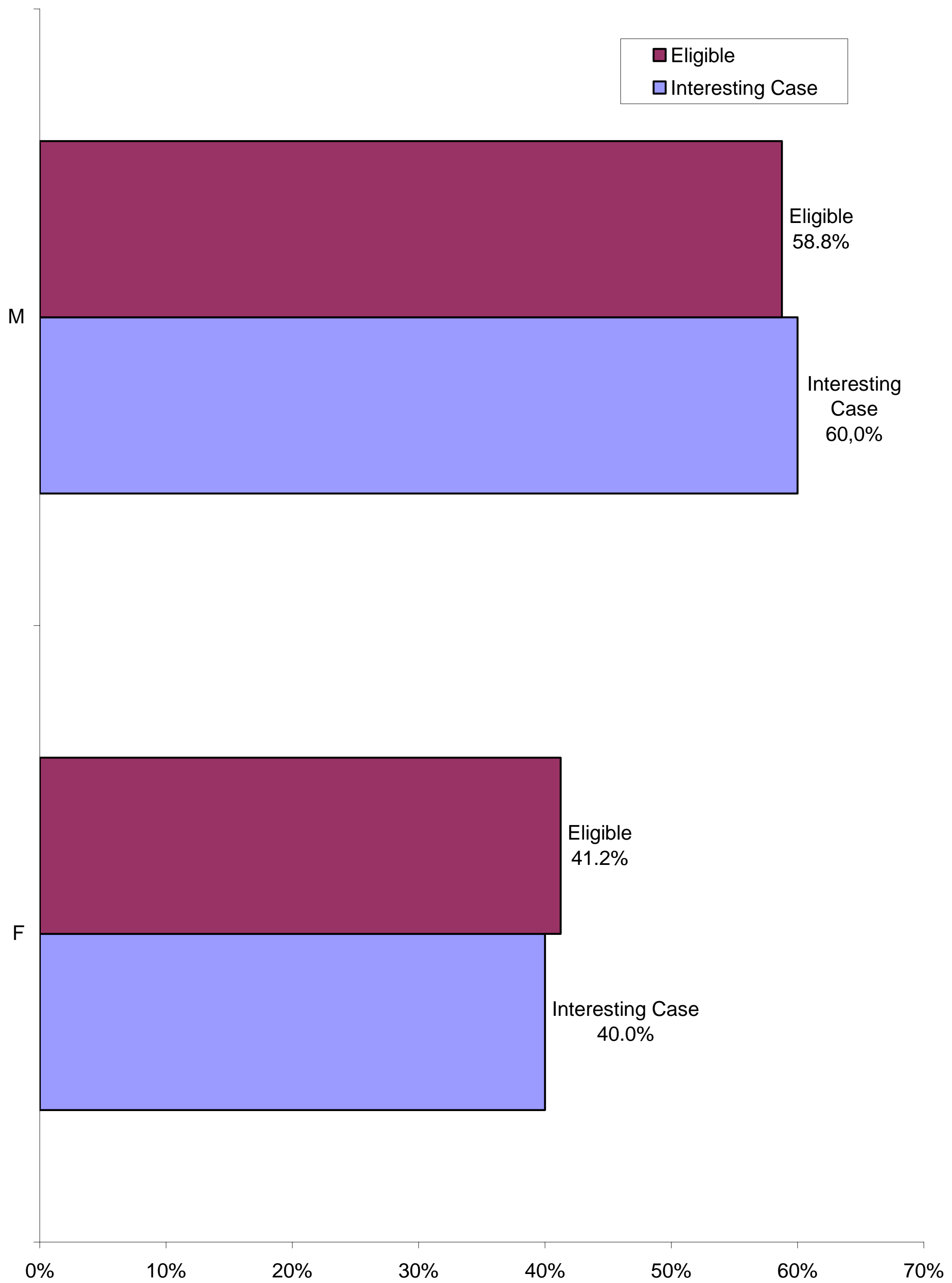


Chart C: Age Groups

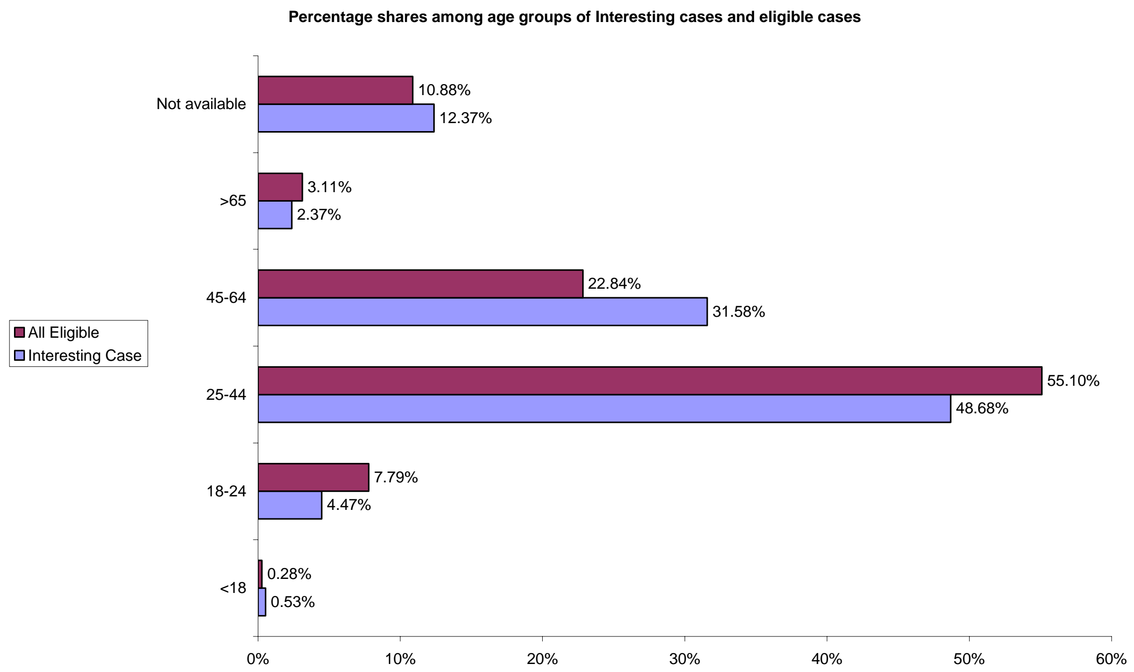


Chart D: Country to which problem relates

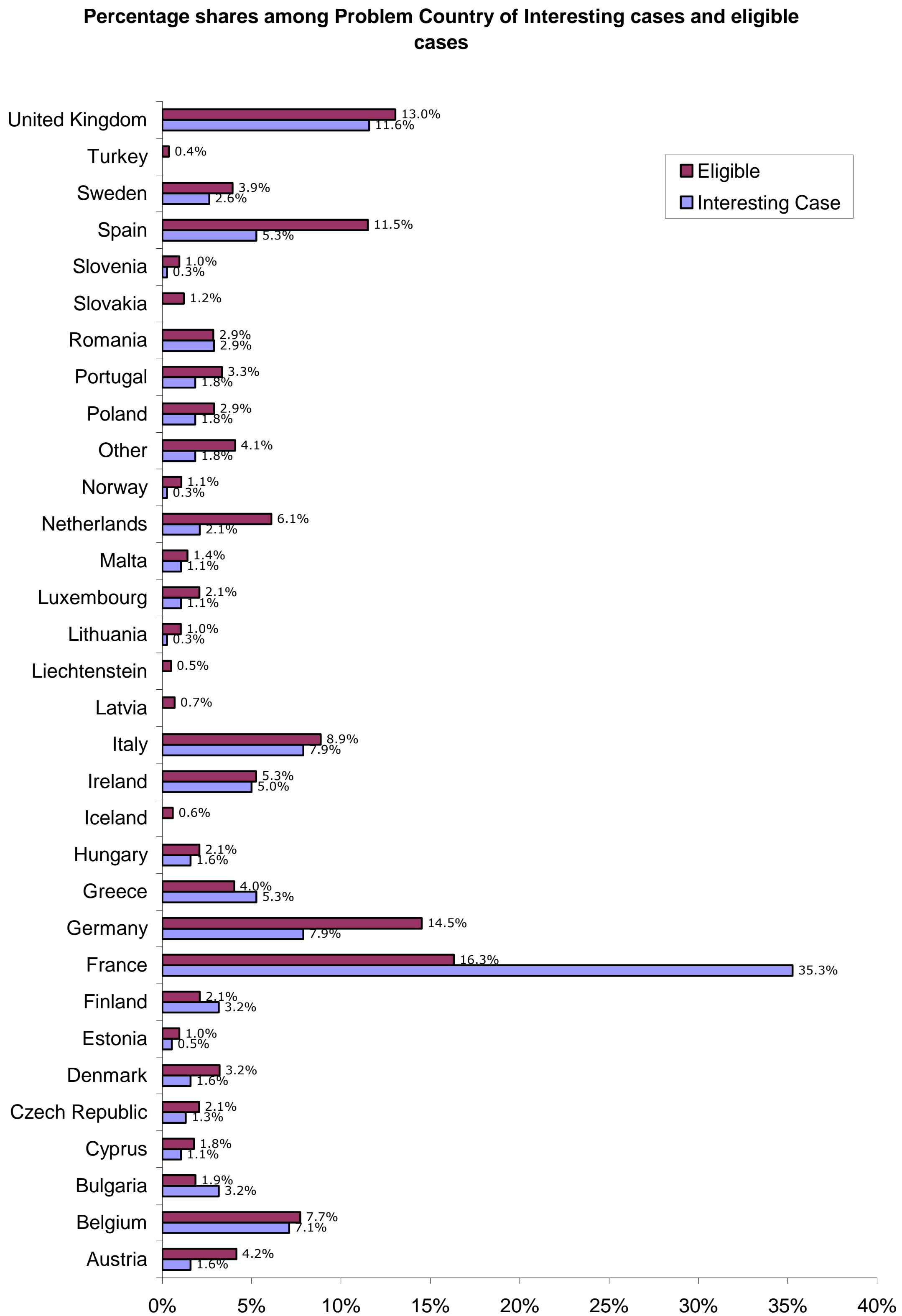


Chart E: Country of Residence

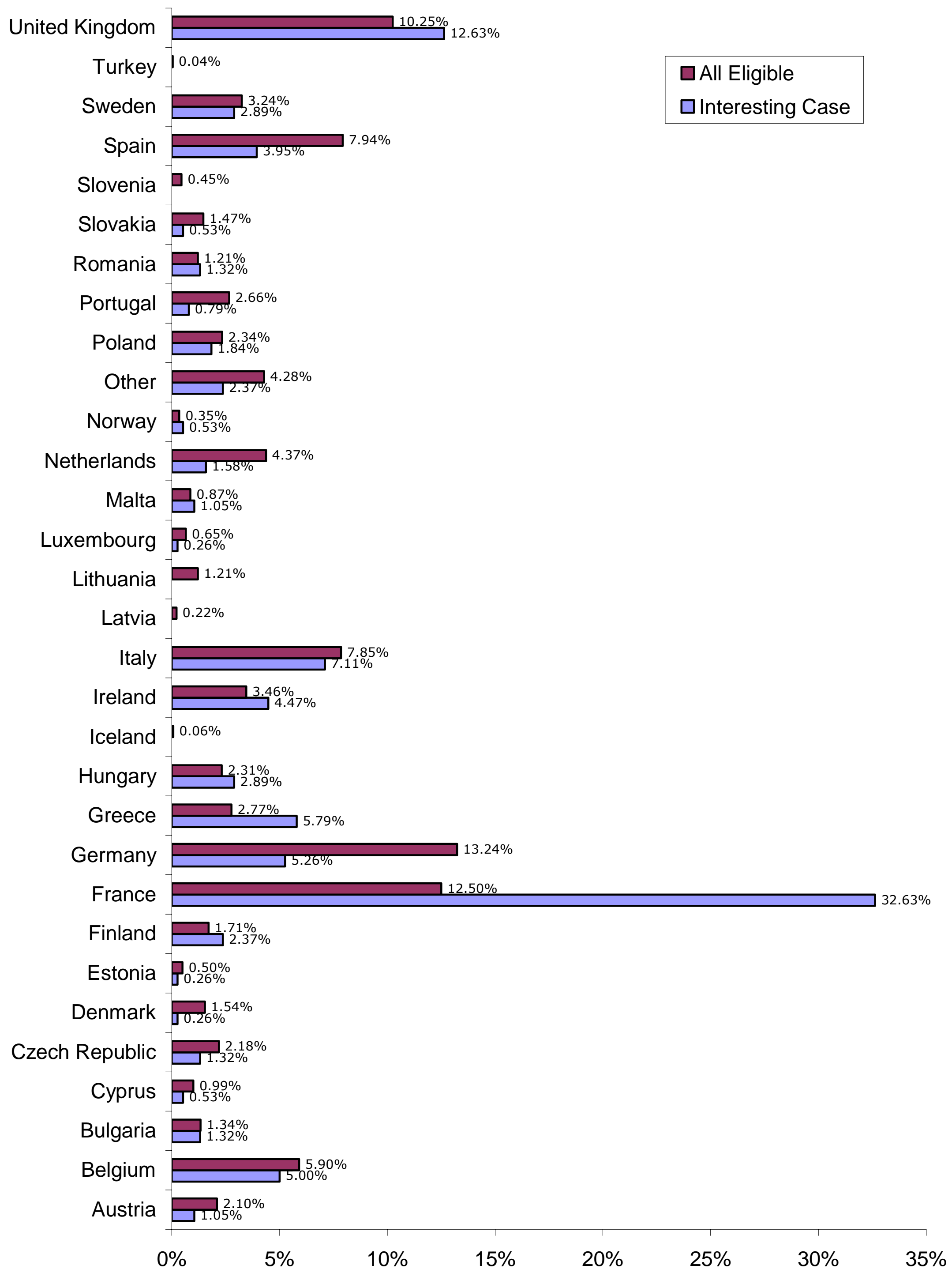
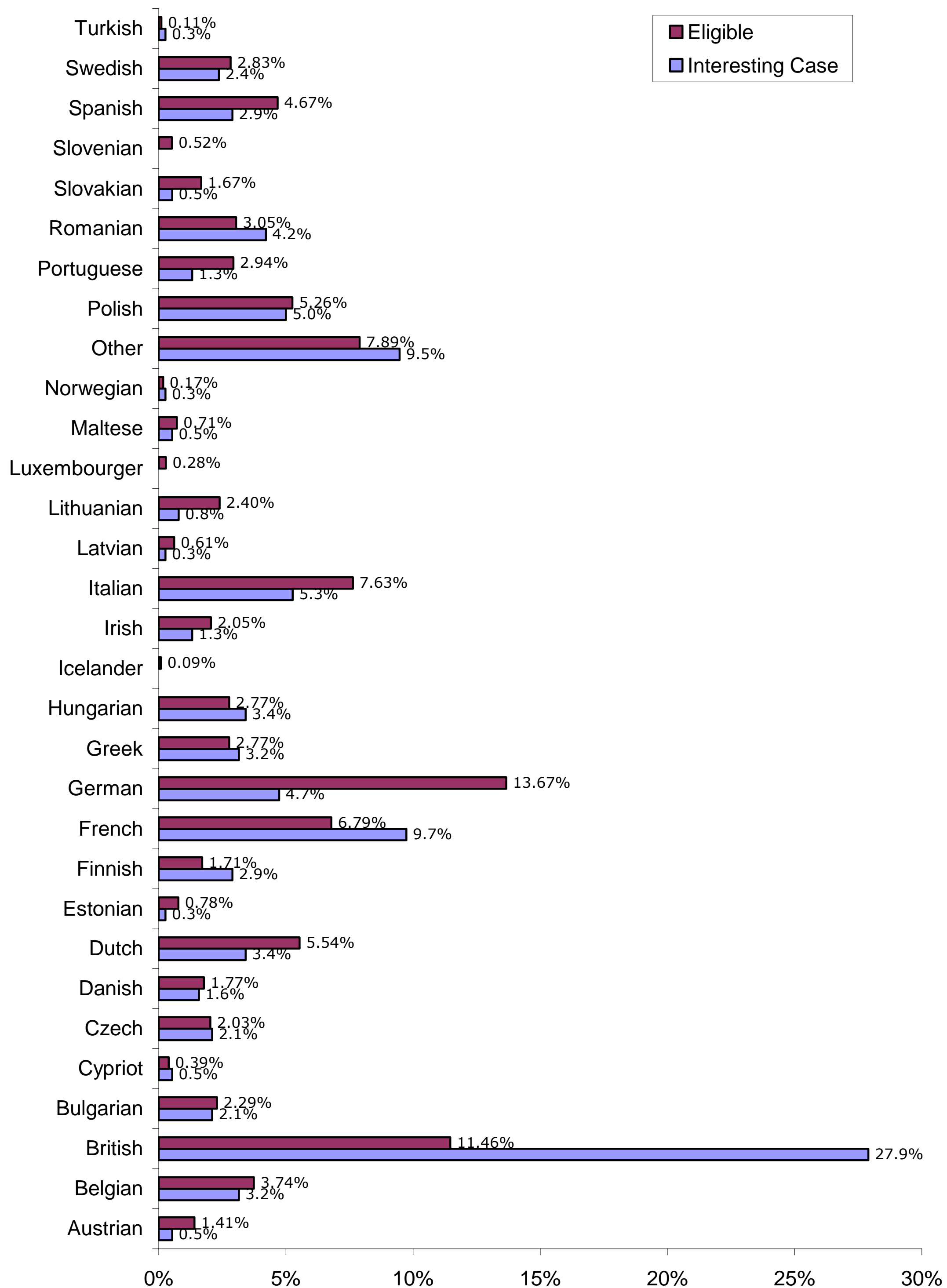


Chart F: Nationality



Interesting cases by sub-topics

Topic	Subtopic	All Eligibilities		Interesting cases	
		Total %	Total	Total %	Total
BUYING GOODS AND SERVICES IN THE SINGLE EUROPEAN MARKET	Buying goods and services in the single European market	0,3%	15	0,3%	1
	Canvassing	0,0%	2		
	Misleading advertising	0,0%	1		
	Motor vehicle insurance	0,4%	19	0,5%	2
	Opening a bank account in another member state	0,8%	35	1,8%	7
	Other	5,1%	237	8,2%	31
	Overbooking of airline seats	0,0%	1		
	Product safety	0,0%	1	0,3%	1
	Unfair terms	0,6%	29	1,1%	4
BUYING GOODS AND SERVICES IN THE SINGLE EUROPEAN MARKET Total		6,9%	320	10,8%	41
DATA PROTECTION IN THE EUROPEAN UNION	Data protection in the European Union	0,1%	4		
	Other	0,0%	2		
DATA PROTECTION IN THE EUROPEAN UNION Total		0,1%	6		
ENFORCING YOUR RIGHTS IN THE SINGLE EUROPEAN MARKET	Enforcing your rights in the single European market	0,1%	3		
	Internal administrative procedures	2,7%	123	3,2%	12
	Judicial procedures	2,8%	130	4,2%	16
	Legal aid	0,8%	36	0,5%	2
	Non-judicial procedures	2,4%	112	3,2%	12
	Other	1,1%	53	1,3%	5
ENFORCING YOUR RIGHTS IN THE SINGLE EUROPEAN MARKET Total		8,2%	380	9,5%	36
EQUAL RIGHTS AND OPPORTUNITIES FOR MEN AND WOMEN IN THE EUROPEAN UNION	Equal rights and opportunities for men and women in the European Union	0,0%	2		
	Other	0,1%	6	0,5%	2

EQUAL RIGHTS AND OPPORTUNITIES FOR MEN AND WOMEN IN THE EUROPEAN UNION Total		0,2%	8	0,5%	2
LIVING IN ANOTHER COUNTRY OF THE EUROPEAN UNION	Driving licences	2,4%	109	1,3%	5
	Living in another country of the European Union	0,7%	32	1,3%	5
	Motor vehicle tax	1,9%	90	1,3%	5
	Other	10,1%	467	14,8%	56
	Right of residence	10,5%	487	21,1%	80
	Right to vote and stand as a candidate in European parliament elections	0,1%	5		
	Taxes	1,6%	72	0,5%	2
	Type-approval and registration of motor vehicles	3,3%	153	2,9%	11
LIVING IN ANOTHER COUNTRY OF THE EUROPEAN UNION Total		27,8%	1285	34,6%	131
OTHER	Other	1,2%	56	0,3%	1
OTHER Total		1,2%	56	0,3%	1
STUDYING, TRAINING AND DOING RESEARCH IN ANOTHER COUNTRY OF THE EUROPEAN UNION	Architects	0,2%	8	0,3%	1
	Dentists	0,2%	10	0,3%	1
	Engineers	0,3%	12	0,3%	1
	General and specialist doctors	0,9%	40	1,3%	5
	General care nurses	0,3%	14	0,8%	3
	Lawyers	0,5%	24	0,3%	1
	Midwives	0,0%	1		
	National education systems	1,2%	55	1,1%	4
	Other	2,6%	120	3,4%	13
	Other regulated professions (general system)	0,9%	41	0,8%	3
	Paramedical professions	0,1%	5		
	Pharmacists	0,1%	5	0,5%	2
	Right of residence	0,8%	37	1,3%	5
	Studying, training and doing research in another country of the European union	0,3%	12	0,3%	1
	Teachers	0,3%	16	0,3%	1
	Training and mobility of researchers	0,2%	8		
	Vets	0,0%	2		

STUDYING, TRAINING AND DOING RESEARCH IN ANOTHER COUNTRY OF THE EUROPEAN UNION Total		8,1%	373	9,8%	37
TRAVELLING IN ANOTHER COUNTRY OF THE EUROPEAN UNION	Consular protection for the citizens of the European Union	0,1%	3	0,3%	1
	Notifying the authorities of your presence in another EU member state	0,7%	34	0,8%	3
	Obtaining a visa for members of your family who are not nationals of an EU member state	4,5%	207	5,0%	19
	Other	7,3%	336	5,0%	19
	Overbooking of airline seats	0,1%	3		
	Travelling in another country of the European Union	0,3%	16	0,3%	1
TRAVELLING IN ANOTHER COUNTRY OF THE EUROPEAN UNION Total		12,7%	585	10,6%	40
WORKING IN ANOTHER COUNTRY OF THE EUROPEAN UNION	Cross-border workers	1,0%	46	0,3%	1
	Looking for work	2,4%	112	1,6%	6
	National education systems	1,8%	83	2,6%	10
	Other	4,6%	213	4,0%	15
	Right of access to employment	11,4%	528	9,5%	36
	Right of residence	5,6%	259	9,0%	34
	Social security	18,8%	867	19,8%	75
	Taxes	5,3%	244	1,6%	6
	Welfare benefits	4,7%	218	5,5%	21
	Working in another country of the European union	0,3%	14	0,3%	1
WORKING IN ANOTHER COUNTRY OF THE EUROPEAN UNION Total		43,9%	2032	41,2%	156