PRACTICAL MEASURES FOR REDUCING IRREGULAR MIGRATION

Study carried out by the French Contact Point of the European Migration Network (EMN)

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TABLE OF CONTENTS

SUMMARY

Since migration flows in the direction of developed countries are constantly growing, these population movements must be better controlled. Otherwise, the chances of development of the countries of origin will be reduced, the social cohesion of the destination countries weakened and the integration of legal immigrants made more difficult.

This control of migration flows should be a shared objective of the two countries that are at the start and end points of the migrant's journey. It should also be based on a necessary balance between firmness, applicable to those immigrants who do not want to obey the Republic's laws, and the reception conditions reserved for those who, on the contrary, have chosen the legal route offered by France for entering the country and, in some cases, settling there and integrating into French society.

The entire French policy for controlling migratory flow is governed by this principle of balance. Several fundamental principles apply in this matter:

- Like any other State, France has the legal right to choose the people that it wishes to receive into the country.

As far as possible, this choice must be made within the framework of a dialogue with each of the countries that are sources of immigration, in order to implement real concerted management of migration flows between the two sovereign States. In the same mind-set, France will always give priority to voluntary return.

- Any illegally staying migrant will be returned to his or her country of origin, either voluntarily or forcibly, unless there is an exceptional reason not to do so, which will be assessed on a case by case basis.

- This firmness in the fight against irregular migration is both fairer and more legitimate, because France simultaneously implements a proactive policy aimed at the better organisation of legal immigration into the country. This is why the fight against irregular migration networks and, more generally, against all of those who see a means of developing their illegal businesses in the exploitation of migration flows, is pursued unceasingly.

- This balanced policy falls within a European framework, because it is obvious that the fight against irregular migration can only be considered in close collaboration with partners in the European Union. This is especially true for the concerted fight against irregular migration networks, but also for control at the external borders. Therefore, France has shown willingness to improve the effectiveness of the actions carried out under the authority of the Frontex agency.

It should be remembered that, because it is impossible to quantify the number of foreign nationals who have entered the country or who are residing there illegally, even approximately, presentation of the results obtained within the framework of the fight against irregular migration in France is extremely complicated.

Foreign nationals entering France illegally are not, by definition, subject to any recording and therefore cannot be counted from any administrative sources. Foreign nationals in irregular situations in France may have entered legally or illegally at any point in the Schengen Area

before travelling to France and may, in the opposite direction, leave France at any time to move to another Schengen country. Finally, the same person's situation may have changed, from the status of a foreign national in a regular situation to that of a foreign national in an irregular situation once he or she continues to stay in the country beyond the authorised period of residence.

Therefore, a dual reasoning inspires the arguments that follow. The first concerns the development of the migratory phenomenon in France, based on indicators revealing the major trends. The second concerns the action of the services and can be used to measure the impact of the actions taken.

1 - INTRODUCTION

1-1 Objectives

The study will deal with the following points:

- Outline the EU and national policy and legal frameworks with regard to preventing, detecting, addressing and reducing irregular migration, and their drivers;
- Provide a comprehensive overview of practical approaches, mechanisms and measures to reduce the number of irregular migrants;
- Explore the availability of data to estimate the irregular migrant population;
- Explore the effects of EU policy and legislation on national policy, procedures and practices;
- Review transnational cooperation in the area of irregular migration;
- Estimate the quantitative assessment of the phenomenon of irregular migration.

In particular, the study will identify effective practical measures undertaken to:

- Address irregular migration before the migrant arrives in France – i.e. at pre-entry level;
- Detect the entry of irregular migrants onto French territory;
- Monitor and ensure migrant compliance with the respective conditions of their visa and/or other permission to stay in France in order to avoid overstay ; and
- Address the (legal) situation of irregular migrants by providing ways out of irregularity.

The study will focus on the following groups of third-country nationals found to be illegally present:

- Persons who have entered French territory illegally (e.g. via smuggling, crossing a border with fake documents, or fraudulently stating the purpose of their stay);
- Persons who have overstayed their visa (or their maximum visa waiver period);
- Persons who have violated the conditions of their visa, work permit or permit to stay (i.e. the conditions for granting the visa / permit are no longer satisfied);
- Persons who have not left French territory upon a (final) negative decision on their application for international protection;
- Persons who have absconded during the application process for international protection and did not leave France / EU.

1-2 Methodology

The study was carried out in consultation with the Ministry of the Interior, Overseas Territories, Local Authorities and Immigration, and in particular the General Secretariat for Immigration and Integration with the sub-departments for Residence and Work (SDST) and for Fraud Prevention, Control and Removal (SDEC) of the Immigration Directorate and the Asylum Service (SAS).

The statistics use, in particular, the data provided by the Ministry of the Interior, Overseas Territories, Local Authorities and Immigration, and especially by the Central Directorate of Border Police (DCPAF) and the Statistics, Studies and Documentation Department (DSED) of the General Secretariat for Immigration and Integration (SGII).

Besides the laws (Code on entry and residence of foreign nationals and right of asylum and Labour Law in particular) and their implementing provisions, the following documents have been used extensively:

- The preparatory documents of the report drawn up, for 2010, pursuant to Article L. 111-10 of the Code on entry and residence of foreign nationals and right of asylum (CESEDA);
- Two studies published by the *Editions Législatives – Dictionnaire permanent du droit des étrangers*:
  - *The fight against irregular migration*
  - *Offences against the legislation on foreign nationals,*

large extracts from which have been reproduced here.

The main problem encountered was the lack of statistics on, or assessments of the number of, illegally staying migrants in France.

2 – POLICY AND LEGAL FRAMEWORK IN RELATION TO IRREGULAR MIGRATION

2-1 National policy and legislation

2-1-1 National policy

Over the last few years, France has adopted a legal framework that enables it to implement a proactive immigration policy. Its first characteristic is that the country's needs, particularly those of its economy and labour market, are better taken into account than in the past. Great attention is also paid to the migrants' ability to integrate into French society. Finally, this policy makes a point of combating irregular migration with all necessary effectiveness.

The immigration policy is defined and managed by the Ministry of the Interior, Overseas Territories, Local Authorities and Immigration.

France makes a point of complying with the commitments of the European Pact on Immigration and Asylum, which is a major issue. In this regard, the main guidelines of the French policy reflect and comply with the Pact's commitments.

Thus, the fight against irregular migration is one of the government's priorities for action. France has made efforts to secure its external borders to the EU and implement a removal policy, in accordance with its policy on immigration matters. Furthermore, it refuses any systematic regularisation of foreign workers in an irregular situation, which also reflects one of the Pact's commitments.

France's commitment to the source countries of emigration is demonstrated by bilateral concerted management agreements of migration flows, which make their regulation easier, dissuade their clandestine part and financially encourage local development.

2-1-2 Legislative framework [1]

French law distinguishes between, on the one hand, the offences committed by foreign nationals and, on the other, the offences committed by third parties.
Furthermore, the offences may be related to entry into France, the stay or work.

2-1-21 Offences attributable to illegally staying migrants

➲ Illegal entry

The conditions of a legal entry into France are set out:

- By Article L. 211-1 of the CESEDA: *"To enter France, all foreign nationals must possess:*

1° the documents and visas required by the international agreements and the regulations in force,

2° subject to the international agreements, the proof of lodgings provided for by Article L.211-3, if required, and the other documents provided for by the decree of the Council Of State related to, on the one hand, the purpose and conditions of his or her stay and, on the other, his or her means of subsistence, the coverage, by a certified insurance company of medical and hospital expenses, including social support, resulting from care that he or she may require in France, as well as the guarantees of his or her repatriation,

3° the documents necessary for the exercise of a professional activity, if he or she proposes to exert one"

- By the Schengen agreement of the 19th of June 1990.

The penalties incurred by a foreign national who enters France without complying with the legal conditions for entry are set out in Article L. 621-1 of the CESEDA: *"A foreign national who has entered or stayed in France without complying with the provisions of Articles L. 211-1 and L. 311-1, or who has stayed in France beyond the time authorised by his or her visa will be punished by a one-year prison sentence and a fine of 3,750 Euros.*
In addition, the court may ban the foreign national thus condemned from entering or staying in France for a period that may not exceed three years. A person condemned to exclusion from the country will be escorted to the border as of right at the end of the prison sentence."

A foreign national who enters France without possessing one of the proof documents mentioned by the CESEDA or the Schengen agreement may be prosecuted before the criminal court. Although theoretically the fact that the foreign national does not possess one of the documents mentioned is enough to constitute an offence, in practice it is a lack of a visa, when the foreign national should possess one, that most often justifies criminal proceedings.

[1] According to: *Editions Législatives – Dictionnaire permanent du droit des étrangers*

The foreign national may be found to lack a visa during an identity check or a visit to the services of the prefecture, or the social services.

➲ *Illegal stay*

Sanctions are incurred by a foreign national:

- who stays in France without complying with the legal conditions set out by the laws, or
- who has stayed in France beyond the time authorised by his or her visa.

The sanctions, which are identical to those that punish illegal entry, are set out in Articles L. 621-1 and L. 621-2 of the CESEDA: Art L.621-2: *"The sanctions set out in Article L. 621-1 are applicable to a foreign national who is not a national of a Member State of the European Union:*

1° If he or she enters mainland France without fulfilling the conditions mentioned in Points a, b or c of Paragraph 1 of Article 5 of regulation (CE) n° 562/2006 of the European Parliament and Council, of 15th March 2006, establishing a community code governing the movement of people across borders (Schengen Borders Code) and without having been admitted to France in application of Points a and c of Paragraph 4 of Article 5 of the same regulation; the same applies when the foreign national is the subject of an alert for the purpose of non-admission in application of an enforceable decision taken by another State that is party to the agreement signed at Schengen on the 19th of June 1990.

2° Or if, coming directly from the territory of a State that is party to that agreement, he or she has entered or stayed in mainland France without complying with the stipulations of Articles 19, Paragraph 1 or 2.20, Paragraph 1, and 21, Paragraph 1 or 2, with the exception of the conditions mentioned in Point e of Paragraph 1 of Article 5 of regulation (CE) n° 562/2006 of the European Parliament and Council, of 15th March 2006, mentioned above and Point d when the alert for the purpose of non-admission does not result from an enforceable decision taken by another State that is party to the agreement."

An illegal stay is an offence, detection and prosecution of which comes within the competence of the public prosecutor's office. Moreover, the prefect is responsible for putting an end to the offence of illegal stay and for issuing an order for returning the irregular migrant to the borders.

<u>Proof of legal stay</u>

• Article L. 311-1 of the CESEDA states that any foreign national who stays in France after the expiry of a period of three months after his or her entry into France must possess a residence permit.
The residence permit may be replaced on a temporary basis by the receipt for the request for issuing or renewal of that permit. Whilst the possession of a receipt prevents prosecution, the foreign national must always be in possession of that receipt on the day or during the period for which charges are laid against him or her. Later regularisation of the situation does not prevent prosecution, or the recognition of guilt by the court[2].

[2] Cass. crim., 30th of Oct. 1985, N° 85-90.459

• Articles 19, 20 and 21 of the Schengen agreement of the 19th of June 1990 govern the conditions for the circulation of foreign nationals in the States that signed it. Foreign nationals possessing a visa may circulate freely in the countries of the Contracting Parties during the validity period of the visa (generally three months)[3]. Foreign nationals who are not subject to visa obligations may circulate freely for a maximum of three months during a six-month period starting from the date of their first entry[4]. Foreign nationals possessing a residence permit may circulate freely for three months within the Schengen area under the cover of this permits and a valid travel document[5].

➲ *Evasion from the execution of a removal order*

Any foreign national who has evaded or sought to evade the execution of one of the following:

- an entry ban decision;
- an expulsion order;
- a return to the borders measure or a removal order;
- or who, having been expulsed or having been the subject of a legal entry ban, a ban on returning to France or an order to be returned to the border issued less than three years previously in application of Article L. 533-1, has entered France again without authorisation (CESEDA, Art. L. 624-1) will incur a sanction of a three year prison sentence.

In addition, the court may issue a ban on entering French territory for a maximum period of ten years. Usually known as "refusal to embark", this measure concerns the different removal orders from France (CESEDA, Art. L. 624-2).

Article L. 624-3 of the CESEDA punishes the refusal to submit to the decision to hand over to the authorities of a Member State of the European Union. The sanction incurred is a six month to three year prison sentence. In addition, the court may issue an exclusion from France for a maximum period of three years.

The latest modification to Article L. 624-1 is a consequence of the law of the 16th of June 2011, which enhanced the legal provisions with the modifications provided for by the law concerning removal.

2-1-22 Offences attributable to third parties

➲ *Helping a foreign national with illegal entry, movement or stay*

• The offence of helping foreign nationals with illegal entry, movement or stay in France has been on the statute book ever since the order of the 2nd of November came into effect with the same constituent elements until the vote on Law N° 94-1136 of the 27th of December 1994.
In practice, Article 21 had to be rewritten to make the law comply with the implementing convention of the Schengen agreement of the 19th of June 1990, Article 27, Paragraph 1 of which stipulates: *"the Contracting Parties undertake to set up appropriate sanctions against anyone who, for lucrative purposes, helps or attempts to help a foreign national to enter or*

[3] Schengen Agreement, 19th of June 1990, Art. 19
[4] Schengen Agreement, 19th of June 1990, Art. 20
[5] Schengen Agreement, 19th of June 1990, Art. 21

stay in the country of a Contracting Party in violation of that Contracting Party's legislation concerning the entry and stay of foreign nationals.".

Today, the offence is contained in Article L. 622-1 and subsequent articles of the CESEDA.

Family immunity

In order to protect the family members of illegally staying migrants from prosecution for aiding and abetting an illegal stay, family immunity was established by Law N° 96-647 of the 22nd of July 1996, extended by the law of the 11th of May 1998 and modified by the law of the 26th of November 2003, then by the law of the 16th of June 2011.

Article L.622-4 of the CESEDA states that, without prejudice to Articles L. 621-1, L. 621-2 and L. 623-1 to L. 623-3, helping a foreign national with an illegal stay cannot give rise to criminal prosecution on the basis of Article L. 622-1 when it is the act of:

- The foreign national's ascendants or descendants or spouse, or the brothers and sisters of the foreign national or his or her spouse. The spouses must not be estranged, have distinct residences or have been authorised to reside separately.
- The foreign national's spouse, unless they are estranged, have been authorised to reside separately or if the cohabitation has ceased, or the person who is well known to live in a marital situation with the foreign national. Family immunity only applies if the person was known to live in a marital situation with the foreign national when the acts occurred[6].
- Any physical or legal person (including associations) that, faced with an actual or imminent danger when the act incriminated occurred (i.e. the help with illegal entry, movement or stay), found this act necessary to safeguard the person of the foreign national, unless there is a disproportion between the means employed and the seriousness of the threat, or if it gave rise to a direct or indirect consideration.

Since the law of the 24th of July 2006, the family members mentioned above no longer enjoy immunity if the foreign national benefiting from help with an illegal stay lives in a polygamous state or if that foreign national is the spouse of a polygamous person residing in France with the first spouse.

The law of the 16th of June 2011 modified the wording of Article L. 622-4, 3. Immunity applies when the act incriminated was, faced with an actual or imminent danger, necessary to safeguard the "person of the foreign national" and no longer "his or her life or physical integrity". According to the impact study of the draft law, this modification "goes beyond the situations of extreme danger or almost deadly threats to include situations of destitution that are countered by humanitarian associations, in particular". It also aims to make "the law consistent with practice and with Article 122-7 of the criminal law on the state of necessity".

Furthermore, the people protected can be the subject of prosecution for complicity in illegal entry or stay on the basis of Article L. 621-1 of the same law. The protection of Article L. 622-1 only covers help with the illegal stay. In addition, these people can be the subject of prosecution for having organised, attempted to organise or contracted a marriage with the sole aim of obtaining a residence permit or getting one obtained[7].

[6] CA Douai, 4e ch., 14th Nov. 2006, no 06/01132, Amun et a.
[7] CESEDA, Art. L. 623-1, L. 623-2, L. 623-3

Humanitarian immunity

In order to clarify the application conditions of the immunity provided for in Article L. 622-4, 3° and to reassure the associations about the conditions for exercising their missions when they provide illegally staying migrants with help, two circulars from the Minister of Justice of the 20th of November 2009 and the Minister for Immigration of the 23rd of November 2009 specify the outlines of that immunity[8].

An exclusively lucrative or self-interested aim may be a criterion for prosecution but its absence does not, in principle, exclude prosecution "as the legislator has clearly chosen to not specify this criterion in the law".

The immunity applies to an act which, faced with an "imminent or actual danger", is necessary to "safeguard the life or physical integrity of the foreign national". These two notions should be interpreted in the widest sense; they are not limited solely to the immediate threat, in the strictest sense, to the foreign national. They must also take into account "the situations of particular fragility or even distress in which illegally staying migrants often find themselves".

Therefore, the courts will take care "to also take this background information into account in order to not start criminal proceedings on the charge of helping with illegal stay against members of associations who provide services such as meals or lodgings, in particular when it is a question of emergency shelter and medical help, when the act in question has no other objective than to ensure the dignified and decent living conditions for the illegally staying migrant".

It seems that, for the government, one of the essential criteria is that the act in question "has no other objective than to ensure the dignified and decent living conditions for the illegally staying migrant", in which case, immunity seems to be granted. Pronouncing on the appeal in summary proceedings formulated by several associations and unions asking for the suspension of the circulars of the 23rd of November 2009, the Council of State, which rejected the appeal, specified that the permanent action of the associations that work in the area of foreign nationals and provide them with certain services (meals, lodging and even legal advice) should be taken into account. This statement should be understood "as a reminder that acts that give rise to a consideration are excluded from the enjoyment of immunity"[9].

On the other hand, when the physical persons or members of associations commit acts, sometimes under the cover of associations' actions, that cannot be included within the field of humanitarian action (for example, handing over to adults residence cards proving that they are minors in full knowledge of the fact, or handing over fake documents) criminal proceedings are justified and should be started.

The courts' attention is also called to "the need to avoid hindering humanitarian actions and therefore to the inappropriate nature of carrying out identity checks or questioning in the places where humanitarian associations operate or close to them on the sole grounds of illegal stay by the foreign national or help with an illegal stay by members of associations or volunteers".

[8] Circ. CRIM, 20th of Nov. 2009, NOR: JUSD927949C and Circ. 23rd of Nov. 2009, NOR: IMIK0900091C
[9] CE, Ref., 15th of Jan. 2010, N° 334879, Gisti et al.

• Any person, whatever his or her nationality, who has, by direct or indirect help, facilitated or attempted to facilitate the illegal entry, circulation or stay of a foreign national in France may be prosecuted[10].

The delinquent's nationality is of no importance in the prosecution of the offence. The law of the 26th of November 2003 extends the offence to the countries of the States that are party to the protocol against the smuggling of migrants, additional to the United Nations Convention against Transnational Organized Crime of the 12th of December 2000.

The offence of helping with illegal entry assumes proof that the foreign nationals do not possess the documents required for entering the country.

Article L. 622-1 of the CESEDA targets:

- smugglers and various intermediaries,
- people who house a foreign national without a residence permit in full knowledge of the fact,
- an employer who hires and retains in his or her employ, a foreign national without a residence permit (and consequently a work permit), in full knowledge of the fact, or, under the same circumstances, an employer who hides a foreign national without a residence permit from the checks.

• The offence assumes knowledge of the foreign national's illegal situation. The proof of this knowledge may be the result of the judge being convinced by the items contained in the case file. When the offence is committed in the country of a State that is party to the Schengen agreement or the protocol against the smuggling of migrants, the foreign national's illegal situation is assessed according to the legislation of the Member State or the Party State in question[11].

• Help with the crossing of the borders by foreign nationals without authorisation to enter France is one of the acts currently pursued by the criminal courts.

• The offence of helping with an illegal stay may be prosecuted concomitantly with other offences related to illegal employment. In which case, there is an accumulation of offences.

• The housing of foreign nationals in an illegal situation is often sanctioned on the basis of Article L. 622-1 of the CESEDA, concurrently or non-concurrently with other offences.

Sometimes, a verdict of mitigating circumstances is rendered or a stay of execution or an exemption from punishment are granted.

On the other hand, the charge against people accused of helping a foreign national to illegally enter and stay in France should be dropped if it cannot be proven that the illegally staying migrant found at their home was not simply visiting[12].

• The activities of civil servants who by their actions help foreign nationals in an illegal situation to enter, circulate and stay in France are covered by Article L. 622-1 of the CESEDA.

[10] CESEDA, Art. L. 622-1, Paragraph 1
[11] CA Aix-en-Provence, 17th of Sept. 1992, Lardon
[12] CA Paris, 19th of Oct. 1990, N° 5419.90, Huang

Offences committed on the country of a State that is party to the Schengen Agreement or the protocol against the smuggling of migrants: Distinction according to the State in which the offence is committed and the agreement binding that State

A distinction must be made between three situations:

- The offence is committed in the country of a State that is party to the Schengen Agreement to help a foreign national enter, move or stay in France (CESEDA, Art. L. 622-1, Paragraph 2).
- The offence is committed to help a foreign national enter, circulate or stay in the country of a State that is party to the Schengen Agreement (CESEDA, Art. L. 622-1, Paragraph 3).
- The offence is committed to help a foreign national enter, move or stay in the country of a State that is party to the protocol against the smuggling of migrants, additional to the United Nations Convention against Transnational Organized Crime of the 12th of December 2000.

The foreign national's illegal situation is assessed according to the legislation of the Member State or the Party State in question (CESEDA, Art. L. 622-1). When considering an appeal against this provision of the law of the 26th of November 2003, the Constitutional Court declared that it conformed to the Constitution. This provision *"is limited to the definition of a constituent element inherent in any transnational offence of helping a foreign national with an illegal stay; […] such criminal charges, established by French criminal law, in application of the international agreements to which France is a party, do not offend against any principle or rule with constitutional standing. The principle stated in Article 121-3 of the criminal law according to which there is no offence unless there is an intention to commit it is applicable to them as of right"*[13].

In the three hypothetical cases, proceedings can only be instituted against the person who has committed the offence on an official accusation or a statement of proof from the competent authorities of the Party State concerned.

No proceedings can be taken against a person who can prove that he or she has been definitively judged abroad for the same acts and, if he or she has been condemned, the penalty has been paid or lapsed.

Sanctions incurred

• **By physical persons**: The offences defined in Article L. 622-1 of the CESEDA are punished by a prison sentence of five years and a fine of €30,000.

The sanctions incurred are increased, up to ten years in prison and a €750,000 fine, under certain number of circumstances:

- When they are committed by an organised gang;
- When they are committed in circumstances that directly expose the foreign nationals to an immediate risk of death or injuries that may lead to mutilation or permanent infirmity;
- When their effect is to submit the foreign nationals to living, transport, working or housing conditions that are incompatible with the dignity of a human being;
- When they are committed by means of an authorisation or circulation document in a reserved area of an airport or port;

[13] Const. council dec., 20th of Nov. 2003, N° 2003-484 DC : JO, 27th of Nov.

- When their effect for minor foreign nationals is to distance them from their family environment or traditional environment (CESEDA, Art. L. 622-5).

Physical persons sentenced for one of the aggravated offences incur, in addition to the further punishments mentioned above, the supplementary sanction of confiscation of all or part of their property, of whatever kind, movable or immovable, individually or jointly owned.

Foreign nationals also incur a definitive ban from France, under the conditions set out in Articles 131-30 to 131-30-2 of the criminal law.

• **By legal persons**: legal persons can be declared criminally responsible, under the conditions set forth in Article 121-2 of the criminal law, for the offences defined in Articles L. 622-1 and subsequent of the CESEDA[14].

The sanctions are then:

- a fine, determined according to the methods of Article 131-38 of the criminal law, which states that: "The maximum level of the fine applicable to legal persons is equal to five times that defined for physical persons by the law that punishes the offence" (CESEDA, Art. L. 622-8). Therefore, the financial sanction applicable can amount to the sum of €150,000;
- in a case where a legal person is condemned for one of the aggravated offences, the court may decide on the confiscation of all or part of the property of the legal persons condemned, whatever the kind, movable or immovable, individually or jointly owned;
- dissolution;
- barring definitively or for a maximum period of five years from directly or indirectly exercising one or more professional or social activities;
- placing under judicial supervision for a maximum period of five years;
- closing of the business premises that were used to commit the criminal acts, definitively or for a maximum period of five years;
- ordering the exclusion from public contracts, definitively or for a maximum period of five years;
- confiscating the item used or that was intended for committing the offence or the item that was produced by it;
- posting of the judgement made, or broadcasting of the same, either by the press or by any other electronic means of public communication.

➲ *The offence of marriage or recognition of child of convenience*

The act of contracting a marriage or recognising a child for the sole purpose of obtaining, or enabling someone else to obtain, a residence permit or the benefit of protection against removal, or for the sole purpose of acquiring or enabling someone else to acquire French nationality, is an offence[15].

This offence is punished by a prison sentence of five years and a fine of €15,000. The same sanctions are applicable in the cases of organising, or attempting to organise, a marriage or recognition of a child for the same purposes and when the foreign national who has contracted the marriage has hidden his or her intentions from his or her spouse[16].

[14] CESEDA, Art. L. 622-8 and L. 622-9
[15] CESEDA, Art. L. 623-1, L. 623-2, L. 623-3
[16] CESEDA, Art. L. 623-1, L. 623-2

The sanctions incurred are increased to a prison sentence of ten years and a fine of €750,000 when the offence is committed by an organised gang.

• **Physical persons** that are guilty of the offence also incur the following additional sanctions:
- banning from residence for a maximum period of five years,
- banning from France for a maximum period of ten years or definitively,
-banning from the exercise of the professional or social activity during which the offence was committed for a maximum period of five years, subject to the conditions mentioned in Article 131-27 of the criminal law.

When the offence was committed by an organised gang, the physical persons also incur the additional sanction of confiscation of all or part of their property of whatever kind, movable or immovable, individually or jointly owned.

• **Legal persons** can be declared criminally responsible, under the conditions set out in Article 121-2 of the criminal law, for the offence of organising, or attempting to organise, a marriage of convenience, including as an organised gang.

➲ *The sanctions against the carriers*

The air, sea or road carrier that transports into France, including in transit, a foreign national who does not possess the documents required by the law or the international agreement is liable to an administrative sanction. This is a fine of €5,000, which may be imposed as many times as there are passengers involved[17].

The fine is reduced to €3,000 per passenger when the business has set up at the boarding place of the passengers and used a certified device for digitising and transmitting travel documents and visas to the French authorities responsible for border controls[18].

The fine is not incurred:
- if the foreign national has been admitted to France on account of an application for asylum that was not obviously unfounded,
- if the transport business establishes that the required documents were presented to it at the time of boarding and did not include an obviously illegal item[19].

Any transport business that disregards the obligation to transmit the data about people transported to the French authorities also incurs a fine of a maximum amount of 50,000 Euros for each journey[20].

➲ *Employment of a foreign national without a work permit*

Article L. 8211-1 of the Labour Law states that*: "Undeclared work and the employment of a foreign national without a work permit constitute illegal employment offences"*.

[17] CESEDA, Art. L. 625-1
[18] CESEDA, Art. L. 625-3
[19] CESEDA, Art. L. 625-5
[20] Law 2006-64 of the 23rd of January 2006, Art. 7

Consequently, the offenders may expose themselves both to sanctions related to undeclared work and to those related to the employment of a foreign national without a work permit.

• Pursuant to Article L. 8251-1, Paragraph 1, of the Labour Law, *"no one may, directly or by means of an intermediary, hire, retain in their service or employ for any period whatsoever a foreign national who does not possess documents authorising him or her to exercise a paid activity in France"*.

Paragraph 2 specifies that no one may hire or retain in their service a foreign national in a professional category, profession or geographical area other than those mentioned in his or her residence permit authorising him or her to work.

The law of the 16th of June 2011 adds a new offence that targets the project owners or main contractors, even if they have not directly participated in committing the offence of employing foreign nationals without work permits. No one may, directly or indirectly, knowingly engage the services of an employer of a foreign national without a work permit[21].

The result of the provisions of Article L. 8251-1 of the Labour Law is that whoever directly or indirectly employs a foreign national, for any period whatsoever, is responsible for checking that he or she possesses a residence permit.

Note that the offence defined in Article L.8251-1, Paragraph 1, may be accumulated with that defined in Article L. 622-1 of the CESEDA in the case of an employer who knowingly employs a foreign national without a work permit.

The main sanctions are provided for in Article L. 8256-2 of the Labour Law: *"Any offence in Paragraph 1 of Article L. 8251-1 is punished by a prison sentence of five years and a fine of €15,000. These sanctions are increased to a prison sentence of ten years and a fine of €100,000 when the offence is committed by an organised gang. The fine is applied as many times as there are foreign nationals involved"*.

The act of, directly or indirectly, knowingly making use of the services of an employer of a foreign national without a work permit is punished by the same sanctions.

In cases of reoffending, the maximum of punishment incurred is doubled[22].

Additional sanctions may also be imposed on physical persons guilty of this offence[23]:

- banning, for a maximum of five years, from exercising, directly or by means of intermediary, the professional activity in the exercise of which or during the exercise of which the offence was committed,
- ordering of exclusion from public contracts for a maximum of five years,
- confiscation of the objects used, directly or indirectly, to commit the offence or that were used on that occasion, whoever owns them, in so far as their owner could not be unaware of their fraudulent use, as well as the objects that are the product of the offence and which belong to the person condemned,
- posting or broadcasting of the judgement made,
- withdrawing civic, civil and familial rights,
- banning from residence for maximum period of five years.

[21] Labour law, Art. L. 8251-2
[22] Criminal law, Art. 132-10
[23] Labour law, Art. L. 8256-3, L. 8256-4, L. 8256-5

In addition, the physical persons guilty of the infraction also incur the supplementary sanction of the closing of the premises or establishments that they use and which were used to commit the incriminated acts. When it is imposed, this closing does not lead to the breaking off or suspension of the work contracts of the employees of the establishment concerned or any pecuniary losses on their part[24].

When the offences are committed by an organised gang, the supplementary sanction of confiscation of all or part of their property, of whatever kind, movable or immovable, individually or jointly owned, may also be imposed.

Furthermore, the foreign national guilty of the offence may be condemned to a ban from French territory for a maximum of ten years or definitively[25].

The law of the 16th of June 2011 creates an exemption from responsibility in favour of employers acting in good faith. The sanction defined in Article L. 8256-2 is not applicable to an employer who, on the basis of fraudulent documents or a document fraudulently presented by a foreign national employee, unintentionally took part in the fraud and without knowing about it made the declaration to the Social Security organisations mentioned in Article L. A221-10 prior to hiring, or the single hiring declaration and the check with the competent local administrations of the document authorising that foreign national to exercise a paid activity in France[26].

Persons who employ foreign nationals without work permits or who make use of the services of employers of foreign nationals without work permits may not bid for partnership contracts and for contracts or framework agreements with certain public or private entities that are not subject to the public contracts law[27].

• Introduced by Law 76-621 of the 10th of July 1976, the special contribution due to the OFII, set out in Article L. 8253-1 of the Labour Law, is an administrative fine imposed on businesses that employ foreign nationals without work permits.
The 2009 Finance Law increased this administrative sanction (the normal rate is 1,000 times the guaranteed minimum hourly wage rate). In 2010, its amount is equal to:

- 1,000 times the guaranteed minimum hourly wage rate (normal rate),
- 5,000 times the guaranteed minimum hourly wage rate in force if the employer has already been notified of the special contribution during the five years preceding the detection of the offence (reoffending) (Art. L 8253-8 of the Labour Law).

The guaranteed minimum rate used as a basis for calculation is set by decree each year. As from the 1st of January 2010, it was set at 3.31 Euros, which represents 3,310 Euros per employee employed.

The contracting authorities can also be subject to this administrative fine. Article L. 8254-1 of the Labour Law obliges them to make sure that, if the subject of the contract involves an obligation for a sum greater than 3,000 Euros, their co-contractor correctly complies with the provisions of Article L. 8251-1 of the same law forbidding the employment of foreign nationals without work permits. If they do not do this, they are held jointly responsible with

[24] Labour law, Art. L. 8256-7-1
[25] Labour law, Art. L. 8256-6
[26] Labour law, Art. L. 8256-2
[27] Law 2011-672 of the 16th of June 2011, Art. 75, III

the employer of the foreign national for the payment of the special contribution due to the OFII.

Regardless of the judicial proceedings that may or may not follow upon report of the offence, recovery of the special contribution is automatic once the offence in reported, under the terms of Article L. 8251-1, Paragraph 1 of the Labour Law.

Other offences

• Article L. 8256-1 of the Labour Law punishes **deception**. "The act of committing a fraud or making a fake declaration in order to obtain, or enable someone else to obtain, or attempt to obtain, the document authorising a foreign national to work is punished by a prison sentence of one year and a fine of €3,000".

The additional sanctions imposed in cases of employment of a foreign national without a work permit are also incurred.

Obtaining a work permit in the fraudulent manner and, in particular, employers who issue work contracts of pure convenience are also sanctioned in this article.

• Since Law N° 2007-1631 of the 20th of November 2007, **French interim employment agencies** are allowed to recruit and set to work newly-arrived migrant workers on temporary work contracts. An interim employment agency not established in France can also transfer temporary migrant workers to France within the framework of an offer of services.

Subject to international agreements, an interim employment agency is forbidden from providing any person whatsoever with migrant workers if the offer of services is carried out outside France[28].

The sanction incurred is a fine of €3,000. Reoffending is punished by a six-month prison sentence and a fine of €6,000[29].

The following supplementary sanctions may also be imposed[30] :

- banning from exercising the activity of interim employment agency for a maximum period of ten years;
- posting or broadcasting of the decision, under the conditions set forth in Article 131-35 of the criminal law.

The supplementary sanctions provided for by Article L. 5224-2 in cases of employment of a foreign national without a work permit are also incurred in the case of reoffending.

• **The staff register** must contain the surnames and names of all of the employees engaged by the establishment, for whatever account, in the order of hiring. These items of information are recorded in the register at the time of hiring in an indelible manner[31].

In the case of foreign national workers subject to the possession of a document authorising the exercise of a paid activity, the register contains the type and serial number of the document that acts as a work permit. In addition, copies of these documents must be appended to the

[28] Labour law, Art. L. 5221-4
[29] Labour law, Art. L. 5224-1)
[30] Labour law, Art. L. 5224-1)
[31] Labour law, Art. L. 1221-13)

register and kept available for the personnel representatives and checking agents on each distinct worksite or workplace of the establishment, for those of the foreign nationals that are employed there[32].

Offences against the provisions are punished by the fine prescribed for Class 4 offences, i.e., 750 Euros. The fine is applied as many times as there are people employed under conditions subject to the sanctions[33].

➲Provisions of the Code on entry and residence of foreigners and right of asylum: The fixed rate contribution representing the expenses of returning the foreign national to his or her country of origin

The law of the 26th of November 2003 created a new sanction against employers of illegally resident migrants[34].

Without prejudice to the judicial proceedings that may be taken against him or her and the special contribution paid to the French Office of Immigration and Integration (OFII), an employer who takes on a migrant worker in an illegal stay situation pays a fixed rate contribution representing the expenses of returning the foreign national to his or her country of origin. The amount of the fixed rate contribution is set by an order depending on the geographical area of the foreign national's country of origin[35].

In cases of accumulation with the special contribution mentioned above, an "upper limit" is applied at the level of €15,000 (per employee) for a physical person and €75,000 for a legal person (Article 626-1 of the CESEDA).

2-2 Institutional framework

2-2-1 The Inter-ministerial Committee on Immigration Control (CICI)

The Inter-ministerial Committee on Immigration Control sets the guidelines of government policy in the matter of the control of migration flows and adopts the report sent to parliament each year on the guidelines of the government's policy in immigration matters.

It is chaired by the Prime Minister and includes the Ministers of the interior, social affairs, defence, foreign affairs, national education, economy and finance and overseas territories[36].

2-2-2 The Ministry of the Interior, Overseas Territories, Local Authorities and Immigration

This Ministry is responsible for the control of migration flows, in particular[37] and, on this account, the ministry houses within it:

[32] Labour law, Art. D. 1221-23)
[33] Labour Law, Art. R. 1227-7)
[34] CESEDA, Art. L. 626-1 and R. 626-1)
[35] Ministerial Orders of the 5th of December 2006 (NOR : INTD0600959A and NOR : INTD0600960A)
[36] Decree 2005-544 of the 26th of May 2005
[37] Decree 2010-1444 of the 25th of November 2010 concerning the attributions of the Ministry of the Interior, Overseas Territories, Local Authorities and Immigration

2-2-21 The General Secretariat for Immigration and Integration (SGII)

This General Secretariat is responsible, in particular, for the admission and residency of foreign nationals, the fight against irregular migration and fraud and relations with countries that are sources of immigration.

2-2-22 The Central Directorate of Border Police (DCPAF)

Its mission [38] is to combat irregular migration at the borders, as well as throughout France. It is responsible for controlling migration flows using the methods specific to each type of border, for combating irregular migration in all its forms and the employment of irregular migrants throughout France, for removing foreign nationals who are the subject of a decision of return to the borders, an exclusion from France, expulsion, readmission or non-admission, for the fight against document fraud, for the safety of means of transport and for aeronautic police[39].

It also includes the Sub-Directorate of Irregular migration and Territorial Services (SDIIST). This sub-directorate deploys the resources aimed at achieving national objectives in the matter of the police of foreign nationals. It provides the national operational coordination of the police of foreign nationals and the material organisation for, and execution of the removal orders for illegally resident migrants. It carries out the technical examination of identity and travel documents, centralises and broadcasts information about fraud techniques and contributes to the improvement of the methods for detecting fraudulent documents and the security of the issuing of permits[40].

The SDIIST includes:

-***The documentary fraud office,***

-***The removal central section,***

- ***The Operational Coordination Unit for the Fight against Irregular migration*** (UCOLLI), which is responsible for centralising information and national operational coordination in the field, on behalf of the directorate general of the national police. It is also responsible for assessing the risk of irregular migration. It updates the national management chart of the fight against irregular migration. It may design, manage and coordinate either national or inter-zone scale operations or operations related to local migration events with national repercussions.

- ***The Central Office for the Suppression of Irregular migration and the Employment of Foreign Nationals without Permits*** (OCRIEST) [41]: its area of competence is dealing with offences relating to the illegal entry, movement and stay of foreign nationals, the employment of foreign nationals without permits and the forging and use of fake documents intended to facilitate these offences.
It is responsible for:

[38] Decree 99-58 of the 29th of January 1999
[39] Ministerial order of the 6th of June 2006, NOR : INTC0600544A
[40] Ministerial order of the 1st of Feb. 2011, NOR : IOCC1033181A
[41] Decree 96-691 of the 6th of August 1996

⇨ Running and coordinating the fight against those committing these offences and their accomplices, on the operational and national levels,

⇨ studying the means to be deployed to combat irregular migration and the employment of foreign nationals without permits in liaison with the other partners that may be involved, as well as the public, private and international organisations concerned,

⇨ intervening on request from the judicial authorities when the designation of a civil servant appears necessary, on request from the police services and gendarmerie, the tax authorities and the labour inspectorate to give them help, or in its own initiative, each time circumstances demand it and

⇨ having research carried out abroad, by competent international organisations.

Finally, the central office is authorised to enter into direct relations and correspond directly with the central services of other States exercising similar functions, for the purpose of cooperation and information exchanges, without prejudice to the application of administrative assistance agreements.

-***The escort, support and intervention unit***, placed under the authority of the head of the central removal section. It escorts people who cannot remain on French territory in France and abroad by land, sea or air. It lends its support to the central and local services of the Central Directorate of Border Police.

- ***The analysis, statistics and assessment of local services unit***.

Within the DCPAF, the job of the operational coordination unit for the fight against the smuggling and exploitation of migrants is to "*collect from various French and foreign partner services information for the national services responsible for the fight against the irregular migration networks….". It centralises, exploits and circulates this information and makes all the links necessary for connecting the investigating services"*[42].

2-2-23 The Central Office for the Fight against Illegal Employment

The central office for the fight against illegal employment[43] is attached to the sub-directorate of judicial police of the general directorate of the national gendarmerie. It cooperates with the OCRIEST.

The office is responsible for:

- running and coordinating judicial police investigations relating to illegal employment offences at national scale and on the operational level,
- observing and studying the most typical behaviours of the offenders and their accomplices,
- centralising information about this form of criminality by promoting its best circulation,
- assisting the units of the national gendarmerie and the services of the national police, the directorates and services of all the other ministries involved and the social protection organisations.

[42] Ministerial order of the 1st of Feb. 2011, NOR : IOCC1033181A
[43] Decree 2005-455 of the 12th of May 2005

2-2-3 The National Delegation for the Fight against Fraud

The decree of the 18th of April 2008 provided the administration with a new organisation for responding to the challenges presented by the development of all the fiscal, social and illegal employment frauds. The Inter-Ministerial Organisation for the Fight against Illegal employment (Dilti) was disbanded. A national organisation for the fight against fraud was created on a national level, one of the missions of which is to guide the activity of the operational committees for the fight against illegal employment and the local committees[44] for the fight.

The organisation carries out its actions in consultation with the central office for the suppression of irregular migration and the employment of foreign nationals without permits and the central office for the fight against illegal employment, for the questions within their fields of competence.

It provides the secretariat of the National Committee for the fight against illegal employment.

2-2-4 The National Committee for the Fight against Illegal Employment

The National committee for the fight against fraud, created by the decree of the 18th of April 2008, is called the National Committee for the Fight against Illegal Employment when it meets to examine questions relating to the fight against illegal employment[45].

It is responsible for determining the control and prevention guidelines relating to the fight against illegal employment and for ensuring that their implementation is coordinated, as well as for supervising the mobilisation of administrative departments and organisations charged with the fight against illegal employment and for ensuring that they are coordinated. It defines the actions that are the responsibility of the operational committees for the fight against illegal employment as a priority.

2-2-5 At the local level

As an experiment, a local committee for the fight against fraud or a single local committee for the fight against fraud was created [46] in the departments or regions, chaired by the prefect and made up of representatives of local social protection organisations and representatives of the State services. The list of these committees is fixed by ministerial order[47].

In each department, an operational committee for the fight against illegal employment coordinates the necessary control operations in its field of activity, as well as all the concerted operations between several administrative service organisations.

In regions or departments that are experimenting with the local committee against fraud, the operational committee for the fight against illegal employment retains its functions. On the

[44] Decree 2008-371 of the 18th of April 2008; Circular. DACG N° CRIM 08-15/G4, of the 29th of September. 2008: BO Justice, N° 2008/6, 30th of Dec.
[45]Decree 2008-371 of the 18th of April 2008; Circular. DACG N° CRIM 08-15/G4, of the 29th of September. 2008: BO Justice, N° 2008/6, 30th of Dec.
[46] Decree 2008-371 of the 18th of April 2008; Circular. DACG N° CRIM 08-15/G4, of the 29th of September. 2008: BO Justice, N° 2008/6, 30th of Dec
[47] Ministerial order of the 6th of August 2008, NOR : BCFZ0818793A

other hand, in departments experimenting with the single local committee against fraud, the operational committee for the fight against illegal employment ceases its functions.

A very recent ministerial order[48] has just authorised the automatic processing of data by the Paris Police Headquarters: *"the chief of police (service of the intelligence department responsible for the fight against irregular migration and the illegal employment of foreign nationals) is authorised to implement the automatic processing of personal data, known as "management of illegally staying migrants" (GESI), the purpose of which is to, on the one hand, ensure that the cases are managed in real time, from apprehension to return to the border, of foreign nationals apprehended by the services of the police department, and, on the other, to use the data for the purpose of statistical research".*

2-2-6 Partnership with the associations

Article R. 553-14 of the Code on entry and residence of foreigners and right of asylum (CESEDA) states: "*to allow foreign nationals held in an administrative detention centre to effectively exercise their rights, the Minister of Immigration has signed an agreement with one or more legal entities with the mission of informing the foreign nationals and helping them to exercise their rights. To this end, in each centre in which the entity is called on to operate, it provides information services by organising hotlines and providing documentation. These services are provided by a single legal entity per centre. The foreign nationals detained can avail themselves of the services without formalities under the conditions set out by the internal regulations*."

In 2010, the associations that operate in the administrative detention centres are: CIMADE, the *Ordre de Malte, Forum-Réfugiés, France Terre d'Asile* and ASSFAM.

3 - PRACTICAL MEASURES TO REDUCE IRREGULAR MIGRATION

3-1 Pre-Entry: practical measures undertaken to address irregular migration before the migrant arrives in France

France does not undertake information or awareness raising campaigns in the countries that are sources of immigration.

Since 2006, the concerted management agreements of migration flows and solidarity development signed with the countries of origin[49] include a part relating to irregular migration.

3-1-1 The fight against irregular migration networks

During 2010, 183 national and international networks were broken up, as against 145 in 2009: 147 by the border police, 28 by the National Gendarmerie, 5 by Police Headquarters and 3 by the Criminal Investigation Department.

[48] Ministerial order of the 21st of September, 2011
[49] See Paragraph 4-2-2

The trend that started more than a decade ago concerning the development of the French situation, changing from a destination country to a destination and transit country, has not only been confirmed but has above all become increasingly complex.

Irregular migrants and irregular migration networks have taken on board the concept of the Schengen area as a total area and no longer as a juxtaposition of Nation States. Now, the networks, particularly the Indo-Pakistani, Vietnamese, Chinese and African networks, attempt to obtain visas for any Schengen State in order to obtain a legal entry point into Europe so that they can move around there without fear for a certain amount of time. Then, the migrants, even in a fragile situation, become used to moving around Europe as opportunities and rumours of work and regularisation arise. This is also true for the migrants of source countries that do not need visas to come to Europe (particularly some Latin Americans). This also multiplies the directions of mobility on the European continent and has now made France a crossroads for flows following the South-North/North-South and East-West/West/East routes. These cross directional flows towards neighbouring countries are in addition to the now permanent ones towards the United Kingdom and the Scandinavian countries.

Since November 2009, the DCPAF (Central Directorate of Border Police) has operationally monitored the network of liaison officers and security advisers and set up a monthly activity report for this purpose, whose exploitation is used to make the fight against irregular migration networks and, more particularly, the pre-entry checks on passengers in airports before boarding, more effective. A table of indicators has been established for this purpose (number of people refused and for what reasons, or notified to the border police services for transits to be watched).

In parallel to this monthly report, a selective report on boarding checks has also been requested. This report gives the DCPAF real-time information about the pre-entry fight against the networks and enables it to engage in reactive operational use by transmitting information to the operational services of the DCPAF.

Thus, this pre-entry set up in the countries that are immigration sources enables the services to combat the networks with increasing effectiveness.

3-1-2 Checking the authenticity of marriages performed abroad before local authorities

Marriages performed abroad before foreign authorities must be the subject of a transcription at the Consulate; it is on the basis of this transcription that the foreign spouses of French nationals are authorised to request a long stay visa to settle in France.

Therefore, the authenticity of the marriage performed by the local authorities and the reality of the matrimonial intentions of the future spouses should be analysed before transcribing a foreign marriage certificate. Once the marriage certificate is transcribed, the foreign national spouse has the right to request a long stay visa in his or her status as the spouse of a French citizen, in order to settle in France with his or her French spouse.

In the cases of these marriages performed before the local authority, the foreign marriage certificate must be authenticated and the conditions set out by the French civil law must be complied with.

The number of marriages performed abroad and transcribed by the Consulates varies from one year to the other, but it has nevertheless increased significantly since 1995: French foreign outposts transcribed 23,546 marriage certificates in 1995; in 2009, this figure reached 48,301 or more than double in 10 years.
These transcriptions concern both marriages between French nationals (countries in which the local authorities do not recognise Consuls as registrars of births, marriages and deaths) and marriages between a French national and foreign national, which are by far the most numerous.

As an indication, the number of residence visas issued to foreign spouses coming to settle in France increased from 29,635 in 2007 to 36,669 in 2010.

The countries mainly concerned by this type of family immigration are, in decreasing order (the figure in brackets gives the number of spouse visas issued in 2010): Morocco (8,484), Algeria (6,967), Tunisia (4,660), Turkey (1,570), Senegal (1,219), Madagascar 1,243), Russia (726), Cameroon (579), China (644) and Ivory Coast (574).

There is no obligation to transcribe a marriage performed abroad in the French registers of births, marriages and deaths: as for any other foreign civil status certificate, the transcription is done upon request by the parties, or involuntarily when public order is involved. In the matter of marriage, a reinforced *a posteriori* check on the validity of the marriage is made at the time of accomplishing the transcription formalities. In cases where there are serious indicators liable to cast doubts on the validity of the marriage, the Consulates must postpone the transcription of the marriage certificate and refer the matter to the Public Prosecutor of the District Court of Nantes (competent for foreign birth, marriage and death certificates) with a view to the annulation of the foreign certificate; the Consulate produces a memorandum outlining the reasoning tending to prove that the marriage is fraudulent: most often it is a set of indicators that lead to this action, rather than an isolated item of information.

Then, either there seems to be no basis for annulation and the transcription is made for the purpose of using the certificate or the court decides to continue with the annulation and the transcription is made to this end.

• **Prior to the marriage**, and if the marriage is performed abroad, either before the local authorities or before the diplomatic or consular authorities, the French spouse or spouses must comply with particular conditions in order for the marriage to be recognised in France.

When the marriage is performed by a foreign authority, the marriage of a French national must be preceded by the issuing of a certificate of No Impediment, the drawing up of which presupposes, in particular, the publication of bans and in principle the hearing of the two spouses. If no certificate of No Impediment is issued previously, the transcription of the marriage in the French registers of births, marriages and deaths will depend, barring exceptions, on a prior hearing of the two spouses.

⇨ If a mixed marriage is performed by a foreign authority, the drawing up of the mandatory (for the French national) certificate of No Impediment presupposes the hearing of the two spouses under the same conditions as for a marriage, mixed or not, in France, with the sole difference that the hearing can be carried out either by the registrar of births, marriages and deaths of the local authority within which one of the future spouses resides, or by the competent diplomatic or consular authority in the case of residence abroad. The basic conditions for carrying out the hearing are identical.

⇨ If the mixed marriage is performed by French diplomatic or consular authorities (very rare: marriages can only be performed by the French diplomatic or consular authorities in certain rare countries designated by decree, for the most part countries in which only the religious form of marriages is recognised, the aim being to protect the French spouse so that he or she is not forced to marry in a form not recognised in France), the hearing is mandatory, as it would be if the marriage was performed in France, whether mixed or not.

Note that, like a Mayor, the consular or diplomatic authority can delegate the functions that it exercises as a registrar of births, marriages and deaths to one or more permanent civil servants of the civil status service for carrying out the hearing of the two spouses.

The issuing of the certificate of No Impediment for the French spouse: this procedure enables the consular official to check that the conditions are met for recognising the foreign marriage as valid under French law: being of age, personal consent, dissolving of a former marriage, parental authorisation if a minor, etc.

These checks are made on the foreign spouse upon presentation of the proof documents produced by the local authorities.

An individual interview between the future spouses and the consular officer is used to check the reality of the matrimonial intentions of the future spouses and to detect any fraud.

Various training courses in the consular disciplines, especially in matters of civil status and visas, are offered to the officers assigned these tasks, so that they understand the difficulties of these matters and are better able to assess the risks of fraud, so that they can detect it better.

Model questionnaires have been adopted in the Consulates. They are used as a basis for the interviews carried out by the consular officer and enable him or her to formulate an idea of the reality of the matrimonial intentions of the two future spouses.

The diplomatic and consular officers carry out an *a priori* check before starting on the procedure of transcribing the marriage certificate.

Under the terms of Article 171-7, Paragraph 3 of the civil law, when there are serious indications leading to the assumption that a marriage performed abroad may be null and void on account of Articles 144, 146, 146-1, 147, 161, 162, 163, 180 or 191, the diplomatic or consular officer responsible for transcribing the certificate immediately informs the Public Prosecutor’s office and suspends the transcription. The Public Prosecutor issues a judgement on the transcription within a period of six months. If he or she has not issued a judgement within this time, or opposes the transcription, the spouses may bring the case before the district court so that it may make a judgement on the transcription. The court decides within the month and an appeal may be lodged with the appeal court that decides within the same time.

When the court asks for the marriage to be declared null and void within the period of six months, it orders that the transcription should be limited to the sole purpose of submission to the judge. Until he or she has made a decision, a copy of the transcribed certificate can only be delivered to the judicial authorities or with the authorisation of the public prosecutor (Article 171-7, Al. 5 of the Civil Code).

Therefore, the control thus instituted may be an obstacle to the transcription of the marriage and consequently its validity in French law, in particular in terms of residence[50] or acquisition of French nationality.

Under the terms of Article 171-6 of the civil law, if the marriage has been performed despite the opposition of the Public Prosecutor, the transcription can only take place after the spouses have submitted a legal Withdrawal of Opposition decision. Furthermore, the diplomatic or consular authority can interview the spouses when the marriage has been performed contrary to the provisions of Article 171-2 of the civil law without production of a certificate of no impediment. It may, however, proceed with the transcription if it seems that marriage's validity is not in question with regard to Articles 146 and 180 of the civil law (Article 171-7 of the civil law).

If the proceedings for declaring the marriage null and void have been started on the initiative of the Public Prosecutor, only the District Court of Nantes is competent to proceed. Conversely, when the court of Nantes reckons that the case does not justify it proceeding with the annulation itself, the interested party may submit it to the district court of his or her home or place of residence. Therefore, annulation disputes are only partly centralised.

On the other hand, cases related to transcription are centralised at Nantes because the requests for the transcription of foreign marriages into the French registers of births, marriages and deaths are addressed either to the diplomatic or consular authorities based abroad or, sometimes, directly to the Civil Status Central Service (SCEC) and, in any case, the supervisory authority of the civil status officers serving in the foreign missions and the SCEC is the public prosecutor of Nantes.

• **After the marriage**, marriages performed abroad before a foreign authority must be the subject of a transcription in the Consulate; it is on the basis of this transcription that the foreign spouses of French nationals are authorised to ask for the long stay visa, in order to settle in France.

Therefore, the validity of the marriage certificate for a marriage performed before the local authorities should be analysed with regard to Article 47 of the civil law before it is transcribed; I.e., it is authentic if it is written in the forms commonly used in the country, unless other documents or external information, or information derived from the certificate itself can be used to establish that it is irregular, has been falsified or describes events that do not correspond to reality and finally does not ensure the reality of the matrimonial intentions of the future spouses. Once the marriage has been transcribed, the foreign spouse has the right to request a long stay visa in his or her capacity as the spouse of the French national, in order to settle in France with his or her French spouse.

These marriages performed before the local authority give rise to the authentication of the foreign certificate and the verification of the conditions set out by the French civil law.

The check may be made *a posteriori*, with regard to the provisions of Article 171-8 of the civil law which institutes a check on the validity of the marriage after its transcription, if new items of information based on serious indications lead to the assumption that the marriage performed according to the forms commonly used in the country may be null and void in terms of Articles 144, 146, 146-1, 147, 161, 162, 163, 180 or 191 of the civil law.

[50] CESEDA, Art. L. 313-11 and L. 314-9

The diplomatic or consular authority, or by its request, the French civil status officer, interviews the spouses. It informs the public prosecutor of the District Court of Nantes, which has six months as from the submission of the case to demand that the marriage be annulled. The Court of Nantes checks that there are no serious indications leading it to assume that the marriage is null and void due to lack of consent, lack of presence of the French spouse, polygamy, failure to take into account the impediments, lack of a public celebration or no competent public officer present at the celebration. If necessary, it initiates an investigation to check whether there is a set of conclusive items of evidence or not. If there is, the public prosecutor opposes the transcription – the spouses can then submit the case to the District Court of Nantes for it to decide on the transcription – and, in the negative, it instructs the central civil status service of Nantes to transcribe the foreign marriage into the French registers of births, marriages and deaths.

In a case of silence, the diplomatic or consular authority transcribes the marriage certificate, without prejudice to the fact that it can ask for annulation of the marriage later on the basis of Articles 180 and 184 of the civil law[51]. In practice, the law of the 4th of April 2006 provides for a delay of five years for requesting annulation.

In the case of an obviously fraudulent marriage, proceedings to annul the marriage should be initiated; representation by a lawyer is mandatory. The consequences of annulation are distinct from those of a divorce: the marriage is assumed to have never existed, except with regard to the children, whatever the circumstances, and, in the case of good faith of the other spouse, with regard to him or her (putative marriage).

When the indications are such that it can be presumed that the marriage performed before a foreign authority is null and void, the diplomatic or consular authority charged with transcribing the certificate immediately informs the public prosecutor and suspends the transcription.

The Public Prosecutor makes a judgement about the transcription within six months of the submission of the case.

If he or she has not decided when this period of time expires, or if he or she opposes the transcription, the spouses can submit the case to the district court so that it can make a judgement about the transcription of the marriage. The district court makes its judgement within a month. If there is an appeal, the court decides within the same time period.

When the court has published its decision, it informs the Ministry of Foreign Affairs' central civil status service at Nantes directly.

3-1-3 Checks on passengers by the carriers

Until 1992, the ministerial order of the 2nd of November 1945 concerning the conditions for the entry and stay of foreign nationals in France did not contain any provision particularly directed at the carriers. Hence, the carriers received relatively few sanctions on this account and it seems mainly to have occurred in areas where the transport professional had exceeded its profession's limitations in order to become a recruiter or a source of foreign labour.

[51] Civil Law, Art. 171-8, Paragraph 5

Since then, under the influence of European law, provisions specific to transport companies have appeared in the law governing foreign nationals as the States subject to immigration have got together to try and jointly fight against irregular migration.

It was thought that one of the ways of conducting this fight was to make the transport companies "assume their responsibilities". Thus, the convention signed on the 19th of June 1990 in Schengen specified that the ratifying States should insert provisions into their national legislation encouraging carriers to select the foreign nationals to be transported to European countries themselves before boarding.

According to Article 26, 1, b) of the convention, the internal legislation should state that *"The carrier shall be obliged to take all the necessary measures to ensure that an alien carried by air or sea is in possession of the travel documents required for entry into the territories of the Contracting Parties*". The same rules would be applicable to some group coach carriers.

France transposed the convention's provisions to an internal law by a law of the 26th of February 1992[52] which obliges carriers to carry out rigorous checks of the documents with which their passengers travel. A transport company that transports foreign nationals who do not possess the necessary documents is not only obliged to return the people concerned, but is subject to the application of sanctions.

A directive with the aim of harmonising the financial sanctions imposed on carriers was adopted on the 28th of June 2001[53]. This directive, which completes the provisions of Article 26 of the convention implementing the Schengen agreement, of the 19th of June 1990, presents the sanctions against carriers as an effective way to fight against irregular migration. It states that these sanctions must be dissuasive, effective and proportional. Moreover, the States are free to impose additional sanctions, such as immobilising, seizing or confiscating the means of transport or the temporary suspension or withdrawal of the operating permit.

According to the preliminary definitions of the Convention implementing the Schengen agreement, a carrier "*shall mean any natural or legal person whose occupation it is to provide passenger transport by air, sea or land*". It follows that only companies ensuring the transport of people on account of commercial contracts should be seen as the air or sea transport companies targeted by Article L. 625-1 of the CESEDA, which provides for sanctions against carriers.

The first obligation imposed on international passenger carriers is to check that they possess the documents that will enable them to disembark in the destination country upon boarding. Article L. 625-1 of the CESEDA prescribes sanctions against carriers that do not fulfil these obligations.

Carriers are also obliged to transmit data about the people carried to the competent national authorities.

[52] Law 92-190 of the 26th of February 1992

[53] Directive 2001/51/CE of the Council of the 28th of June 2001 transposed into Internal Law 2003-1119 of the 26th of November 2003 on immigration control, the stay of foreign nationals in France and nationality.

3-1-31 Checks on the travel documents

The obligations imposed by Article L. 625-1 of the CESEDA are not only incumbent upon the French national carriers, but on all carriers transporting travellers to France.

The carriers targeted by the law are:

- air and sea carriers,
- road carriers using international links in the form of regular lines, occasional services or shuttles with the exclusion of border traffic. However, road carriers benefit from more extensive facilities regarding the ways of fulfilling their obligations.

On the other hand, rail carriers are excluded from the field of application of rules concerning checks on passengers' travel documents. Nevertheless, they may be obliged to take charge of foreign nationals to whom access to European countries is refused. However, Law N° 2001-409 of the 11th of May 2001 authorises the approval of the additional protocol to the so called Sangatte[54] protocol, between France and the United Kingdom. This concerns the creation of offices responsible for checking people travelling on the rail link between the two countries.

The sanctions do not apply when the person travelling without documents is a French national or a national of a Member State of the European Union.

The law of the 26th of November 2003[55] extended the application of Article L. 625-1 to transit. Any air or sea transport company that, in the context of transit, disembarks a foreign national who is not a national of a Member State of the European Union and does not possess the travel document or visa required by the law or international agreement to which he or she is subject given his or her nationality and destination will be sanctioned.

A priori, only trips from States that are not part of the European Union or, at the very least, States that are not parties to the Schengen Agreement should give rise to checks on documents. Article 26 of the Schengen agreement only concerns trips made from a third country State.

Article L. 625-6 of the CESEDA, devoted to road carriers, concerns those that "operate on the international routes coming from a State that is not party to the Schengen agreement". However, nothing similar is indicated in the other provisions applicable to air and sea carriers.

The obligation imposed on the carrier by Article L. 625-1 of the CESEDA seems very much like an obligation to produce results. It is more than a simple obligation to check for the possession of travel documents: there is a ban on disembarking in France a foreign national who does not possess them.

Nevertheless, exonerating circumstances are defined: the sanction is not imposed in a certain number of cases and, particularly, if the carrier establishes that it has taken a certain number of steps. These exonerating circumstances amount to a qualification of the notion of obligation: it can be seen as simply an obligation to deploy means, with the important provision that failure to do so is sanctioned according to regulations that make the carrier responsible for proving the steps that it has taken.

[54] Additional prot. 26th of May 2000
[55] Law 2003-1119 of the 26th of November 2003, Article 27

Article L. 625-1 of the CESEDA obliges professional carriers to check that any passenger bound for France who is not a national of a Member State of the European Union possesses a travel document (generally a passport) and, in the case of nationals of States subject to these obligations, a visa. This check is limited to the possession of these two documents.

The Ministry of the Interior reckons that, for a passenger, the lack of a visa is the equivalent of bearing a false residence permit. As this residence permit normally exempts the bearer from the visa requirement, when the document is false, the lack of a visa can therefore be invoked against its bearer. The aim of this is to encourage the carriers to also examine the apparent genuineness of the residence permit. This equal treatment of a false resident and a foreign national lacking a visa has enabled the government to extend the carriers' obligations beyond what is strictly provided for by the law.

The carrier may be exonerated from any responsibility if it establishes that "the required documents were presented to it at the time of boarding and did not show any obvious signs of irregularity"[56]. Therefore, the company must not only check that the foreign national that it embarks possesses the required travel documents, visas or residence permit, but it must also ensure that "they do not show any obvious signs of irregularity".

Article L. 625-1 of the CESEDA does not impose the same rigour on road carriers as on other carriers. If such a company has not been able to check the travel documents and, where necessary, the visas of the passengers using its services, it is exempt from the fine on condition that it has proven that there was a check upon entry to the country of one of the contracting parties to the Schengen agreement or, if there was no such check, on condition that it got the competent services to make one upon entry to France.

The French services authorised to make this check are the national police services or, in the absence of such services, the customs services or national gendarmerie units located at the entry point to France[57].

If there is no police, gendarmerie or customs post at the entry point to France, the above-mentioned circular of the 15th of February 1993 specifies that the carrier is responsible for approaching the nearest authorised services "located in any case in the first border department crossed".

3-1-32 Transmitting data about the people transported

The directive of the 29th of April 2004[58] obliging carriers to transmit data about the people transported to the competent national authorities became effective on the 5th of September 2004. The law of the 23rd of January 2006 concerning the fight against terrorism transposes it into internal law[59].

In order to improve controls at the borders and fight against irregular migration, the Ministry of the Interior is authorised to implement the automatic processing of personal data gathered on the occasion of international movements coming from or going to States that do not belong to European Union. This processing is known as the "Air Passengers Database" (FPA).

[56] CESEDA, Article L. 625-5, 2º
[57] Decree 93-180 of the 8th of February 1993
[58] Council Directive 2004/82/CE of the 29th of April 2004
[59] Law 2006-64 of the 23rd of January 2006, Art. 7

The implementation of this automatic processing by the Ministry of the Interior's Central Directorate of Border Police was originally authorised, on an experimental basis, for two years, up to the 21st of December 2008[60]. CNIL (Information Commissioner's Office) deliberation 2011-048 of the 17th of February 2011 authorised the extension of the experiment until the 31st of December 2011.

These provisions are applicable to Mayotte, in the Wallis and Futuna Islands, in New Caledonia, in French Polynesia and in the French Southern and Antarctic lands.

The data subject to automatic processing is that:

- regarding the landing and boarding cards of the passengers of air carriers,
- collected from the optical reading strip of travel documents, national identity cards and visas of passengers of air, sea and rail carriers,
- regarding passengers recorded in the booking and departure control systems when it is held by the air, sea and rail carriers.

"Sensitive" personal data that, directly or indirectly, indicates the racial or ethnic origins, political, philosophical or religious opinions or trade union membership of people, or which is about their health or sex lives, is excluded from this data processing[61].

When the purpose is to prevent or suppress acts of terrorism, access to the file is limited to the individually nominated and duly authorised agents of the police and national gendarmerie services specially charged with the mission and to the police, national gendarmerie and customs services that are responsible for the safety of international means of transport[62].

The period for which the data is kept is five years as from the date of recording. However, the "known" or "unknown" in the Wanted Persons database and in the Schengen information system indication is only kept for twenty four hours. Within the framework of the fight against irregular migration, this data can only be consulted within the twenty four hours following its transmission. This new automated processing is the subject of interconnection with the Wanted Persons database and the Schengen information system.

The air, sea and rail carriers must collect the following data items and transmit them to the services of the Ministry of the Interior: number and type of the travel document used, nationality, full name, date of birth, border crossing point used to enter the territory of the Member States, transport code, departure and arrival times of the transport, total number of people transported and initial boarding point.

They are also obliged to communicate, if they have it, the data about the passengers recorded in the booking and departure control systems, other than those items mentioned above.

In accordance with the law on data processing and civil liberty, the air, sea and rail carriers are obliged to inform the people concerned about the processing of the data about passengers and that recorded in the booking and departure control systems.

The personal data is transmitted to the Ministry of the Interior (central directorate of border police) by the air carriers by secured electronic transmission immediately after the flight is

[60] Ministerial order of the 19th of December 2006, NOR : INTD0600967A.; CNIL Deliberation 2006-198 of the 14th of September 2006; CNIL Deliberation 2006-199 of the 14th of September 2006

[61] Law 78-17 of the 6th of January 1978, Art. 8, I

[62] Law 2006-64 of the 23rd of January 2006, Art. 7; Ministerial order of the 19th of December 2006, NOR : INTD0600967A

closed. The air carriers had to comply with these new obligations by the end of April 2007 at the latest[63].

Any transport company that disregards the obligation to transmit data incurs a maximum fine of 50,000 Euros for each trip. The procedure provides for guarantees similar to those currently applicable to carriers who transport foreign nationals lacking the required travel documents to France[64].

3-1-33 Taking charge of and returning foreign nationals who are refused entry

The obligation to take charge of, and return, foreign nationals who are refused entry, set forth in Article L. 213-4 of CESEDA, is based on Article 26 of the Convention implementing the Schengen agreement of the 19th of June 1990, which concerns air, sea and land transport companies (the latter term covers both road and rail carriers). The agreement provides for the creation of a two part obligation:

- Immediate taking charge ("without delay") of the foreign national refused entry,
- Return to another country, when it is required of the carrier.

In addition, Appendix 9 of the Chicago convention of the 7th of December 1944 includes, in the case of air carriers, the same rule, worded as follows: "each contracting State will ensure that a person judged to be not admissible is returned to the custody of the operator, which will be responsible for returning him or her promptly to his or her point of departure, or any other place where he or she may be admitted"[65].

The obligation to take charge of, and return, foreign nationals has approximately the same area of application as the obligation to check travel documents set forth in Article L. 625-1 of the CESEDA:

• **Carriers concerned**: The obligations are applicable to all carriers transporting travellers to France, from whatever source, whatever their nationality and whatever law is applicable to the transport contract.

Air and sea transport companies are the companies mainly concerned by these provisions.

Road carriers using the international links in the form of regular lines, occasional services or shuttles, with the exclusion of border traffic, are also concerned.

Rail carriers are concerned, subject to a slight modification of their obligations in the matter of the return.

• **Passengers concerned**: The obligation to take charge of, and return, passengers is only applicable in the cases of foreign nationals of States that are not members of the European Union.

Normally, these provisions would not be held to apply to foreign nationals who only transit through France and do not ask to be admitted, because the event generating these obligations to take charge of, and return, these passengers is the decision to refuse their entry to France.

[63] Decree 2006-1630 of the 19th of December 2006
[64] Law 2006-64 of the 23rd of January 2006, Art. 7
[65] Chicago Convention of the 7th of December 1944, Appendix 9, § 3.36

Nevertheless, the obligation to return (but not to take charge of) passengers is enforced in the case of interrupted transit: the air or sea carriers that have transported to France a passenger who should only transit through it may in practice, on requisition, be obliged to return him or her when the transit is interrupted, either due to an act of the transport company who should transport him or her to a final destination but refuses to do it (whatever the reasons for that refusal) or due to the authorities of the destination country, who refused him or her entry and sent him or her back to France.

The obligation to return is only enforced when the public authorities require the transport company to do it[66].

The return requisition

The competent authority for requisitioning the carrier is the "authority responsible for the checking of people at the border". It informs the carrier of the destination that it has chosen and the means of transport that it wishes to be used.

There is nothing in the law that obliges the government to use for the return the means of transport available to the company to which these provisions are applied. Therefore, the government may, for example, prefer to use air transport to expel foreign nationals who have entered France by sea, if, for example, the ship that brought them to France continues its route to destinations where they are no more admissible than in France.

The requisition may specify that the government wishes to see the foreign national escorted and consequently indicate the need of escort on transport tickets. It seems that the government has foreign nationals escorted quite frequently for security reasons at the expense of transport companies, even though this is not explicitly provided for by the laws. The financial consequences are heavy because expelling foreign nationals usually multiplies the cost of transport by five (generally two return tickets must be added to the foreign national's one-way ticket in the most frequent cases of a two-man escort).

The choice of destination

For the transport company, return usually involves transporting the foreign national who has been refused entry back to the point where he or she boarded.

However, this is not always the case, for several reasons. For example, if the foreign national has already been subject to a refusal of entry or a removal order in the country where he or she boarded, or if the means of transport on which he or she arrived in France continues its route to another destination where the foreign national would probably be refused entry.

Article L. 213-4 of the CESEDA mentions as alternatives the point at which the foreign national started to use the company's means of transport or, if that is impossible, the State that issued the travel document with which he or she travelled, or any other place where he or she may be admitted.

[66] CESEDA, Art. L. 213-4

Methods of return specific to rail carriers

According to Article L. 213-8 of the CESEDA *"when entry to France is refused to a foreign national who is not a national of the European Union, the rail transport company that transported him or her is obliged, upon request from the authorities checking people at the border, to make available to those authorities seats for transporting that foreign national away from the French border".*

The specific features of the regulations applicable to rail carriers are the following:

- the only case concerned is that of a foreign national who is not a national of the European Union who is refused entry to France: interrupted transit, which may entail the same obligation to return for other categories of carriers, is not concerned here,
- the law refers to providing, upon requisition by the authority, seats for the transporting of the foreign national simply "away from the French border", rather than to an obligation to return them.

These specific features give the obligation to return imposed on the rail carrier the aspect of a kind of participation in a public service mission rather than that of a sanction as for air, sea and road carriers. Remember that the rail carriers, unlike the other carriers, are not obliged to check the travel documents of their passengers upon boarding the train.

Thus, the rail carrier cannot be forced to repatriate these using other means than rail transport. It is only obliged to provide the government with seats up to the border (the circular of the 8th of February 1994 from the Ministry of the Interior, concerning the application of the law of the 24th of August 1993, specifies transport "to the first station located outside of France").

Obligation to pay for stay expenses

The transport company is obliged to take responsibility not only for the return, but also for *"the costs of taking charge of the foreign national […] during the time necessary for his or her return"*. These are the costs of food and lodging from the time of arrival at the border to that of his or her departure.

These provisions apply equally to air, sea, road and rail carriers. However, for the latter, administrative practice seems less rigorous. Thus, the circular of the 8th of February 1994 states that, in the case of this category of carriers, their obligation to bear the expenses of taking charge *"may simply in the end involve food expenses, with the exclusion of any responsibility for hotel expenses and any lodging expenses".*

3-1-34 Sanctions against the carriers

The sanction incurred is an administrative fine imposed by the Ministry of the Interior. Since the law of the 26th of November 2003, its maximum amount is €5,000[67]. It may be imposed as many times as there are passengers involved[68].

The amount of the fine imposed by the Ministry of Interior must be proportionate to the circumstances of the case and may also be modified by the administrative judge.

[67] CESEDA, Article L. 625-1
[68] CESEDA, Article L. 625-2

The fine is reduced to 3,000 Euros per passenger if the company has installed and used a certified device for digitising travel documents and visas and transmitting them to the French authorities responsible for border control at the place of boarding. The purpose of this is to encourage companies to digitise passengers' travel documents and visas at the place of boarding and to transmit them to the French authorities responsible for border control[69].

Before boarding, the transport company creates a digital image of the travel document and visa (if it is required) presented by each passenger. These images are stored on a CD-ROM. The transport company hands the removable media in a sealed envelope to the captain, senior cabin crew member or a security agent on board who is responsible for handing over this envelope immediately when the aircraft arrives at Roissy Airport to the police officers individually authorised by the airport's supervisor of border police. The officer who receives the CD-Rom containing the data must give a receipt to the transport company's representative. The digitised images are consulted by the individually authorised police officers.

The images are kept for seventy two hours, as from the time when they are handed over to the authorised police officer. The images may not be copied, duplicated or recorded. When this time expires, the removable media is destroyed. Nevertheless, the images may be kept, on paper media only, for the needs of an administrative or judicial procedure started within the seventy two hour period. The right to access the digitised images, within the limits of the time for which they are kept, is exercised with the airport's border police service. There is no right of opposition.

When the foreign national disembarked is an unaccompanied minor, the law of the 26th of November 2003 provides for a system of deposit of the amount of fines incurred by the carriers, with the objective of encouraging the carriers to be more attentive when they become aware upon boarding that a passenger is a minor unaccompanied by his or her parents[70].

When the foreign national disembarked in France is a minor without a legal representative, the sum of €3,000 or €5,000 must be immediately deposited with the official responsible for border control. All or part of this sum is returned to the company, depending on the amount of the fine imposed later by the Minister of the interior. If the company does not deposit the sum, the amount of the fine is increased to €6,000 or €10,000 respectively.

Article L. 625-1 of the CESEDA institutes a presumption of failure by the carrier in its obligation to check the passenger's documents, when it disembarks a foreign national who is not in possession of the required documents in France. Hence, it is up to the carrier to provide proof that it has fulfilled his/her obligations.

The fine is not incurred[71]:

- if the foreign national has been admitted to France on account of an asylum request that is not obviously unfounded,
- if the transport company establishes that the required documents were presented to it at the time boarding and that they did not include any obviously false item,
- if the carrier can prove the situation of *force majeure*. This third cause of exemption from responsibility is not provided for by Article L. 625-5, but the Administrative Court of

[69] CESEDA, Articles L. 625-3, R. 625-5 to R. 625-12 ; Ministerial order of the 11th of October 2006, NOR : INTD0600823A
[70] CESEDAC, Art. L. 625-4
[71] CESEDA, Art. L. 625-5

Paris accepted it in favour of an airline that transported a foreign national without a visa from Jeddah to Paris because the Saudi authorities had forbidden him to disembark[72].

3-1-4 The introduction of biometric visas

The purpose of biometrics is to prevent "visa shopping" and to combat identity fraud by means of certain identification of the people to whom visas are issued, either during border controls or during identity checks in France or in the country of origin if the issue of the visa is combined with a return visit to the Consulate after the visa's validity has expired.

On the 1st of July 2011, 168 Consulates (out of 192) authorised to issue visas, i.e., 88 % had operational equipment installed at the counters of their visa service that could be used to collect biometric data. 167 Consulates currently issue biometric visas. One station (Jerusalem) has not yet been able to implement this procedure, due to reasons related to the access of Palestinians to the General Consulate.

Deployment in 2 additional Consulates will take place in 2011.

Thus, on the 1st of July 2011, the following consulates issued "biometric" visas:

- All of the Consulates located in Africa, with the exception of Algiers and Johannesburg,
- All of the Consulates located in the Middle East, with the exception of Riyadh, Jeddah, Kuwait and Jerusalem (equipped but not in use),
- All of the Consulates located in America,
- All of the Consulates located in Europe, with the exception of London, Istanbul, Kiev and three Consulates located in Russia,
- All of the Consulates located in Asia-Oceania, with the exception of those located in Afghanistan, India, China, Thailand and Indonesia.

46.56 % of the visas issued by the Consulates in 2010 were "biometric" visas (17.20 % in 2007, 29.14 % in 2008 and 40.03 % in 2009).

3-2 Entry: practical measures undertaken to identify and detect irregular migrants at borders

3-2-1 Action at the airports

This action is mainly taken at the Roissy airport, where most entries into France by air are concentrated.

In the case of checks in the true sense of the word, efforts are being concentrated on checks at the aircraft door, which have increased by 4 % in relation to 2009 to reach a figure of 16,081 or a daily average of 44. The corollary of these checks, based on risk analysis, has been a significant decrease in the number of foreign nationals from unknown sources, i.e., people who find themselves in an international area without travel documents and tickets. This technique, which makes identification of the air carrier very difficult, is aimed at countering any attempt to return them.

[72] TA Paris, 3rd of July 1998, N° 9405214/4, Air France, the national airline

3-2-2 Action at the land borders and on the railway network

The pressure at internal land borders represents about 50 % of the total migratory pressure.

The borders to the south of mainland France are those that require the greatest vigilance (in 2010, 42 % of simplified readmissions were carried out to Italy and 35 % to Spain - source PAFISA[73]). Free movement of people within the Schengen area has led to the implementation of joint action at border areas and on the rail and road links.

The checks made on trains have been increased due to the action of the national service of rail police (SNPF), the 930 daily patrols of which secure around 1,430 trains and 2,337 stations; 54,192 people were apprehended during the year, including 20,514 for offences against the legislation on foreign nationals (56 per day). 323 people were apprehended during the two phases of the European High Impact Project (8th to 21st of March, 17th to 30th of May) (railway vector).

The majority of illegally staying migrants in the Calais area mainly entered the Schengen area via the Greek border: in practice, until the end of 2010, Greece was the main entry point for irregular migration into Europe and it was evidently beyond its own capabilities to control the migration pressure to which it was subject on its border with Turkey. It is reckoned that around 90 % of the people in an illegal situation in Europe have entered via Greece: some 128,000 foreign nationals having illegally crossed the Evros in 2010 (34,000 of whom were intercepted). However, this is still lower than the record year of 2008 (150,000 arrests). Greece's inability to control the migration flows required the intervention of the Frontex agency and the launch of the RABIT operation starting on the 2nd of November 2010 to support the country's border guards and caused a joint initiative to be undertaken by some Member States, including France, addressed to the European Commission, for the improvement of the "Schengen governance".

The Greek plan of action in the matter of asylum and migration, drawn up as a consequence, sets forth Greece's obligation to mobilise, with the support of the Member States, over the long term to remedy the failings found in its control of its borders.

3-2-3 Action at the external borders

3-2-31 Operations carried out by the FRONTEX agency

The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) encourages border cooperation, trains border guards and centralises the surveillance data communicated by the Member States. In addition, it uses the statistical data about irregular migration transmitted by the Member States and that gathered during operations to carry out risk analyses that determine the programme of future joint operations. It also helps the Member States to carry out joint return operations.

[73] PAFISA (Programme d'Analyse des Flux et Indicateurs Statistiques d'Activité): Programme for the analysis of flows and statistical indicators of activity managed by the border police.

France is one of the Member States most involved in the joint operations co-ordinated by the agency and particularly at Europe's southern sea borders, due to the geopolitical events in the Mediterranean area (Egypt, Libya and Tunisia). Almost 130 experts from the DCPAF were be deployed in this area in 2011.

The Frontex Agency's operational coordination activity includes the following three parts:

Operations carried out at the air borders

These mainly consist of mutual exchanges of border police officers to reinforce the migration flow controls. In particular, France takes part in the following operations:

⇨ "HAMMER" whose objective is that of targeting the most sensitive nationalities;

⇨ "HUBBLE" which looks at the most targeted European international airports;

⇨ The "Focal Point" operations, during which Roissy Airport plays host to foreign officers. For its part, the PAF (Border Police) has deployed a total of five officers at Athens Airport for five months in this context;

⇨ "MIZAR" whose objective is to detect fake documents, forgeries and documents illegally obtained in the main European international airports.

Operations at the land borders

These consist of deploying experts at sensitive crossing points:

⇨ at external land borders with Eastern and Balkan countries (JUPITER and NEPTUNE);

⇨ POSEIDON LAND (permanent operation) between Greece and Turkey, which succeeded the deployment of RABITs (Rapid Border Intervention Teams). As a reminder, the RABIT operation was launched by FRONTEX upon request by the Greek authorities at the end of October 2010 and the start of March 2011. France deployed 36 experts from the DCPAF within the framework of this operation.

Joint operations at the sea borders

These are based on the deployment of human resources, on land and air, and naval resources (surveillance aircraft and patrol boats):

⇨ in order to help Spain block the irregular flows coming from Africa, France participates in the maritime operation co-ordinated by the FRONTEX Agency, in the Spanish enclave of Ceuta on the external border with Morocco and in Algeciras (MINERVA), as well as at the Spanish external maritime borders of Cartagena, Motril and Almeria (INDALO);

⇨ it does the same with Greece, in order to control the flows crossing the Aegean Sea (POSEIDON). Similar operations take place off the coast of Italy (HERMES and AENEAS) in order to control the flows coming from Libya, Tunisia and Egypt.

In parallel to the human resources, France is periodically called upon to deploy national navy ships in the joint maritime operations (INDALO) as well as customs aircraft and boats (INDALO, HERMES). This naval contribution was made possible by prior formal commitment made by the Member States asking for the joint operation to readmit the people taken on board by the national navy to their countries. This written commitment remains a *sine qua non* condition for the use of French resources.

3-2-32 System implemented in case of sudden massive increase in the inflow of migrants

This was devised in 2010, after an unidentified ship landed on a Bonifacio beach in Corsica, carrying around one hundred Kurdish nationals; it appeared to be advisable to recall and update the procedure established in 2001 when the East Sea cargo vessel grounded off the coast of the Var region.

France submitted a list of national services tasked with border control to the European Commission: the Central Directorate of Border Police (*Direction Centrale de la Police aux Frontières*, DCPAF) and the Directorate-General of Customs and Indirect Rights (*Direction Générale des Douanes et des Droits Indirects*, DGDDI). It was also stated that border surveillance is the responsibility of the services of the Directorate-General of the National Police (*Direction Générale de la Police Nationale*, DGPN), the Directorate-General of Customs and Indirect Rights (*Direction générale des Douanes et Droits Indirects*, DGDDI), the Directorate-General of the National Gendarmerie (*Direction générale de la Gendarmerie Nationale*, DGGN) and the French Navy.

All scenarios need to be allowed for – with regard to both the possible number of new arrivals and their point of arrival. A review needs to be conducted of existing waiting zones and facilities that are likely to be erected in *ad hoc* waiting zones. In this way, it will be possible to go ahead with extending or creating a waiting zone suitable for the situation encountered without delay and by prefectural order.

Law 2011-672 of the 16th of June 2011 on Immigration, Integration and Nationality issued confirmation of this system.

3-3 Stay: practical measures undertaken to control irregular immigration in France

3-3-1 The fight against the illegal employment of foreigners

The Government has made the fight against illegal employment a national priority, this being justified by the adverse effects of this practice for both salaried workers and the public coffers[74] and because it is also a factor in clandestine immigration.

On a European level, the issue of immigration is at the heart of the concerns of a number of Member States. Thus, the European Pact on Immigration and Asylum, adopted by the European Council on the15th and 16th of October 2008 under the French Presidency reaffirmed the political intent and commitment of all Member States to implement a truly common policy with regard to migration. Member States have made a commitment to five actions, one of which is the fight against irregular immigration. To this end, the European Council "*invites Member States to fight with firmness, which is also in the interest of the migrants, using dissuasive and proportionate penalties against persons exploiting irregular foreign nationals…*". Such political intent and commitment has been formalised by a directive

[74] In this regard, the Central Agency for Social Security Bodies (*Agence Centrale des Organismes de Sécurité Sociale* – ACOSS)has estimated the amount of social contribution fraud through undeclared work at between 15.5 and18.7 billion Euros

providing for employer penalties and measures aimed at protecting the social and financial rights of foreign nationals without residence permits.

This directive (Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals) forbids the employment of illegally staying third-country nationals and provides for common minimum standards for obligations and penalties (criminal and administrative) for employers who infringe them.

The concept of illegal employment covers major infractions detrimental to public, social and economic order, which are criminal offences under employment legislation. The General Secretariat for Immigration and Integration to the Ministry of the Interior, Overseas Departments and Territories and Local Government (*Secrétariat Général à l'Immigration et à l'Intégration du Ministère de l'Intérieur, de l'Outre-mer et des Collectivités Territoriales)* is directly and principally concerned by the infraction constituted by the employment of foreign nationals without a work permit.

3-3-11 Changes to legislative and regulatory provisions relating to the fight against illegal employment in 2010

The system for combating illegal employment is organised on the basis of the central plan around the National Commission to Combat Illegal Employment (*Commission Nationale de Lutte Contre le Travail Illégal*, CNLTI), being one component of the fight against fraud. It is coordinated by the National Delegation for the Fight against Fraud (*Délégation Nationale à la Lutte Contre la Fraude*, DNLF), created by the Decree of the 18th of April 2008 and tasked with coordinating transversal initiatives between State services and social protection bodies. By way of an experiment, Local Committees for the Fight against Fraud (*Comités Locaux de Lutte Contre la Fraude*, CLLF) have been created in parallel with the DNLF.
This administrative system for combating fraud was overhauled in 2010, when it was decentralised by the creation of the Anti-Fraud Departmental Operations Committees *Comités Opérationnels Départementaux Anti-Fraude*, CODAF) located in each department under the authority of prefects and public prosecutors. These committees have jurisdiction over matters of social, financial and customs fraud and illegal employment. A national coordination plan to combat fraud is issued every year, based on the national plan for combating illegal employment and taking into account the focus and major areas of priority action determined by the CODAF.

3-3-12 Results obtained by the police and gendarmerie services in mainland France in 2010

Re-launched in 2005 at the instigation of the Inter-Ministerial Committee for Immigration Control (*Comité Interministériel de Contrôle de l'Immigration*, CICI), the results of the fight against the illegal employment of foreign nationals showed a slight downward trend in 2010, particularly for enforcement against the employment of foreign nationals without a work permit, which is measured through trends observed for index 94 ("employment of foreign nationals without a work permit ") of Statistical Report 4001[75]. This downward trend was also observed for the two other indices measuring illegal employment activity overall.

[75] Report 4001: please refer to Appendix 2

Global figures

For the year 2010, 12,479 persons were charged with infringement of employment legislation, compared to 13,170 in 2009 (- 5.2 %). Foreign nationals account for 32 % of the total number of persons charged, i.e., 3,988 persons (-1.3 % compared to 2009).

Three indices from the 4001 report enable us to keep track of these infringements:

- *Indices 93 and 95 relating to undeclared employment and the illicit supply of workers respectively*

Having greatly advanced in 2008, the results that enable us to assess illegal employment activity began to show a downward trend in 2009. This was borne out for both indices in 2010: 9,615 persons were charged under Index 93, compared to 10,037 in 2009, i.e., a 4.2 % drop; 256 persons were charged under Index 95, compared to 290 in 2009, i.e., a 11.8 % drop.

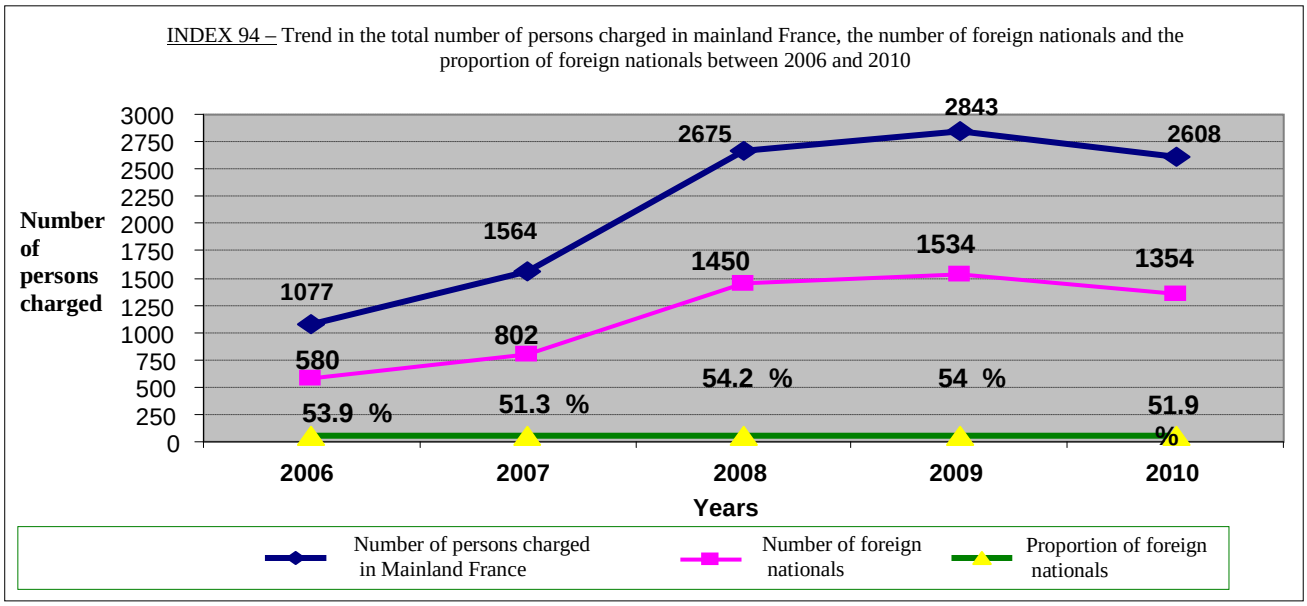
- *Index 94 relating to the employment of foreign nationals without a work permit*

The trend for this index is no doubt a reflection of the global crisis and its impact on economic activity in 2010, in so far it shows a reduction in the number of persons charged during the same year.

Report 4001 – results for Indices 93, 94 and 95 for mainland France

	2008	2009	Trend for 2009 /2008	2010	Trend for 2010 / 2009
Total number of persons charged	14,477	13,170	– 9.0 %	12,479	-5.2 %
– of which foreign nationals	5,157	4,382	– 15.0 %	3,988	-9.0 %
Proportion of foreign nationals	35.6 %	33.3 %	– 2.4 %	32.0 %	- 1.3

Source: MIOMCTI-DCPJ (Ministry of the Interior, Overseas Territories, Local Collectivities and Immigration - Central Directorate of Judicial Police)



Figures for the employment of foreign nationals without a permit

Following the increase in the results obtained during 2009, the number of persons charged with employing foreign nationals without a permit fell by 8.3 % in 2010 compared to 2009 (2,608 persons).
Nevertheless, even if recorded activity is down overall, the target set for the police services and gendarmerie units was met at a level of 97.6 %. Despite the negative effects of the crisis referred to above, the results obtained show a high level of involvement by the control agencies, particularly the border police.

The proportion of foreign nationals charged in this regard has stabilised at around 52 % of the total. For the first time, numbers are decreasing in volume (-11.8 % compared to 2009), reaching 1,354 in 2010.

The table below shows that the total number of persons charged has more than doubled since 2006, i.e., + 142 %. The same can be said of the number of foreign nationals, which increased by 133 % over the same period. The proportion of foreign nationals remains stable, ranging between 51 and 54 %.

Number of persons charged with employing foreign nationals without a permit (Index 94 - Report 4001)

	2006	2007	2008	2009	2010	Trend for 2010/2006	Trend for 2010/2006
Total number of persons charged	1,077	1,564	2,675	2,843	2,608	-8.3 %	+142 %
- of which foreign nationals	580	802	1,450	1,534	1,354	-11.8 %	+133.4 %
Proportion of foreign nationals	53.9 %	51.3 %	54.2 %	54.0 %	51.9 %	-2.1 %	-2 %

Source: MIOMCT-DCPJ

Number of persons charged with employing foreign nationals without a permit (Index 94 - Report 4001) by control agencies for the years 2009 and 2010.

		Public security	*Gendarmerie Nationale*	Police Prefecture	Border police	Judicial police	Total
Years	2009	250	695	406	1,491	1	2,843
	2010	212	504	352	1,535	5	2,608
% variation		-15.2 %	-27.5 %	-13.3 %	3.0 %	+400.0 %	-8.3 %

Source MIOMCTI/DCPJ-SDRES – DEP

With 1,535 and 504 persons charged respectively, the border police and the *Gendarmerie Nationale* are shown to be the main high-performing enforcing bodies.
Results for the border police have risen by 3 %, contributing to the 59 % proportion of all results obtained by the police and gendarmerie services.

3-3-13 Joint operations in the fight against illegal employment with regard to foreign nationals

Decided upon in 2005 by the Inter-Ministerial Committee for Immigration Control (*Comité Interministériel de Contrôle de l'Immigration*, CICI), joint operations have been organised regularly ever since. Those conducted in 2010, pursuant to the inter-ministerial circular of the 2nd of June 2010, have made it possible to achieve positive results.

In 2010, implementation procedures provided for a programme of two operations per semester and an additional operation in the 34 departments with seasonal employment activity. In total, 1,501 operations were carried out in 2010 (9.8 % more than in 2009), 23,830 persons were checked, 586 employers of foreign nationals were implicated, 761 irregular foreign nationals were discovered, over a quarter (26.15 %) of whom were actually removed, which is an increase of 25.2 % compared to 2009 (159 removals).

During the joint control operations, special attention was paid to the restaurant (480 operations), construction (445 operations) and caretaking (68 operations) sectors. The clothing manufacture, agriculture and cleaning sectors were not targeted to a great extent in 2010.

Figures for joint operations in the fight against illegal employment

	Years				Variation 2010/2009
	2007	2008	2009	2010	
Number of operations	831	1,220	1,367	1 501	9.80 %
Number of persons checked	25,539	28,752	29,505	23,830	-19.2 %
Number of EST employers	483	808	649	586	-9.7 %
Number of procedures	522	597	593	519	-12.5 %
Number of irregular foreign nationals	992	987	1 116	761	-13.8 %
Number of irregular foreign nationals removed	295	381	159	199	25.2 %

Source: MIOMCT –DCPAF (OCRIEST)

Involvement of the services (participation in joint operations)

Services involved	2008	2009	2010	Trend for 2010 / 2009
PAF (Border Police)	673	619	698	+ 12.8 %
SP (Public Security)	289	287	383	+ 33.5 %
PJ (Judicial Police)	7	8	4	- 50 %-
Gendarmerie	341	406	487	+ 20 %
GIR (Regional Intervention Group)	41	26	19	- 27 %
Employment Inspection	453	625	760	+ 21.6 %
URSSAF[76]	826	925	1 021	+ 10.4 %
MSA (farming mutual insurance system	75	59	79	+ 34 %
SDIG/SDLCIITIE (ex-Intelligence Bureau)	120	206	126	- 38.9 %
Veterinary Services	92	72	47	- 34.8 %
DDCCRF (Departmental Directorate for Competition, Consumption and Fraud control)	86	98	67	- 31.7 %
Tax	186	178	335	+ 88.2 %
Other services	405	209	486	+ 132.6 %

Source: MIOMCT-DCPAF (OCRIEST)

Administrative penalties enforced against employers of foreign nationals without a permit

Special and flat-rate contributions are administrative penalties applied to employers of irregular foreign nationals in order to work or stay in France. They are a general part of the policy for managing migration flows by cutting off illegal employment, which is itself fed by irregular migration. In this regard, these two fines would also appear to be one of the main tools made available to the public authorities for preventing, discouraging and limiting the illegal employment of foreign nationals without a specific permit.

They aim to:

- apply direct financial penalties to unscrupulous employers who, by employing foreign nationals, have contributed to the uncontrolled flow of foreign labour into the national employment market;
- reduce the vulnerability of the French social protection system, which supports the burden of tax and contributions only for companies following the legal rules and therefore finding themselves seriously penalised.

• ***Special contribution payable to the French Office for Immigration and Integration (Office Français de l'Immigration et de l'Intégration, OFII)***

The special contribution referred to in Article L.8253-1 of the French Employment Code is to be paid by employers of foreign nationals without a work permit. It is payable to the French

[76] URSSAF: Union for the collection of compulsory professional social security contributions and for distribution of family allowances

Office for Immigration and Integration (*Office Français de l'Immigration et de l'Intégration*, OFII). In 2010, this figure amounted to 1,000 times (5,000 times if not paid in the past) the minimum guaranteed hourly rate of salary, as provided in Article L. 3231-12 of the French Employment Code and fixed at 3.36 Euros as of the 1st of January 2011.

Recovery of the special contribution is independent from any legal proceedings arising from the report confirming the infraction.

Evolution of the number of cases submitted to the OFII

Year	2006	2007	2008	2009	2010	Trend for 2010/2009
Number of cases reaching the OFII	1,010	1,164	1,341	1,433	1, 240	- 13.5 %
Number of infractions recorded (employment of foreign nationals without a permit)	2,515	2,584	2,814	2,046	2, 438	+ 19.2 %
Average number of infractions per case	2.5	2.2	2.1	1.42	1.96	/

Source : OFII

Enforcement services and inspection bodies involved

Of the 2,438 infractions reported, 1,093 were on the basis of police statements (45 %), 515 from the gendarmerie (21 %), 813 from employment inspectors (33 %) and 17 by customs.

Activity sectors concerned by illegal employment infractions

Most infractions were recorded and/or observed in the construction sector (35 %), miscellaneous services (29 %), hotel and restaurant (21 %), caretaking, temping and cleaning (8 %).

The number of cases submitted to the OFII (French office for immigration and integration) fell by 13.5 % but the number of infractions recorded in 2010 went up 19.2 % compared to 2009, i.e., 2,438 infractions, as a number of cases reaching the OFII cover several infractions.

In total, 750 cases (-4 % compared to 2009) equivalent to 1,180 infractions (-7 % compared to 2009) were validated and marked for recovery.

In 2010, income receipts issued for special contributions generated 3.81 million Euros in tax revenue.

In the course of 2010, 158 informal appeals were sent to the OFII, i.e., around 9 % fewer than for the previous year, with 150 of them refused, 5 accepted and 3 partially annulled.

• Flat-rate contribution representing the cost of transportation back to the country of origin

The flat-rate contribution representing the cost of transporting foreign nationals back to their country, introduced in Article L. 626-1 of the Code on Entry and Residence of Foreigners and

Right of Asylum (Code de l'Entrée et du Séjour des Étrangers et du Droit d'Asile, CESEDA) by Law N° 2003-1119 of the 26th of November 2003, is payable by an employer who has given work to an illegally staying foreign worker. The amount is established by two inter-ministerial orders dated the 5th of December 2006. It is payable without prejudice to any legal proceedings and regardless of the special contribution payable to the OFII[77].

To date, this administrative fine has been implemented by the Prefect. In modification of Article L.626-1 of the CESEDA, Article 78 of Law N°2010-1657 of the 29th of December 2010 on finance for 2011, has conferred confirmation and payment of the contribution to the OFII and reimbursement to the State as from the 1st of January 2011.

The table below shows the figures generated by the implementation of flat-rate contribution procedures by Prefectures in mainland France during the years 2008 to 2010.

Number of proceedings initiated for the flat-rate contribution

	2008	2009(*)	2010
Number of procedures	596	643	590
Amount for recovery	€ 1,895,265	€ 2,116,965	€ 1,779,938
Amount recovered	€ 415,157	€ 483,707	€ 391,848
Number of disputes	23	27	27
Withdrawal of residence permit carried out or pending	66	55	39

Source: MIOMCTI /BLTIFI

(*) Consolidated figures for 2010

In 2010, Prefectures in forty-two departments in mainland France initiated proceedings for flat-rate contributions against unscrupulous employers (45 in 2009). These proceedings made it possible to recover a total figure of 1,779,938 Euros.
The amounts recovered in 2009, for which figures were consolidated in 2010, reach a total of 483,707 Euros.
During 2010, the recovery figures communicated to the Ministry by Prefectures in mainland France were evaluated at 391,848 Euros.

The Ile-de-France region is the most affected, with 47.8 % of the proceedings, 76.6 % of the sums for recovery and 80 % of the amounts recovered.

[77] Article L. 626-1 of the CESEDA states that the total amount of financial penalties for employing an illegally staying foreign national may not exceed the amount of criminal penalties provided for in Articles L. 8256-2 of the French Employment Code.

Verification of the administrative situation of foreign nationals applying for employment by employers at Prefectures

The activity of services involved in combating fraud, and particularly employment fraud, was backed up by the coming into force on the 1st of July 2007 of the requirement for employers to check the administrative situation of foreign nationals applying for employment (Article L. 5221-8 of the French employment code).

Two and a half years after its implementation, Prefectures in mainland France have been called in on 1,242,680 occasions, leading to the detection of 23,188 fake documents (1.9 %).

Verification of residence permits by employers (mainland France)

	2008	2009	2010	Trend for 2010/2009
Total number of referrals	523,438	483,045	543,539	12.5 %
Number of fake documents detected	9,967	4,116	2,597	-37 %
Percentage of fake documents	1.9 %	0.9 %	0.5 %	

Source: MIOMCTI-BLTIFI

The decrease in the number of fake documents detected leads us to believe that this procedure is continuing to be effective by discouraging fraud, but also that fraud has moved to the fraudulent use of genuine residence permits and French and European identity documents.

The special case of the Île-de-France region:
A comparative study of data from departments in the Paris region and other departments in mainland France reveals notable differences in terms of cases and detection of fraud.
The proportion of Prefecture referrals in the Île-de-France region is 56.2 % of the total number of referrals, while fake permits account for 90.5 %.
The Prefecture of police alone accounts for a quarter of the referrals in mainland France and 58.3 % of the forgeries detected.

3-3-2 The fight against identity fraud and document fraud

Irregular migrants use document fraud (concerning identity documents, residence permits etc.) to remain on national territory. The fight against fraud is an essential tool in this regard.

Faced with better trained staff and increasingly secure documents, in recent years forgers have tended to abandon traditional forms of fraud, such as counterfeiting and falsifying regulatory documents, moving to obtaining them illicitly. Departments need to remain vigilant with regard to the phenomenon of fraud as a whole, so that they can respond quickly to highly opportunistic fraudsters.

Taking into account the exceptional nature of the results in 2009, a year marked by the dismantling of a major network for obtaining documents illicitly, the types of fraud recorded in the PAFISA[78] statistical tool presented below illustrate the continued increase in obtaining documents illicitly since 2007. It is for this reason that a new priority approach was initiated in 2010 for making supporting documentation secure.

Types of fraud (in numbers of fake documents discovered)

	2007	2008	2009	2010
TOTAL incidences of fraud:	**14 363**	**14 163**	**14 826**	**12 097**
Amount of which that were forgeries	6 621	5 547	5 590	4 820
Amount of which that were falsifications	4 362	4 278	3 525	3 062
Amount of which that were fraudulent use	2 348	2 626	2 442	2 336
Amount of which that were fraudulently obtained	1 022	1 485	3 003	1674
DETAILS of fraudulently obtained documents				
French documents obtained fraudulently:	774	1073	2633	1296
Amount of which that were birth certificates	58	142	601	50
Amount of which that were national identity cards	143	164	714	269
Amount of which were passports (all types)	192	179	694	166
Amount of which that were driving licences	80	91	191	67
Amount of which that were residence permits(all types)	154	265	264	421
Amount of which that were visas (other than from the Prefecture)	10	23	21	37

Source: DCPAF

3-2-21 Changes in the institutional framework

As a strategic priority reiterated by the National Directive for the Orientation of Prefectures (*Directive Nationale d'Orientation des Prefectures*) 2010-2015, the fight against document fraud is also being re-organised in terms of the central administration of the Ministry of the Interior, Overseas Departments and Territories, Local Government and Immigration (*Ministère de l'Intérieur, de l'Outre-mer, des Collectivités Locales et de l'Immigration,* MIOMCTI).

On the 5th of December 2006[79], the Inter-Ministerial Committee for Immigration Control (*Comité Interministériel de Contrôle de l'Immigration*, CICI), instituted a system designed to combat document and identity fraud committed by foreign nationals. The regular attendance of a representative from the DNLF [National Delegation for the Fight against Fraud] at expert meetings of the GIELFI [Expert Inter-Ministerial Group for Combating Identity Fraud committed by foreign nationals] made it possible to initiate a joint approach in training in 2010.

[78] *Programme d'Analyse des Flux et Indicateurs Statistiques d'Activité* [Programme for the analysis of flow and statistical indicators of activity] managed by the border police.

[79] In particular, the creation of the Expert Inter-Ministerial Group for Combating Identity Fraud committed by foreign nationals (*Groupe Interministériel d'Expertise de la Lutte contre les Fraudes à l'Identité commise par des ressortissants étrangers*, GIELFI); the designation of national and local reference points for fraud; the adoption of a three-year plan to train staff and the supply to exposed services of equipment for detecting fake documents.

Moreover, the DNLF [National Delegation for the Fight against Fraud] and the local committees for the fight against fraud, which were created by Decree 2008-371 of the 18th of April 2008 to combat public finance fraud, have been continued by Decree 2010-333 of the 2nd of March 2010. An order of the same date sets forth new operating conditions for local committees, now known collectively as Anti-Fraud Departmental Operations Committees (Comités Opérationnels - Départementaux Anti-Fraude, CODAF).

The order of the 27th of August 2010 created a mission for the "prevention and fight against document fraud", managed and coordinated by the Secretary General of the MIOMCTI [Ministry of the Interior, Overseas Departments and Territories, Local Government and Immigration], made up of officers from all of the departments involved in combating the fraud phenomenon. It has jurisdiction over all documentation issued by the Ministry: national identity cards, passports, residence permits, driving licences and vehicle registration certificates.

3-3-22 Results obtained

The mobilisation of services in the fight against fraud in 2010 was marked by a new increase (+1.46% compared to 2009) in the overall number of persons charged over three indices of Report 4001[80]: Index 81 fake identity documents) – Index 82 (fake documents for the circulation of vehicles) - Index 83 (other fake administrative documents).

The proportion of foreign nationals charged has continued to increase since 2008 and stands at 59% across all indices. This proportion remains at a very high level (82.6%) for Index 81 infractions.

Index 81, 82 and 83

	2007		2008		2009		2010	
	No of persons charged	Proportion of foreign nationals	No of persons charged	Proportion of foreign nationals	No of persons charged	Proportion of foreign nationals	No of persons charged	Proportion of foreign nationals
Index 81	3,190	77.1 %	3,583	81.5 %	3,593	83.1 %	3,668	82.6 %
Index 82	2,362	46.9 %	2,401	46.1 %	2,604	50.1 %	2,567	52.2 %
Index 83	2,207	40.2 %	2,276	33.4 %	2,311	30.3 %	2,397	30.1 %
Cumulation	7,759	57.4 %	8,260	58.0 %	8,508	58.7 %	8,632	59.0 %

Source: DCPJ

A detailed analysis of this fraud is given below.

– Fake identity documents (Index 81)

The number of foreign nationals charged under this index has continued to rise over a number of years: +3.14% in 2007, +18.70% in 2008, +2.29% in 2009 and + 1.44% in 2010. Their relative proportion has also increased regularly since 2007 and, in 2010, stabilised at a high level comparable with the result recorded for 2009 (over 83% of the total number of persons charged).

In mainland France, over half of these charges were made in the following departments (in descending order): Pas-de-Calais, Alpes Maritimes, Paris, Bouches-du-Rhône, Yvelines, Val-de-Marne, Ille et Vilaine, Essonne, Oise and Val d'Oise.

[80] See Appendix 2

– Fake documents concerning the circulation of vehicles (Index 82)

The total number of persons charged *(Personnes Mises en Cause*, PMC) for fake documents concerning the circulation of vehicles, which are often used as "proofs of identity", fell by 1.42% in 2010 compared to 2009. However, the proportion of foreign nationals increased: 52.20% of the total number of persons charged, compared to 50.10% in 2009.

– Fraud concerning other administrative documents (index 83)

For this index, the number of foreign nationals charged fell between 2007 and 2009. It rose by +3% in 2010 compared to 2009. The proportion of foreign nationals compared to the total number of persons charged (PMC) for other instances of administrative fraud was over a third on average in 2010.

According to PAFISA (DCPAF) data, in 2010, the nationalities of foreign nationals holding fake documents most often picked up by the border police were as follows:

Nationality of holders of fake documents

(Classed in decreasing order/ French nationality not included)

MAINLAND FRANCE	2010	OVERSEAS	2010
Algerian	►	Comorian	►
Tunisian	▲	Haitian	►
Moroccan	▼	Malagasy	▲
Congolese	►	Suriname	▼
Albanian	►	Vanuatu	▲
Iraqi	▲	Dominican	▼
Chinese	▼	Brazilian	►
Nigerian	▲	Rwandan	▲
DRC Congolese	▲	Guyanese	►

Source: DCPAF

In mainland France, there are people of a wide range of different nationalities carrying fake documents: no single nationality accounts for more than 5% of the cases. The Senegalese and Afghans do not come under this classification, while Nigerians and DRC Congolese do appear. The two greatest increases concern Tunisians (+63%) and Algerians (+26%); the two greatest reductions concern the Chinese (-34%) and the Moroccans (-15%).

3-3-23 Initiatives conducted by various players in the fight against document fraud

Launched by the CICI in 2006, the national plan to combat fraud has made it possible to increase awareness in a number of players. In many cases, document fraud or identity fraud is a practice that encourages other types of infraction (deception, abuse of trust, social service fraud, infringement of legislation regarding foreign nationals, infringement of employment legislation, etc.).

At an inter-ministerial level, GIELFI meetings remain an essential place for informal dialogue and information open-sharing. Two major initiatives resulted from its work in 2010: a project to secure the main documents serving as proof of domicile using a 2D bar code (energy and telephone bills, etc.); a joint project to develop a module for delivering training on proofs other than proofs of identity, co-managed by the DCPAF and the DNLF. These projects are due to be finalised in 2011.

At the level of the central administration of the Ministry of Interior, the Immigration Directorate (Direction de l'Immigration, DIMM), the Central Directorate of Border Police (*Direction Centrale de la Police aux Frontières*, DCPAF), the Directorate-General of the National Gendarmerie (*Direction Générale de la Gendarmerie Nationale*, DGGN), the Public and Legal Affairs Directorate (*Direction des Libertés Publiques et des Affaires Juridiques*, DLPAJ), the Territorial Modernisation and Administration Directorate (*Direction de la Modernisation et de l'Administration Territoriale*, DMAT), the Central Directorate of Public Security (*Direction Centrale de la Sécurité Publique* , DCSP), the Central Directorate of Judicial Police (*Direction Centrale de la Police Judiciaire*, DCPJ), the Central Directorate of Internal Information (*Direction Centrale du Renseignement Intérieur*, DCRI), the International Cooperation Directorate (*Direction de la Coopération Internationale*, DCI) and the National Agency for Secure Documents (*Agence Nationale des Titres Sécurisés*, ANTS) are all mobilised to varying extents.

At the local level, the 101 prefect staff members tasked with fighting document fraud and identity fraud have received support in the form of the *Directive Nationale d'Orientation des Préfectures* 2010-2015. From the activity reports submitted by these contacts to the Immigration Directorate, it would appear that over 1,500 cases have been notified to prosecutors.

3-3-24 Training and equipment

A simple and effective way to combat fraud is to train officers in regard to how to detect falsification and forgery. The strong involvement of the DCPAF and the DGGN was demonstrated by the training of around 49,000 persons between 2007 and 2010 (a third of which were trained in 2010).

Moreover, the prefect staff in the fight against document fraud and identity fraud met again at the third annual seminar organised by the Immigration Directorate. Led by an expert from the DCPAF, training in 2010 was mainly aimed at enabling staff having completed the session to detect two types of identity fraud: identity theft and obtaining documents illicitly

In parallel with conducting these awareness-raising and training initiatives, mobile secure document scanners were made available to the gendarmerie and national police force by the *Agence Nationale des Titres Sécurisés* (ANTS) in 2010 (7,200 issued to gendarmes in March 2010 and January 2011 and 3,200 for police officers). Together with embedded IT terminals fitted in service vehicles, these devices can be used to identify the optical scanning zone on all documents adhering to international standards, scanning with contact and contactless electronic chips and the comparison of digital fingerprints with those contained in the chip inserted in the document. When connected to embedded IT terminals fitted into service vehicles, they can be used for checking purposes to detect fake French or foreign documents on the public highway and also to access police files (missing persons files, items reported lost – lost or stolen identity papers).

Finally, similar to the drive started in 1997 to equip Prefectures, providing basic detection equipment for nearly all services tasked with processing requests for official papers, a survey was carried out on the need for similar equipment across services tasked with handling visa applications and a catch-up plan spread over two years (2010/2011) was ordered as part of Action 3.5.1 in the schedule for the European external borders fund.

Initiatives conducted by the *Direction Générale de la Gendarmerie Nationale* (DGGN)

A network of investigators specialising in the fight against document fraud was set up, allocating at least one military person per department. Superior technical capability (two weeks of training delivered by the IRCGN [the French Gendarmerie's forensic science institute] in addition to the initial 4 days of training delivered by the DCPAF) enables the gendarmerie to act as a preferred point of contact for Prefectures, prosecutors, investigating judges and social bodies in each department.

Within the DGGN itself, a central office for the fight against fraud has been set up to coordinate activity and centralise operational information coming in from territorial units, particularly with regard to official document fraud.

An identity fraud awareness campaign run for local council staff under the jurisdiction of the gendarmerie made it possible to train 1,315 persons in 2010. The aim of the training was to prevent attempts to obtain administrative documents illicitly and to help raise the alarm if local council staff members observe manifestly fraudulent behaviour.

In addition to external and internal training initiatives, so-called "4-in-1" secure document scanners, when used with embedded IT terminals fitted in service vehicles, make it possible to scan electronic components in French or foreign identity and travel documents (optical scanning zone, contact or contactless component) thereby contributing to the detection of counterfeits. They also assist in the process of accessing police files (missing persons files, items reported lost and reported vehicles, etc.).

Initiatives conducted by the *Direction Centrale de la Police aux Frontières* (DCPAF)

The *Direction Centrale de la Police aux Frontières* is tasked with the centralisation of operational information relating to fake documents, applying it and sending it back out to various State services. Its expertise is based on having 300 police analysts specialised in document and identity fraud spread across the whole territory, plus on the 14,000 documents detected by the services every year.

The entire document fraud office training offering was updated in 2009 and new modules were developed. In 2010, 10,296 persons benefited from further document and identity fraud training: 3,918 police officers, 383 gendarmes, 247 municipal police officers, 1,286 members of Prefecture staff, 1,448 local council staff and 1,134 social protection officers.

All players in the identity chain also receive alerts on the latest trends for fraud, which are also available on the DCPAF intranet site (66 files in 2010).

With regard to identity fraud, a full range of tools has been put in place: a dedicated training module, identity fraud handbook and identity fraud alert bulletins that, by giving a detailed description of the operating methods of the fraudsters make it possible to identify organised networks. In 2010, a little over 38% of the networks (i.e., 70) dismantled related to document fraud.

Initiatives conducted by the Central Directorate of Judicial Police (*Direction Centrale de la Police Judiciaire*, DCPJ)

• *The central office for the fight against organised crime (Office central de lutte contre le crime organisé):*

The Central Office for the Fight against Organised Crime (OCLCO) has both an operational group exclusively dedicated to the fight against the traffic of fake documents and a consolidation office, which has the task of gathering, analysing and processing intelligence related to this topic

The operational group referred to above has the job of dismantling workshops for the production of fake documents linked to organised crime. At the time of police operations led by the OCLCO against criminal networks producing fake documents, irregular migrants were incidentally prosecuted for their illegal presence on French territory. However, there is no concerted action led by the OCLCO in this specific area.

• *The technical and scientific police sub-directorate (sous-direction de la police technique et scientifique):*

Within the forensic identification service of the technical and scientific police divisions, the Central Directorate of Judicial Police includes a group carrying out the technical analysis of documents using video-spectral observation and analysis equipment (VSC 600 and Luminisys) for identity and other documents. It is a recognised specialist in terrorism, particularly with regard to matters regarding the separatist organisation E.T.A, which has a unit specialising in fake documents.
Activity levels vary from year to year. The central service also has a reference base of typewriter fonts, which are still used by some forgers for identity documents that are still valid.

This service has trained 45 document correspondents within the Regional Forensic Identification Services (*Services Régionaux d'Identité Judiciaire*, SRIJ), who provide their technical expertise for community forensics investigators and magistrates.

Investigators also have a range of tools available to them to combat document fraud. The investigated individual file (*Fichier des Personnes Recherchées*, FPR) authorises a record to be made of any individual involved in identity theft or presenting fake civil status documents.
Finally, in the near future, the reported items and vehicle file *(Fichier des Objets et Véhicules Signalés*, FOVeS), a project shared between the national police and gendarmerie forces, will make it possible to manage flagged, stolen or lost identity documents.

3-3-3 Marriages

3-3-31 The fight against marriage fraud in France

Marriages between French nationals and third country nationals are a major avenue for integration, but can also be a way to commit migration fraud.

The following cases can be identified:

- Bogus marriage: the marriage contracted for the sole purpose of obtaining advantage (especially for migration purposes). The spouses have simply used the ceremony of marriage to achieve a result other than that of matrimonial union;

- Abused marriage: it is the aim of one of the spouses to obtain advantage (obtain a residence permit or citizenship for the host country), the aim not being revealed to the spouse;

- Forced marriage: consent by one of the spouses is not voluntary, but has only been given as a result of psychological pressure or physical violence.

Articles 63, 146, 171-4, 175-2 and 180 of the French Civil Code are aimed at preventing marriages of convenience and forced marriages. Article 184 renders null and void any marriage of convenience, whatever the motives guiding the persons involved in a bogus marriage and especially a forced marriage.

A circular issued by the Minister of State, Minister of Justice and the Liberties (*Ministre d'Etat, Garde des sceaux ministre de la justice et des libertés*) dated the 22nd of June 2010[81] determines and reinforces the procedures for implementing the policy aimed at preventing and penalising bogus marriages.

Article L. 623-1 of the Code on Entry and Residence of Foreigners and Right of Asylum (*Code de l'Entrée et du Séjour des Étrangers et du Droit d'Asile*) imposes a criminal penalty of 5 years of imprisonment and a €15,000 fine on anyone who has engaged in a marriage of convenience. Article L. 623-2 also provides for a five-year ban on entering the territory.

The latest available figures from the Ministry of Justice on illegal marriages relate to the year 2008 and concern the number of cases flagged by civil registrars at French diplomatic and consular authorities. The figures are as follows: 1,601 referrals to the relevant public prosecutor by civil registrars at French local councils on the basis of Article 175-2 of the French Civil Code (marriages between French nationals and mixed marriages) and 1,646 referrals by diplomatic and consular authorities on the basis of Article 171-7 of the French Civil Code. Prosecutors opposed 287 marriages. Of the 287, 17% were cases reported by a Consulate.

A bogus marriage can be understood as any marriage that is not based on the free and informed desire to take each other as man and wife, whether concluded solely for the purposes of migration or to obtain professional, social, financial or succession-related advantage.
However, bogus marriages are often difficult to characterise. It therefore behoves the person claiming absence of matrimonial intent to provide proof thereof.

3-3-32 Transcription of marriages performed abroad

In 2009, there were 84,000 mixed marriages (36,500 on national territory and 48,500 abroad).
In terms of entry flow to national territory, 37,236 spouses of French nationals were recorded in 2008 and 41,567 in 2009.

[81] Circular n° CIV/09/10 of the 22nd of June 2010 (*ministère de la justice et des libertés* [ministry of justice and civil liberties])

Law No. 2006-1376 of the 14th of November 2006 inserted a Chapter II bis under Heading V of Book 1 into the French Civil Code, containing three sections, the latter two of which are devoted to the celebration of marriage by a foreign authority and the transcription of the marriage into the civil records (Article 171-1 and subsequent articles of the French Civil Code).

The formality of transcription is indispensable for a marriage performed abroad with a male or female French national as spouse to have effect in France. It is subject to Articles 175-5 to 175-8 of the French Civil Code. Article 171-5 of the French Civil Code reiterates that the spouses shall be informed of the transcription procedure when the certificate of competence is issued.

To prevent forced marriages and marriages of convenience, the Law of the 14th of November 2006 introduced a restrictive measure relating to the transcription of the marriage act.

This transcription is carried out at the consular or diplomatic authority where the marriage is performed.

There is no specific office or administration with exclusively in charge of marriage between foreign nationals or between a French national and a foreign national in France (territory or Consulate). Foreign nationals are subject to the same rules as nationals. Specific documents establishing that a foreign national is in a position to contract marriage may be required with a view to checking their matrimonial status.

Compiling the marriage dossier is provided for in Paragraphs 347 and subsequent paragraphs of the general instruction on civil status (IGREC, 11th of May 1999, n° 347). The dossier will be compiled prior to the publication of the banns, a formality imposed by Article 63 of the French Civil Code.

The following supporting documentation is to be supplied in all cases:

- a certified copy of the birth certificate of each spouse dating back less than three months if issued in France and six months if issued in an overseas department, overseas territory or a Consulate (Article 70 of the French Civil Code).

Any extract issued by a foreign authority should only be accepted if it dates back less than six months (IGREC, 11th of May 1999, No. 352). It must be translated and authenticated but, when it concerns a French national, transcription in consular records may be required.

If it is not possible to obtain a deed, it may be replaced by a notarial deed. This notarial deed shall be issued by the district court of the place of birth or future place of domicile of the future spouse (Article 71 of the French Civil Code) ;

- proof of domicile, giving jurisdiction to the Mayor of the commune where one of the spouses has been resident for at least one month (Article 74 of the French Civil Code). If there is no text to regulate this formality, which simply consists of verification by the Mayor with territorial competence to celebrate the marriage, a sworn statement should suffice and the production of other documents sometimes required has no textual basis.

Civil status certificates issued by foreign authorities must be translated and authenticated (unless there is a dispensation by a specific international agreement) by a French Consul if abroad, by the Consul of the country where they were settled if in France, or by a foreign Consul; the translation must bear the translator's signature and seal. Article 7 of the Law of the 14th of November 2006 provided for a restrictive arrangement to combat civil status certificate fraud.

In the terms of N° 543, Paragraph 7 of the general instruction on civil status, "If the civil registrar does not have the competency to assess the validity of the civil status certificates presented, he/she must nonetheless ensure that all steps are taken to ensure that the certificates that he/she handles are as far as possible free of subsequent dispute based on items of which he/she was or might have been aware (IGREC, 11th of May 1999, N° 543). To this end, it is not always enough simply to produce only the civil status documents required for a French national. Indeed, these documents are determined according to the legal and administrative organisation of our country, do not necessarily correspond to the foreign State organisation and are therefore likely to fail in their intent. Many countries are not aware of the system of entries in the margins of birth certificates, so it is not always possible, for example, to know if the person in question is already married on sight of a certified copy of his birth certificate.

A civil registrar is therefore entitled to request the production of supporting documentation enabling him to know the civil status of future spouses and to check that the planned marriage is not contrary to public order. If he/she is unaware of which civil status documents will ensure such a verification he/she must request the production of a *certificat de coutume* [certificate of custom] indicating the civil certificates and documents that will enable him/her to confirm the exact civil status of the person in question, particularly where there was a previous marriage." (IGREC, 11th of May 1999, No. 546).

The certificat de coutume may be issued by the authorities of the country of origin (Consulate or administration) or by a lawyer.

If a mixed marriage is performed in France, Article 63 provides that an interview (separate, then joint as required) should be held under the same conditions as those for persons applying for a marriage between two French nationals or two foreign nationals:

- The municipal civil registrar may only dispense with adhering to this requirement under two circumstances: when he/she has no doubt as to the marriage intentions on sight of the documents submitted, or where an interview proves to be impossible. For these two exceptions to the rule, the civil registrar must put it in writing, sign it and add it to the marriage dossier. Such reasons must derive from an *in concreto* assessment of the situation of each couple.
- If the civil registrar has doubts as to the marriage intentions based on the documents in the application, it is appropriate for him/her to interview the couple separately, followed by a joint interview as required, to identify any possible discrepancies between what the future spouses say.

With regard to competency for conducting the interview before the marriage or transcription thereof, the Mayor may delegate the functions that he carries out as civil registrar for this to one or several officers in charge of civil status. It should be noted however that he may not delegate such functions for celebrating the marriage itself.

The civil registrar is tasked with checking the authenticity of the supporting documentation provided by the future spouses. If there is any doubt, he may call in the consular services of the country of origin of the foreign national or the services tasked with the fight against document fraud based in the Prefectures.

The aim of Circular CIV/09/10 of the 22nd of June 2010 relating to the fight against bogus marriages issued to the judicial hierarchy is to promote the detection of marriages of convenience.

Pursuant to the recommendations of a general inspection report by judicial authorities relating to the assessment of the conditions for conducting the fight against bogus marriages and submitted to the Keeper of the Seals on the 8th of December 2009, the instructions of June 2010 emphasise the role of providing information and training that public prosecutors must have regard to the civil registrars in their jurisdiction.

Signed by the Minister of State, Minister of Justice and the Liberties (*Ministre d'Etat, Garde des sceaux, ministre de la justice*), this document is designed to be circulated to local councils, police and gendarmerie services and the courts, all of which are asked to identify, report and, as appropriate, take proceedings in situations of fraud.

The circular is specifically designed to be accompanied by a concise "interview template" for civil registrars and a series of more inquisitive questions for police and gendarmerie services (when an enquiry has been launched by the public prosecutor) to verify the matrimonial intent of the future spouses. This is also why it is not intended for wider circulation:

"The proposed interview template is to be made available to the professionals concerned – and to them alone. With this in mind, you have the task of contacting the communes under your jurisdiction in order to explain the best ways of informing and even training staff in the detection of bogus marriages".

Primarily, the circular provides a definition of a bogus marriage: *"as being any marriage that is not based on the free and informed desire to take each other as man and wife, whether concluded solely for the purposes of migration or to obtain professional, social, financial or succession-related advantage"*.

The circular then goes on to emphasize the necessary partnership between the authorities involved in the fight against marriage fraud. It reiterates the existing law, underlining the necessity for providing good information for elected representatives, so that they are able to prevent a conviction, particularly for an offence.

The civil registrar, who cannot refuse to celebrate the marriage for the sole reason that the candidate for the union has irregular administrative status, must, where required, before notifying the courts of the case, gather together "a consistent series of suspicious signs". The interview of the future spouses, the compulsory nature of which is reaffirmed here (Article 63 of the French Civil Code), provides the opportunity to gather such signs. According to the circular, the signs of a bogus marriage are: the spouses confessing their reasons for marriage, discrepancies as to the circumstances in which the future spouses (or married couple if the interview is conducted by the consular authority before the transcription of the marriage) met, repeated and unexplained delays in producing documentation for the marriage dossier, a marked change in the lifestyle of a future spouse with modest or limited income or (the final sign in this long but non-exhaustive list) the irregular status of a candidate for marriage in terms of the rules for entry and stay on French territory.

Civil registrars are expected to carry out scrupulous checks of all items in the marriage dossier: domicile (from a number of supporting documents), legal capacity to marry where the spouses (or one of them) are (is) foreign nationals, verification of celibacy through the production of a *certificat de coutume* [certificate of custom] and identity documents.

The procedure for postponing or opposing the celebration of a marriage is described precisely to avoid any illegality. It includes an appendix containing a series of questions, which are particularly intrusive when asked by police or gendarmerie services called upon by the prosecutor following a decision to postpone.

The questions relate to the circumstances of their meeting ("When, where and under what circumstances did the French spouse meet the foreign spouse? Who proposed marriage? When?", etc.), previous migration history ("Has the foreign spouse ever been to France before? How many times, when and for how long? Where did they stay?"), the knowledge that French spouse has of the foreign spouse ("Where do the parents of the foreign spouse live? Have they been introduced to the French partner? If there is an age difference, obtain the observations of the French spouse"), on the family history of the French spouse and the foreign spouse on the celebration of the marriage ("Who paid the wedding expenses"?) and the period between the planned marriage and the day the enquiry was carried out ("was there an engagement? Was there a party? Was there an exchange of gifts?").

The last part of the circular encourages prosecutors to take criminal proceedings against persons involved in a bogus marriage: "bogus marriages, which break the social pact, most often by attempting to use marriage for personal or ideological ends, need to be fought with the highest level of determination".

Where there are serious signs allowing the presumption that the planned marriage is not based on matrimonial intent, the civil registrar may call upon the public prosecutor. Whereas Article 175-2 of the French Civil Code does indeed invoke in this regard the mere option held by the civil registrar and not an obligation, it is nonetheless true that this jurisdiction is part of completing a task relating to the defence of public order.

Article 175-2 of the French Civil Code permits the civil registrar to call upon the public prosecutor whenever there are serious signs allowing the presumption that the marriage might be annulled under Article 146 (i.e., absence of consent).

Serious signs often relate to irregular stay, to which are added other aspects such as a major age difference or the psychological fragility of the spouse.

Within fifteen days of being called upon, the public prosecutor must either allow the marriage to proceed, oppose it, or issue a postponement of the marriage. He must inform the registrar and the interested parties of his decision. The period of postponement may not exceed one month, and is renewable once with reasons given for the decision[82]. At the end of this period, the prosecutor must issue his decision as to whether the marriage may proceed or is opposed and give the reasons for such a decision[83].

According to the terms of Article 175-1 of the French Civil Code: *"The public prosecutor may oppose marriages for which he might request that the marriage be annulled"*. Article 184 lists the cases where the public prosecutor may ask for the marriage to be annulled. It is essentially the issue of whether the consent is real that will be addressed (Article 146 of the French Civil Code: *"There is no marriage without consent"*), the public prosecutor considering that the marriage will be null and void because the spouses have not consented to a true marriage. This article is linked to Article 175-2 of the French Civil Code.

[82] French Civil Code, Art. 175-2, Paragraph 3
[83] French Civil Code, Art. 175-2, Paragraph 4

Opposition to marriage is a legal act that obliges the civil registrar to postpone the marriage. It is therefore a serious act, regulated by the French Civil Code and listing the persons and reasons for which opposition is issued. Opposition must be issued by a court officer writ and notified to the two future spouses and the civil registrar celebrating the marriage. It must include obligatory details, particularly the text of the French Civil Code on which it is based. If lawful, it prohibits the celebration of the marriage. It lapses after a year unless it is renewed. When issued by the public prosecutor, it will only cease to have effect by the decision of a court (Article 176 of the French Civil Code).

As reiterated by the circular of the 22nd of June 2010, legislation having expressly given the civil registrar the power to issue an alert, he/she may legitimately exercise such power on any occasion when all the conditions are met. In support of this mechanism, legislation has provided that any civil registrar not following the instructions of Article 63 of the French Civil Code (publication of the banns, verification of supporting documentation and interview with the spouses) will be prosecuted before the regional court and be fined an amount between €3 and €30", notwithstanding the difficulty of establishing proof to apply the sanction.

Unless the marriage dossier is incomplete, the civil registrar has no inherent power to either refuse to celebrate a union to which the courts have not expressed opposition or to bypass a decision to oppose or postpone.

In the first instance, a refusal by the civil registrar to celebrate a marriage in the absence of any referral or restriction from the courts is an infringement of basic freedom constituted by the right to marry and constitutes an offence.

In the second instance, a civil registrar who celebrates a union despite the existence of a decision to postpone or oppose issued by the public prosecutor risks a fine of €3,000 plus damages and interest.

Opposition must be lifted if it becomes apparent that there was true matrimonial intent.

Interested parties may appeal to the regional court with jurisdiction where they live and then to the court of appeal, which shall each issue a decision within ten days (Article 175-2, Paragraph 5 of the French Civil Code).

Any dispute relating to a marriage performed in a Consulate shall be brought before the Regional Court of Nantes, and the same applies to marriages performed abroad.

Following a marriage, the administrative authority may initiate an enquiry in order to verify whether the spouses are living as man and wife within three years of the marriage having taken place. To this end, the authority may also interview the spouses separately.
For a report or complaint, the court may also be asked to initiate and enquiry to check whether it would be opportune to annul the marriage: checks may relate to whether or not the spouses are living as man and wife, but this is not as important here as it can be for granting or renewing a residence permit. The mere absence of living as man and wife after the marriage cannot on its own determine that the marriage is null and void.

If a marriage is clearly fraudulent, the public prosecutor, spouses and any person having an interest may undertake proceedings to annul the marriage if there is a consistent series of signs. The main difficulty lies in the probative force of the facts reported.

If such facts make it possible to establish that the act of marriage was performed for a purpose other than matrimonial, those involved in the infraction shall incur criminal penalties set forth in Article L. 623-1 of Code on Entry and Residence of Foreigners and Right of Asylum the Entry and Stay of Foreigners and Asylum Law (*Code de l'entrée et du séjour des étrangers et du droit d'asile*) and the administrative penalties set forth in Article L. 623-2 of the same code.

The criminal penalty is subject to a decision by the criminal court, a decision which brings the handling of the case to a close. The opening of an investigation is subject to a decision by the courts.

The criminal penalty determines the loss of right to stay and the administrative penalties provided in Article L. 623-2.

The Prefect may call on police or gendarmerie services to verify whether the spouses are living as man as wife within three years of the celebration of the marriage. To this end, he/she may also interview the spouses separately when making the decision.

If the couple is no longer living as man and wife, the Prefect will not renew a temporary *carte de séjour* bearing the reference "private and family life" issued solely on the basis of a marriage certificate.

If the couple is no longer living as man and wife, this in no way prejudices the lack of validity of the marriage and in no way annuls the marriage certificate.

In a known case of a marriage of convenience, abused marriage or forced marriage, if the facts make it possible to establish that the act of marriage was carried out for any purpose other than matrimonial, those involved in the infraction shall incur the criminal penalties determined in Article L. 623-1 of the Code on the Entry and Residence of Foreigners and Right of Asylum (*Code de l'entrée et du séjour des étrangers et du droit d'asile*) and the administrative penalties determined in Article L. 623-2 of the same code.

The criminal penalty is subject to a decision by the criminal court, a decision which brings the handling of the case to a close. The opening of an investigation is subject to a decision by the courts.

The criminal penalty determines the loss of right to stay and the administrative penalties provided in Article L. 623-2.

The act of marriage shall be annulled by the public prosecutor on the grounds of lack of consent (Article 146 of the French Civil Code).

In 2008, 1,554 proceedings to annul marriage were undertaken (46.8 % on the initiative of the Court of Nantes). 1,484 actions were recorded in 2009 and 1,631 in 2010, with 1,076 and 1,065 ending in annulment, respectively.

3-3-4 Identification of routes and smuggling

The understanding and representation of irregular migration phenomena have become major issues – in terms of both risk analysis and threat evaluation.

This task is the responsibility of the Strategic Analysis Unit *(Unité d'Analyse Stratégique*, UAS) of the Border Police (*police aux frontiers*, DCPAF). It receives real-time intelligence gathered by OCRIEST, which is itself charged with the national coordination and international cooperation in this regard.

A number of initiatives have been conducted:

- Sources and national/international partners have been diversified in order to monitor the migration situation in real time;
- A number of exploratory missions (Egypt, Kosovo, Algeria, Ukraine, and Bosnia) and audits have been conducted, increasing sources of information and contacts;
- Partnerships with EUROPOL, INTERPOL and FRONTEX have been strengthened; active cooperation has been set up with UNODC through training sessions and exchanges with overseas police officers and magistrates;
- The linguistic terms used by the authorities in charge of the fight against irregular migration change from one country to another and apply to different situations. It has proven necessary to develop shared assessment tools and to standardise terminology in order to enable European bodies to speak the same language and perceive the same reality in terms of migration. At the G8 Summit, France proposed the definition of a common analytical standard, the first stage of which is to survey good practice in current use;
- A project of mapping migration flow in transit through or towards France is currently underway. The map will be an operational tool (risk analysis) as well as a general source of information.

3-4 Pathways out of irregularity

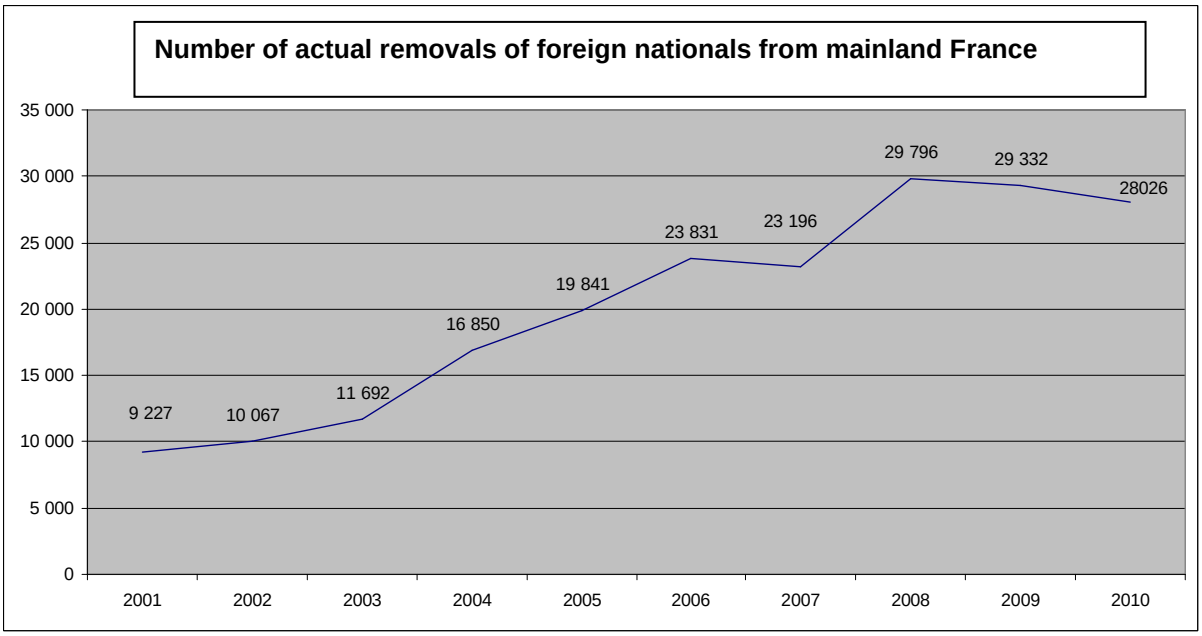
3-4-1- Removal of irregular migrants

Irregular migrants are to be removed.

3-4-11 Execution of removal orders

The graph below shows the trend in actual removals between 2001 and 2010.

During 2010, 28,026 removal orders were executed from mainland France, this being 100.09 % of the national target set at 28,000 orders. There is a clear reduction of 4.5% in removals compared to the previous year (29,332 removals).



Source: MIOCT-DCPAF

In 2010, 19,622 forced returns were made compared to 21,020 in 2009, i.e., a reduction of 6.6%.

The total of 8,404 assisted returns only covers Assisted Voluntary Return without a removal order. The proportion of assisted returns increased in 2010, reaching 29.9% of the removals counted (28.2% in 2009). Assisted returns increased by 1.5% in 2010 compared to 2009.

The total rate of execution for all orders increased slightly in 2010 compared to the previous year, increasing from 30.9% to 33.2%, i.e., a 2.3 point increase. However, an examination of the rates of execution by type of order allows us to assess the increase in 2010 compared to 2009 in greater depth.

Thus, in terms of APRF [orders for escort to the frontier] and OQTF [obligations to leave French territory], which alone account for 85% of the total number of orders issued in 2009, the improvement in the rate of execution appears more significant than that observed for exclusions from territory and expulsion orders – orders that quantitatively less numerous. In fact, the rate of execution of APRF increased from 26% in 2009 to 28.8% in 2010, i.e., a 2.8 point increase. With regard to OQTF, there is also an increase in the rate execution, from 12.2% to 13.8%, i.e., a 1.6 point increase. By cumulating APRF and OQTF, the rate of execution increased from 19% in 2009 to 20.6% in 2010.

Looking at the most highly represented nationalities (actual removals from mainland France) in 2010, Romanian nationals are the nationality with the highest level of removals (29.9%). As for other EU countries, the removal of Romanian nationals is legally possible on the grounds of disturbance of public order or following the loss of right to stay beyond three months on national territory but, because of the transitory period for access to the employment market, infractions against employment legislation can be added to this.

Maghreb nationals (Algeria, Morocco and Tunisia) come next after Romanian nationals.
These four nationalities alone account for 53.6% of persons actually escorted to the frontier. This trend has remained stable over the last three years.

Orders issued and executed

Orders	2009		2010		Trend	
	issued	executed	issued	executed	issued	executed
Banning from French territory (Interdictions du Territoire Français, ITF)	2,009	1,330	1,683	1,201	-16.2%	-9.7%
APRF	40,116	10,424	32,519	9,370	-18.9%	-10.1%
Expulsion orders	215	198	212	164	-1.4%	-17.2%
Readmission decisions	12,162	4,156	10,849	3,504	-10.8%	-15.7%
OQTF	40,191	4,946	39,083	5,383	-2.8%	8.8%
Voluntary returns (assisted)	n/a	8,278	n/a	8,404	n/a	1.5%
Totals	94,693	29,332	84,346	28,026	-10.9%	-4.5%

Sources: MIOMCTI - DCPAF

3-4-12 The Inter-Service Removal Divisions (Pôles Interservices Eloignement, PIE) system

As part of the general revision of public policy, Prefecture support cells were set up in 2009 for all Prefectures placing an irregular migrant in detention in one of the administrative detention centres in Lille-Lesquin, Lyon Saint-Exupéry, Saint-Jacques-de-la-Lande or Toulouse-Cornebarrieu. The area of activity of the "*pôles interservices éloignement*" (PIE) was defined by Circular NORIMIM0800050C of the 31st of December 2008. In 2010, three additional Prefectures were introduced to the system: Moselle, Seine-et-Marne and Bouches-du-Rhône.

These new structures are affected to two areas of activity, one relating to State representation before ordinary and administrative courts, and the other to the operational aspects of removals (management of asylum applications and booking of transport services).

The implementation of this system has made it possible to improve the rate of execution of removal orders issued by acting in two ways:

- strengthening the legal security of administrative acts, specifically through systematic State representation before ordinary and administrative courts (members of the civil or military reserve having detailed knowledge of the legal procedure or, failing that, Prefecture staff);
- reducing case processing periods by centralising the physical management of asylum and routing applications.

The effectiveness of the PIE system can be measured through an indicator, the "CRA [administrative retention centre] performance rate", which is calculated by relating the number of irregular migrants placed in administrative detention with the number of detainees removed.

The performance rate (calculated in the same way as for 2009, i.e., 4 CRA PIE, the 3 new CRA PIE in 2010 having been included during the year) of CRAs in mainland France without a PIE was 37 % in 2010. That for CRAs with a *pôle interservices éloignement* is noticeably higher at 42% for 2010, i.e., a 5 point increase.

3-4-13 Obstacles to implementing removals

Despite the strong involvement of all of the central and local players in charge of the fight against irregular migration, the execution of removal orders continues to come up against certain problems, which are essentially ancillary to action by Prefectures, police services and gendarmerie units. These problems can be explained by a number of factors, some of which merit special attention.

➲ ***Procedures cancelled by an ordinary or administrative court***

In 2009, cancellations of removal procedures by ordinary or administrative courts accounted for 33.8 % of failures recorded when removal orders were executed. The rate was 35.6 % for 2010.

In close liaison with the offices for foreigners at Prefectures, detention teams have made an effort to improve the quality of procedures (stopping and questioning, notification and exercise of rights while in custody or administrative detention).

➲ ***Issue of consular passes***

The global issue rate for consular passes within deadline showed strong progression until 2005 (45.7 %), notably due to the active policy employed by France with regard to source countries for immigration and the effects of extending the maximum period of administrative detention from twelve to thirty-two days, but has decreased since then, the 45.7 % rate dropping to 42.1 % in 2006 and 36.1% in 2007.

For 2010, the issue rate for consular passes within deadlines across all nationalities was 32.7 %.

The failure to issue a consular pass within the detention period, which would enable the execution of an expulsion order, was the second reason for the failure to execute orders issued (35.5 %).

Consular passes

Year	Pass applications	Pass obtained within deadlines	Pass obtained outside deadlines	Pass refused	Applications with no response (applications - responses)	Rate of issue within deadlines	Global issue rate
2006	13,551	5,703	245	3,726	3,850	42.1%	43.9%
2007	14,558	5,248	425	4,171	5,012	36.0%	39.0%
2008	14,012	4,524	320	3,806	4,905	32.3%	34.6%
2009	12,219	3,823	404	3,870	3,861	31.3%	34.6%
2010	10,668	3,493	318	3,766	2,522	32.7%	35.7%

Source: MIOMCTI

Less cooperative countries have been the subject of special monitoring since 2009. The table below shows trends in issue rates for these 21 countries. Overall, the rate has risen from 19.6% in 2009 to 23% in 2010 because of the initiative made with regard to these countries, but it still remains lower than the national average for all countries together (32.7%), i.e., 9.7 points below.

It should be noted that:

- Only two countries (Haiti being treated as a separate case), China and Armenia, have a higher rate than the average for all countries, for the whole of 2010: 52% in 2010 for China and 34% for Armenia;
- In 2010, eight countries show an issue rate lower than, or equal to, 10% (Afghanistan, Angola, Ivory Coast, Gabon, Iraq, Mali, Pakistan and Russia);
- Five countries show an issue rate between 10 and 20% (Bangladesh, Egypt, India, Mauritania and Vietnam);
- Finally, five countries are between 20 and 32% (Cape Verde, Congo-Brazzaville, DRC, Senegal and Tunisia).

Several types of problem were observed:

- The behaviour of the third country national who rids him/herself of all personal documents, in particular his/her passport;
- The sometimes contestable practices of some consular authorities, which result in responses outside deadlines, which therefore cannot be used, refusals or failures to respond;
- The increasing practice of some consular authorities of only issuing a pass when a removal decision has been taken against their nationals, when the nationality of the persons in question is not contested;
- The absence of consular representation in France (applies to Surinam and Sierra Leone).

A new action plan for the improvement of consular pass issue rates was decided and implemented in the spring of 2011. Of the 21 countries referred to above, it targets a list of eight countries deemed to be a priority: Mali (10%), Senegal (21.5%), Pakistan (6.6%), Democratic Republic of Congo (28%), Republic of Congo (29.9%), Mauritania (12.3%), Angola (10%) and Bangladesh (16.7%).

The procedure applied consisted in summoning the Ambassadors of the eight countries posted in France in order to:

- remind them of the need for a real improvement in consular pass issue rates,
- inform them that, if there is no improvement by a certain deadline, retaliatory measures will be taken in the form of a reduction of consular facilities and increased inspections by the French authorities with regard to the issue of visas to their nationals,
- inform them that a regular review will be carried out with them with regard to the significant progress expected.

Issue rates in the 21 countries said to be un-cooperative

Nationality	2009			2010			Concerted management agreement on migration flow
	total number of applications	LPC issued in good time	Issue rate	total number of applications	LPC issued in good time	Issue rate	
Afghanistan	115	7	6.1%	46	4	8.7%	
Angola	75	9	12.0%	50	5	10.0%	
Armenia	93	17	18.3%	88	30	34.1%	
Bangladesh	46	3	6.5%	48	8	16.7%	
Cape Verde	67	18	26.9%	43	14	32.6%	
China	458	131	28.6%	314	165	52.5%	
Congo (DRC)	294	80	27.2%	164	46	28.0%	
Congo Brazzaville (Republic of)	104	24	23.1%	97	29	29.9%	Signed on 25/10/07, in force as of 01/08/09
Ivory Coast	142	7	4.9%	109	7	6.4%	
Egypt	499	72	14.4%	498	61	12.2%	
Gabon	57	2	3.5%	69	5	7.2%	
Haiti	59	7	11,9%	3	3	100.0%	
India	354	58	16.4%	443	56	12.6%	
Iraq	148	2	1,4%	153	6	3.9%	
Mali	426	40	9.4%	289	29	10.0%	
Mauritania	106	16	15.1%	73	9	12.3%	
Pakistan	196	40	20.4%	198	13	6.6%	
Russia	86	4	4.7%	79	6	7.6%	
Senegal	179	37	20.7%	135	29	21.5%	signed 23/09/10, in force as of 01/08/09
Tunisia	2,416	595	24.6%	2,210	627	28.4%	signed on 28/04/08, in force as of 01/08/09
Vietnam	107	10	9.3%	67	13	19.4%	

3-4-14 Additional measures

➲ ***Administrative detention***

The number of places in CRAs [administrative detention centres] has increased from 1,071 in 2005, when the CRA construction and improvement plan was launched, to 1,718 as on the 31st of December 2009.
The number of places in administrative detention centres stood at 1,735 on the 31st of December 2010: 591 in mainland France and 144 overseas.

In terms of CRA facilities, to help improve detention conditions and ensure that CESEDA rules are adhered to, centres in Bobigny, Mesnil-Amelot and Nice were brought up to standard. This work resulted in the removal of a number of detention places: 16 at Bobigny, 44 at Mesnil-Amelot and the 5 places for women in Nice.
Accessibility standards for handicapped persons were also considered when the new CRAs were built in Paris, resulting in the removal of 4 places.

Given these changes, the number of places in administrative detention centres will be brought up to 1,970: 1,826 in mainland France and 144 overseas.

With regard to administrative detention premises, following an assessment of existing premises (44 in mainland France and 4 Overseas) in relation to the prescriptions of Code on the Entry and Residence of Foreigners and Right of Asylum *(Code du séjour de l'entrée et du séjour des étrangers et du droit d'asile*) (Article R-553-6 and 7), it became evident that only 13 mainland facilities adhered to regulatory requirements, whereas the 4 Overseas LRA were in compliance with regulations.

Since this discovery, work has been carried out to bring facilities up to standard and rulings have been issued to close 24 facilities across 2009, 2010 and 2011.
As on the 31st of December 2010, 22 LRA (18 in mainland France and 4 Overseas) remained. These LRA provide 128 places in mainland France and 31 places Overseas.
Additionally, consideration was given to the organisation of information and assistance for detainees in exercising their rights provided in Article R. 553-14 of the CESEDA. This resulted in CRAs being allocated to lots which, at the end of a tendering procedure, are allocated to 5 associations instead of just the one as before. The new structure came into force on the 1st of January 2010.

➲ ***Financial incentives: Assisted Voluntary Return and Assisted Humanitarian Return***

The *Office Français de l'Immigration et de l'Intégration* is implementing Assisted Return mechanisms for foreign nationals wishing to return to their country of origin: Assisted Voluntary Return (AVR), Assisted Humanitarian Return (AHR) and Assisted Return (AR).

<u>Assisted Voluntary Return (AVR)</u>
The following persons may benefit from Assisted Voluntary Return:

- a foreign national staying in mainland France who has been refused stay or renewal of stay and who has been the subject of an obligation to leave French territory *(Obligation de Quitter le Territoire Français*, OQTF), or who has been the subject of a prefectural order for escort to the frontier (*Arrêté Préfectoral de Reconduite à la Frontière*, APRF), unless placed in administrative detention;

- an irregular migrant who has not been the subject of any of the above orders, on condition that he/she has been staying in mainland France for at least three months;

- a third country national placed in a *Centre de Rétention Administrative* (CRA) in mainland France and having the nationality of a country that is a signatory to a bilateral concerted management agreement of migration flows with France, which provides that its nationals, staying in France irregularly, shall be offered assisted return.

The total assistance amounts to €2,000 per single adult, €3,500 per couple, €1,000 per child with status as a minor, up to and including the third child, and €500 per child as from child number four.

In 2010, 3,215 persons left the territory through Voluntary Assisted Return, the figure for 2009 being 2,913.

Assisted Humanitarian Return (AHR)

AHR is an exceptional form of assistance, and is given subject to certain conditions, making it possible to organise the return of foreign nationals present on national territory for over three months and in dire need, or precarious conditions. The amount of assistance is €300 per adult and €100 per accompanying child with status as a minor and is paid once upon departure.

In 2010, 8 381 foreign nationals benefited from AHR, the figure for 2009 being 12,323.

Assisted Return (AR)

For exceptional cases, AR is a way of paying travel and transportation expenses to the destination country of foreign nationals present on national territory for less than three months. It applies to the whole of mainland France.

For exceptional cases and following an examination of the individual and family situation by the OFII, foreign nationals in dire need or precarious conditions and present in mainland France for less than three months may benefit from Assisted Return. Foreign nationals who have already benefited from AR managed by the OFII and foreign nationals who are clearly able to return to their country or a reception country by their own means cannot benefit from Assisted Return (AR).

Payments under this system can only be made once to the same foreign national and his or her spouse. Consequently, if a foreign national who has benefited under any of the three programmes returns to France at a later date, he/she cannot claim further payment under any of the programmes.

For the application of this rule, the OFII manages a system (*Outil Statistique et de Contrôle de l'Aide au Retour (*Tool for statistics and control of assisted return*)* – OSCAR) for taking and recording the fingerprints of migrants who have benefited from Assisted Return, this being pursuant to Law N° 2007-1631 of the 20th of November 2007 and Decree N° 2009-1310 of the 26th of October 2009.

Summary statement of Assisted Returns (AVR and AHR)

	AVR	AHR	AR	TOTAL
2008	2,227	10,191	-	12,418
2009	2,913	12,323	-	15,236
2010	3,215	8,381	104	11,700

Source: OFII

3-4-2 Options for regularisation

This is obviously an essential aspect, in that it addresses the most serious political issues.

There are three possible scenarios:

- Possible existence of a general scheme for regularisations
- Possible one-off practice of mass regularisations
- Exercise of discretionary power by public authority of variable extent

3-4-21 General system of regularisations

Irregular migrants (except for cases relating to the right of asylum) can be admitted to stay on the basis of either a general system that provides for conditions under ordinary law or discretional power of public authority with a partial framework.

The system of ordinary law is based on the provisions set forth in Article L. 313-11 and Paragraphs 2, 2 bis, 6, 7, 8, 9 and 11. The system is aimed at foreign minors who have then reached the age of majority under certain conditions, third country nationals who are seriously ill and third country nationals with an occupational disease or seriously handicapped following an accident at work, or third country nationals residing in France for several years who have developed personal and family relationships such that escort to the frontier would not be in compliance with the application of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

Additionally, irregularly staying spouses of French nationals may be issued a long stay visa by the Prefect after six months of living as man and wife, in order to complete the formalities required for the issue of a temporary residence permit *(carte de séjour*) bearing the reference "private and family life" without having to leave national territory, on condition that they entered France legally[84].

Irregular migrants may therefore be admitted for residence if they meet the conditions set by legislation.

[84] CESEDA, Art. L. 211-2-1 6th paragraph

The number of persons concerned excluding spouses of French nationals is of the order of 20,000 every year.

With the exception of those referred to in Article L. 313-11 7, the conditions set forth by Law are precise in nature. For foreign nationals who claim personal and family relationships such that escort to the frontier would be an infringement of their right to lead a normal family life, the nature and depth of the relationships put forward are assessed by the Prefecture authority, which may base its analysis of the situation on recommendations given in the circular of the 12th of May 1998 entitled "Application of Law N° 98-349 of 11/05/1998 relating to the Code on Entry and Residence of Foreigners and Right of Asylum (*Entrée et Séjour des Étrangers en France et Droit d'Asile*)".

The decision to grant the permit is made by the Prefect of the department where the foreign national lives.

3-4-22 Mass regularisations in exceptional cases

There have been mass regularisations in France in exceptional cases. The most recent are as follows:

- In 1981, of 145,000 cases submitted for examination, there were 132,000 actual regularisations;
- In 1991, of 50,000 cases submitted for examination, there were 10,000 actual regularisations;
- In 1997, of 143,000 cases submitted for examination, there were 80,000 actual regularisations;
- In June 2006, of 30,000 cases submitted for examination, there were 6,000 actual regularisations.

These exceptional regularisations were based on ministerial instructions, which determined the field of application and the conditions of eligibility for exceptional admission to stay.

The above mentioned provisions of Article L. 313-11 introduced by the Law of 1998 modifying the Code on Entry and Residence of Foreigners and Right of Asylum made it possible to manage the admission to stay of irregular migrants without having to use a regular mass regularisation procedure.

3-4-23 Exercise of discretionary powers by a public authority

The Prefect will issue residence permits to any foreign national meeting the requirements set by legislation. He/she may also issue residence permits to foreign nationals who do not meet or only partially meet these requirements if the situation of the foreign national with regard to legal and regulatory provisions does not prohibit him from doing so. However, a foreign national who disturbs public order cannot be issued with a *carte de séjour* for any reason.

The discretionary power of the Prefect is used in the absence of any standards prohibiting him/her from issuing a residence permit to a foreign national who does not meet the conditions set forth by Law for receiving such a permit.
This discretionary power is now partially governed by Article L. 313-14, which provides that the Prefect may issue a residence permit to a foreign national who claims humanitarian grounds or exceptional reasons. This residence permit may be a temporary *carte de séjour* bearing the reference "employee" if the foreign national claims professional experience in a

trade where there is a clear lack of labour. A circular dated the 24th of November 2009 and a guide to good practice with its addendum dated the 18th of June 2010 can be used to support Prefects' decisions.

Applications for exceptional admission based on L. 313-14 are always examined on an individual basis.
However, foreign nationals may have recourse to associations, collectives and organisations, which then submit a series of files to the Prefecture that they have helped to compile.

A circular dated the 24th of November 2009 and a guide to good practice with its addendum dated the 18th of June 2010 can be used to support Prefects' decisions.

Under no circumstances can irregular presence for a certain period in France be used as the sole reason for granting the right to stay.

In order for all applications across the entire territory to be treated equally, the application circular of the 24th of November 2009 indicated to Prefects the elements that can be considered when assessing individual applications:

- Length of time in France;
- Personal and family situation;
- Length of time in a company;
- Employment in a trade where there is clearly an acute need for recruitment;
- Employment contract with a commitment from the employer (procedure for admission to stay for employment)

The situation is reviewed at least every quarter, but there is a delay until consolidated figures are received.
A monitoring committee chaired by the Director of Immigration and attended by the director general of labour (*directeur général du travail*) is examining the implementation of the provisions of L. 313-14, with particular reference to the guide to good practice. The monitoring committee met on the 29th of April 2011.

Union organisations were consulted for developing the guide to good practice and its addendum.
Union organisations were involved in the procedure for "regularisation through employment". In particular, they were authorised to submit single and group cases. They play an intermediary role and attend regular meetings with the Prefect services concerned.

If an application for exceptional admission to stay is not approved, foreign nationals can lodge a claim of equitable relief or a formal complaint to higher authority (*recours gracieux or hiérarchique*) and then a litigation appeal (*recours contentieux*).

There are no plans for automatic regularisation. The fact that it is not easy to escort certain persons to the border due to the nationality of the foreign nationals in no way influences the treatment of an application for exceptional admission to stay.

Algerian and Tunisian nationals in application of treaties may not avail themselves of the provisions of Article L. 313-14. However, the Prefect may use his discretionary power to issue them with a residence permit if he considers that their personal situation leads him to make this decision. Article L. 313-14 does not prohibit the Prefect from using his/her

discretionary power for foreign nationals subject to an international agreement (See the CE 333679 Opinion, Djilali Saou, 22nd of March 2010).

Status of regularised persons

The Prefect will issue a temporary *carte de séjour* bearing the reference "private and family life", "employee" or "temporary worker". These permits allow holders to carry out paid activity.

In an opinion dated the 8th of June 2010 (CE, Opinion, 8th of June 2010, N° 334793, Sacko et al), the Council of State stated that the administrative authority should first assess whether the application could be considered on the basis of personal and family life or, failing that, if there were exceptional reasons that would allow issue of, in this case, a temporary *carte de séjour* bearing the reference “employee” or “temporary worker”.

If an application made by a foreign national is approved, the permit that he/she receives allows him/her to work under the conditions of ordinary law specific to the permit issued: in a restricted profession and geographical area for a temporary *carte de séjour* bearing the reference “employee” or “temporary worker,” and without restriction for a temporary *carte de séjour* bearing the reference "private and family life".

While the application is being examined, Prefects have been asked to issue a temporary residence permit or a receipt of application for a residence permit authorising the person to work in order to secure the "regularisation through employment" procedure for both employer and employee.

Figures

By nature, all unapproved applications will result in the Prefect issuing a decision for removal. However there are no data for OQTF against foreign nationals who have made an application for exceptional admission to stay, or *a fortiori* data relating to the execution of removal orders for this category of foreign national.

It would have at least been possible to produce figures for regularisations through employment if Prefectures had issued a temporary residence permit or a receipt of application for a residence permit authorising the person to work in all of the cased examined. This was not the case.

3-4-3 Other cases of dealing with irregularities

3-4-31 The foreign father or mother of a French child

In compliance with Article L. 313-11 6°, the fact of being the father or mother of a French minor, residing in France, gives full rights of residence provided the raising and education of the child is effectively contributed to by the parent in question, as from the child’s birth or for at least the last two years.

The foreign parent of a French child shall be granted a temporary residence permit provided that he/she is effectively contributing to the raising and education of the child under the

conditions provided for in Article 371-2 of the Civil code, since the birth of the child or for at least the last two years (L. 313-11 6).

The prefectural authorities will need to see documents attesting to the parent-child relation, the French nationality of the child and his/her residence in France. They will also need to be satisfied that the foreign parent is contributing effectively to the raising and education of the child which implies, for example, the presentation of a school attendance certificate.
Article L. 313-11 6° indicates that the parent of a French child may be granted a temporary residence permit bearing the words "*vie privée et familiale*" (private and family life) even though he/she does not possess a long-stay visa. It is however required that the entry of the parent into the country be regularised. Clandestine entry, without a visa, even a short stay visa, does not give the right to being admitted for residence *ipso jure* on the basis of Article L. 313-11 6.

3-4-32 The foreign parent of a foreign child born in France

The fact of being the parent of a child born in France does not give the right to residence. However, the establishing of a household in France, provided that this situation is based on stable and intense relations of some duration that assists in the insertion into French society, shall mean that the foreigner may, on the basis of personal and family relations in the sense of Article L. 313-11 7, be granted a temporary residence permit bearing the words "*vie privée et familiale*" (private and family life). The foreign national does not have the right to a long-stay visa. It is however required that the entry of the parent into the country be regularised. Illegal entry, without a visa, even a short stay visa, does not give the right to being admitted for residence *ipso jure* on the basis of Article L. 313-11 7.

The fact that the situation of one of the two parents of a foreign child is regularised does not give the right to residence of the other parent. Nevertheless, and particularly if the couple has given birth to children and is raising them in France, the prefect may, under Article 8 of the European Court of Human Rights, grant a family reunification *sur place*. The best interests of the child are usually the major factor in the decision of the prefect.
If the couple is not married, then the fact that the situation of one of the partners is regularised may be taken into account in the appraisal of the situation with respect to Article L. 313-11 7.

3-4-33 Other cases based on Article L313-11 of the CESEDA

The principle is the removal of foreign nationals whose situation is illegal. Nevertheless, foreign nationals who occasionally spend time on French territory may request that they be granted an individual residence permit.

The cases provided for by the legislation concern:

- marriage of a duration of more than six months with a French national, subject to the maintenance of cohabitation;
- personal and family relations that are sufficiently intense that deportation could be considered to be a violation of Article 8 of the European Convention of Human Rights and Fundamental Freedoms;
- a pathological situation of a certain degree of seriousness necessitating care that could not be provided in the country of origin;
- an accident at work of such gravity (minimum degree of incapacity of 20%) that the foreigner has been granted a pension for an accident at work.

Also, children who were minors when they arrived in France are admitted when they come of age if they arrived before their 13th birthday and are educated by one of their parents or if it can be proven that they arrived before their 10th birthday and have received at least 5 years of schooling.

Finally, unaccompanied foreign minors have the right to a residence permit when they come of age if they were entrusted to child care social services before the age of 16 and if they have regularly attended professional training.

Foreigners whose situation is illegal may, although their situation does not give the right to a residence permit, be granted one by the prefect. In this case it needs to be shown that, in application of article of the CESEDA, "humanitarian considerations" or "exceptional reasons" are applicable. Examples of exceptional reasons could be a stay that has lasted more than ten years or a stay of more than five years if the foreigner is exercising a professional activity in a sector where the demand for labour is high. Humanitarian considerations would appropriate in a situation of absolute distress.

Moreover, unaccompanied foreign minors may, in application of Article L. 313-15 of the CESEDA, when they come of age, be granted a residence permit that authorises them to work if they were entrusted to child care social services before the age of 16 and if they have regularly attended professional training.

4 – TRANS-NATIONAL COOPERATION IN REDUCING IRREGULAR MIGRATION

4-1 Cross-border cooperation

4-1-1 Mutual legal assistance, for criminal cases, between the Member States

The protocol, adopted following the conclusions of the European Council of Tampere of the 15th/16th of October 1999, bears particularly to mutual aid regarding bank accounts and expressly targets, of the violations that may justify this mutual assistance, irregular migration networks and the trafficking in human beings.

In order to facilitate legal cooperation between Member States of the European Union, a European arrest warrant replaces extradition. A extradition system has been set up between legal authorities. A framework decision of the Council of the 13th of June 2002[85] defines the scope of the European arrest warrant that applies in particular to the assisting of illegal entry and residence, the trafficking in human beings and participation in a criminal organisation. The constitutional law of the 25th of March 2003 relating to the European arrest warrant provides for the legislative setting of rules for the European arrest warrant, in application of acts adopted on the basis on the European Union treaty. Law No. 2004-204 of the 9th of March 2004 to adapt the law to developments in criminal behaviour has made the transposition effective by inserting in the criminal code Articles 695-11 to 695-51, which form a chapter entitled: "On the European arrest warrant and extradition procedures between

[85] Framework-decision 2002/584/JAI of the Council of the 13th of June 2002

Member States resulting in the framework decision of the Council of the European Union of the 13th of June 2002".

4-1-2 Bilateral cooperation agreements on security

In order to develop police cooperation between neighbouring Member States that are party to the Schengen agreements, France has signed cooperation agreements with several countries, including Italy, Germany, Spain, Bulgaria and the Republic of Macedonia. An agreement also links France and Switzerland although it was not a member of the Schengen area at that time. These agreements provide for the implementation of police and customs cooperation centres close to common borders. The centres are available to all of the departments with responsibility for police and customs matters, for the purpose of facilitating cross-border cooperation and fighting against irregular migration in particular. At these centres, the competent departments contribute to the preparation and extradition of irregular migrants, under the conditions allowed for by the convention of the 19th of June 1990, in application of the Schengen agreement.

The treaty between France and Spain came into force on the 1st of September 2003[86]. The agreement between France and Switzerland, relating to the implementation of mixed border patrols came into force on the 28th of May 2004[87]. An agreement for cooperation on internal security between France and Bulgaria came into force on the 1st of May 2005[88]. A similar agreement was also signed with the Republic of Macedonia and has been in force since the 1st of September 2006[89].

Other cooperation agreements have been signed with the following countries:

- Brazil: The partnership and cooperation agreement of the 12th of March 1997 on public security came into force on the 1st of September 2007[90];
- Cyprus: The agreement relating to cooperation on internal security of the 4th of March 2005, which came into force on the 1st of November 2007[91];
- Algeria: The agreement for cooperation on security and the fight against organised crime of the 25th of October 2003, which came into force on the 1st of April 2008[92];
- Albania: The agreement relating to cooperation on internal security of the 15th of May 2008, which came into force on the 1st of June 2010[93].

4-1-3 "Immigration" liaison officers

Regulation No.377/2004 of the 19th of February 2004 provided for the implementation of a network of "immigration" liaison officers. They are the representatives of a Member State seconded abroad, by the immigration department or by other competent authorities, to establish and maintain contacts with the authorities of third countries in order to help in the

[86] Treaty of the 7th of July 1998 on cross-border cooperation
[87] Agreement in the form of an exchange of Franco-Swiss letters of the 28th of May 2004
[88] Franco-Bulgarian agreement of the 10th of April 2002
[89] Franco-Macedonian agreement of the 18th of December 2003 published by Decree 2006-1146 of the 13th of September 2006
[90] Franco-Brazilian partnership and cooperation agreement of the 12th of March 1997, published by Decree2008-7 of the 22nd of January 2008
[91] Franco-Cypriote agreement of the 4th of March 2005, published by Decree2008-38 of the 10th of January 2008
[92] Franco-Algerian agreement of the 25th of October 2003, published by Decree 2008-373 of the 18th of April 2008
[93] Franco-Albanian agreement of the 15th of May 2008, published by Decree 2010-731 of the 28th of June 2010

prevention of irregular migration and the fight against this phenomenon, the repatriation of irregular migrants and the management of legal immigration[94]. This regulation has been modified[95]. It now provides for:

- The establishment of a closer cooperation between the various liaison officer networks and the Frontex agency (European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union);
- Allowing Member States to call meetings between liaison officers in order to reinforce their cooperation;
- Regularly informing the European Parliament, the Council and the Commission of the activities of the networks of liaison officers. Thus, the Member State that is the current President of the Council of the European Union (or, if this Member State is not represented in the country or region in question, the Member State that is temporarily exercising the presidency) establishes, for the end of each half-year period, a report on the activities of the "Immigration" liaison officer networks in the specific countries and/or regions of a particular interest for the Union. This report is transmitted to the European Parliament, the Council and the Commission.

The French network currently has 26 "immigration" liaison officers working around the world, mostly in the main countries of origin and transit.

4-1-4 Surveillance of external borders

Since the Schengen agreements, the controls and surveillance at the external borders of Member States are governed by common principles.
The European agency for the management of operational cooperation at external frontiers of Member States has been exercising its functions since the 1st of May 2005[96]. Its task is mainly to coordinate operational cooperation between the Member States and to provide them with the support necessary for the organisation of joint return operations for nationals of third countries that are illegally present. The agency may cooperate with Europol under working agreements.

Under the national law, the law of orientation and programming for internal security emphasises the necessity, so as to be able to fight against clandestine immigration, of reinforcing the presence of internal security forces in the most exposed areas (airports, some borders such as the Channel tunnel, the rail network). France is to take an active part in the development of the integrated management of external borders and cross-border cooperation agreements[97].

4-1-5 Franco-British border controls

A treaty that links France, the United Kingdom and Northern Ireland came into force on the 1st of February 2004[98] for the implementation of border controls at the maritime ports of the Channel and the North Sea of the two countries. It provides for cooperation between the

[94] Ruling (CE) 377/2004 of the Council of the 19th of February 2004
[95] Ruling (UE) 493/2011 of the 5th of April 2011
[96] Ruling (CE) 2007/2004 of the Council of the 26th of October 2004
[97] Law 2002-1094 of the 29th of August 2002, Appendix I and II
[98] Treaty of the 4th of February 2003 published by Decree 2004-137 of the 6th of February 2004

authorities of the two States, particularly in terms of investigations into immigration law violations.

Completing the treaty of the 4th of February 2003, an administrative arrangement of the 6th of July 2009 between France and the United Kingdom aims to secure the common border between the two countries and fight against irregular migration. The agreement allows for the creation of a joint information centre, strengthened border controls at the port of Calais (with the setting up of a joint operational coordination centre) and the dismantling of irregular camps along the coast.

A second administrative arrangement, signed on the 2nd of November 2010, follows on from the previous agreement. The Franco-British declaration that accompanies the agreement emphasises that all of the commitments made in 2009 have been honoured. The new arrangement aims to implement, in compliance with the objectives set for 2009, a second phase of concrete measures to strengthen the common border, fight against organised criminal activity, combat fraud and the illegal circulation of goods and persons, and discourage clandestine immigration.

4-1-6 The fight against irregular migration by sea

Law No. 94-589 of the 15th of July 1994 relating to the procedures of the State in exercising its powers of maritime control allows for measures of control and coercion (boarding, diversion) that the French State has the right to exercise by virtue of international maritime law. The State may only exercise its prerogatives with regard to foreign vessels if they enter its territorial waters or if, on the open sea, they are suspected of being involved in certain illegal activities.

The scope of intervention of the law of 1994 has been extended by the law of the 22nd of April 2005[99], to the fight against irregular migration by sea, in order to be able to implement international measures of mutual aid, provided for by agreements with the flag State or by the protocol against smuggling of migrants by land, air or sea.

The law of 1994 has been extended to violations that suppress the fact, by direct or indirect assistance, of facilitating or attempting to facilitate illegal entry, movement or residence of third country nationals in France. Provisions of the same nature contained in specific texts applicable to the islands of Wallis and Futuna, French Polynesia, Mayotte and New Caledonia are also concerned.

4-2 Readmission agreements

A readmission agreement is an international convention, bilateral or multilateral, the purpose of which is to facilitate the removal of foreigners whose situation is illegal. Each agreement sets out the conditions of readmission and the arrangements for a specific implementation.

The State that has allowed a third country national to transit or reside in its territory, and that has allowed the person to make his/her way to the destination country, is then obliged to

[99] L. N° 2005-371, 22nd of Apr. 2005: JO, 23rd of Apr.

readmit the person onto its own territory. This principle is applied by the States that have signed the Schengen convention and by the Member States of the European Union, as well as third States that have accepted to sign a readmission agreement with one of the European Union Member States.

Two types of instrument may be distinguished:

- Agreements that are specifically devoted to the readmission of irregular migrants whose situation is illegal;
- Agreements that develop a global approach to the phenomenon of migration, including stipulations on the readmission of irregular migrants.

4-2-1 Agreements that are specifically devoted to the readmission of illegal foreigners

4-2-11 On the national level

France has signed 43 readmission agreements[100]. Most of these agreements have been signed with Latin American and European countries. The latest readmission agreement to date is that signed with Kosovo on the 2nd of December 2009 in Pristina.

A readmission agreement usually has three parts:

- The taking back of third country nationals whose situation on the territory of the other contracting party is not legal,
- The readmission of third country nationals that have resided or transited on the territory of the requested Party before entering into a non-regularised situation on the territory of the requesting Party,
- The possibility of a transit via contracting States for removal of third country nationals to their country of origin.

A readmission agreement is usually supplemented by a protocol for its application. In particular, this text identifies the competent authorities for the implementation of the agreement, the contact points for the extraditions and the practical procedures for the implementation of removals and transits of third country nationals on the territory of the requested Party.

The difficulties encountered by France in negotiating this type of agreements with the countries representing a high risk of migration (those of Africa and Asia in particular) have led it to seek new cooperation instruments in the fight against irregular migration.

Thus, France concluded statements on the issuing of consular passes. These texts, memoranda or statements of conclusions have no restrictive legal value, but are aimed at setting up cooperation for the issuing of consular passes between the Consulates of the countries in question and the competent French authorities. They have been signed with Morocco (1993), Algeria (1994), Tunisia (1994), Georgia (2006), Sudan (2006), Byelorussia (2007), Armenia (2011) and Vietnam (2011). France also drafted an agreement of this type with Guinea Conakry in 2006, but the latter has not yet been signed.

[100] See list in Appendix 1.

4-2-12 On the level of the European Union

In compliance with Article 63, Paragraph 3, Point b of the EC Treaty, the Council of the European Union has authorised the Commission to negotiate EU readmission agreements with 18 third countries: 13 agreements are in force (Hong Kong, Macao, Sri Lanka, Albania, Russia, the former Yugoslav Republic of Macedonia, Bosnia-Herzegovina, Moldavia, Montenegro, Pakistan, Serbia, Georgia and Ukraine).

Readmission agreements are finally in the course of negotiation with 3 countries (Algeria, Cap Verde, Morocco), two of which are blocked at the moment (Algeria, Morocco). A readmission agreement with Turkey was drafted at the start of 2011 and could be signed this autumn.

Furthermore, the Council of the European Union adopted a mandate on the 28th of February 2011 authorising the European Commission to negotiate a readmission agreement with Byelorussia.

These EU readmission agreements mean that bilateral application protocols can then be concluded, although in the case of Russia this is mandatory. France signed an application protocol with Serbia on the 18th of November 2009 and also with Russia on the 1st of March 2010. The latter came into force on the 22nd of October 2010. Moreover, an application protocol with Albania may be signed in the near future. Initial exchanges have taken place between France and Macedonia, as well as between France and Bosnia-Herzegovina, with a view to negotiating an application protocol for the community readmission agreement. As of today, no meeting date has been proposed by the Parties.

4-2-2 Agreements that develop a global approach to the phenomenon of migration, including stipulations on the readmission of irregular migrants

France is currently engaged in the negotiation of a new generation of agreements: **"concerted management agreements for migratory flows and solidarity development".** This new type of agreement, which places cooperation for readmission under a global partnership on migrations, the principle of which was cited at the Conference on migration and development, held in Rabat on the 10th / 11th of July 2006, opens up new perspectives for negotiating with the third countries concerned. It has been integrated into the adopted in Paris, under the French presidency of the European Union, on the 24th / 25th of November 2008. Contrary to the restrictive approach of previous years, which merely aimed for simple conventions signed by France that were limited to readmissions, circulation and installation, it represents a real generation change in the type of commitment that France undertakes with the countries of origin.

Since 2006, France is one of the host countries with the best organised concrete application of a global approach to bilateral agreements signed with the countries of origin.

Three parts, distinct but coherent, constitute the basis for this new type of partnerships that France is developing with the countries of origin:

- The organisation of legal migration that essentially comes from commitments of the host country;

- The fight against irregular migration which, in exchange for efforts agreed on by the destination country for legal migration, provides for close cooperation with the country of origin for everything to do with clandestine migrations;

- The implementation of initiatives for the solidarity development and co-development of poor regions that are sources of migration from the country of origin.

The part specially devoted to the fight against clandestine immigration uses all of the provisions relating to the readmission of persons whose situation is illegal by which the partner country undertakes to take back its nationals (and possibly those of third countries who have transited through its territory) who are in France illegally and who are under an obligation to leave French territory. It is supplemented by provisions relating to police cooperation aimed particularly at helping the partner country to strengthen surveillance at its borders, fight against document fraud and develop cooperation between police services, in order to dismantle criminal networks of irregular migrant smugglers.

Agreements signed

While the framework of the agreements remains identical, each text is nevertheless subject to a specific negotiation appropriate to the needs and migration profile of each partner country.

Fifteen agreements have so far been signed:

- Eight of these comprise all 3 parts described above, those signed with Senegal on the 23rd of September 2006 and supplemented by a rider of the 25th of February 2008, with Gabon on the 5th of July 2007, with the Republic of Congo on the 25th of October 2007, with Benin on the 28th of November 2007, with Tunisia on the 28th of April 2008, with Cape Verde on the 24th of November 2008, with Burkina Faso on the 10th of January 2009 and with the Cameroons on the 21st of May 2009.

- Five agreements use only the first and third parts: That signed with Mauritius on the 23rd of September 2008, relating to the residence and circular migration of professionals, and those signed with Macedonia on the 1st of December 2009, with Montenegro on the 2nd of December 2009, with Serbia on the 2nd of December 2009 and with Lebanon on the 26th of June 2010, relating to the mobility of young people;

- A treaty agreement for professional migrations only signed with Russia on the 27th of November 2009;

- Finally, an administrative arrangement signed with Brazil on the 7th of September 2009 concerns the creation of a bilateral mechanism for discussions on migration issues.

Other negotiations have been started and are progressing with:

- Mali and Egypt on all the parts;
- Algeria on the movement of people;
- Equatorial Guinea, mostly on issues of police cooperation;
- Morocco on the mobility of young people and professionals and the return of skills to Morocco;
- Georgia on the circular migration of professionals;
- Bosnia and Albania on the exchange of young people.

Furthermore, meetings have been held prior to new negotiations, with India and Vietnam.

The impact of these specific international agreements on the change in the rate of issuing consular passes is quite tricky to measure. It is true that these agreements help to improve the

rate of issue within the detention deadlines, facilitating the conditions for the recognition and identification of the foreigners concerned, simplifying the hearings procedure and reducing the timescales for the various steps involved in the readmission procedure. The provisions in the readmission agreements remain a reference legal framework for sustaining observed positive practices. However, they cannot constitute the only instruments for improving the rate of issuing consular passes. Dialogue, including at the political level, which takes place with the countries with a high migration risk, must take into account all aspects of migration. Thus, this global approach is concretised, in the case of France, through the negotiation of concerted management agreements for migratory flows and solidarity development, including a number of different tools, direct or indirect, that may contribute to a greater recognition of the interests of the French authorities on the subject of the removal of irregular migrants.

4-2-3 Association and cooperation agreements with readmission clauses

Association and cooperation agreements signed with a number of third countries include clauses dealing with readmission. Such clauses figure in the commercial and cooperation agreements signed in particular with Algeria, Armenia, Azerbaijan, Chile, the Andean Community, the Community of Central American States, Croatia, Egypt, Georgia, Lebanon, the former Yugoslav Republic of Macedonia, Uzbekistan and Syria.

Since the European Council of Seville in 2002, any cooperation or association agreement, or equivalent, signed between the European Community and a third country must include a clause on the joint management of migratory flows and the mandatory readmission of irregular migrants.

The ACP-European Community Agreement

The partnership agreement between the members of the group of African, Caribbean and Pacific States (ACP) and the European Community, signed in Cotonou on the 23rd of June 2000, came into force on the 1st of April 2003. It includes provisions on the readmission of nationals whose situation is illegal[101].

The parties agree in particular that each Member State of the European Union accepts the return of its own nationals who are illegally present on the territory of an ACP State, at the request of the latter, without formality, and reciprocally. It is laid down that these obligations of readmission apply *to*:

- ACP States, only with regard to persons who must be considered as their nationals under their respective national legislations;
- Member States of the Union, only with regard to persons who must be considered as their nationals as defined by the EU.

At the request of one of the parties, negotiations have been initiated with ACP States with a view to concluding in good faith and in accord with the principles of international law, bilateral accords governing the specific obligations of readmission and return of their nationals. If one of the parties feels that it is necessary, then these agreements also allow for provisions for the readmission of nationals from third countries and stateless persons. These agreements detail the categories of persons concerned and the procedures for readmission and return. It is also specified that adequate assistance is to be accorded to the ACP States for the implementation of these agreements.

[101] Euro-Mediterranean agreement EC-Egypt, 25th of June 2001 D. Nº 2003-348, 7th of Apr. 2003, Art. 13: JO, 16th of Apr.

Euro-Mediterranean Agreements
Euro-Mediterranean agreements have been signed between the European Community and Algeria, Egypt, Jordan, Israel, Morocco, Tunisia and Lebanon. These agreements institute an association between the European Community and its Member States and the signing countries.

All of these agreements are based on the same principles. They include a "social and cultural cooperation" part that bears particularly on cooperation in the area of prevention and control of irregular migration. To this end, the agreements include an article relating to readmission. The signing country agrees to readmit all of its nationals illegally present on the territory of an EU Member State, at the request of the latter, without formality, as soon as these persons have been clearly identified as such.

Provision is also made, as from the coming into force of the agreement, for the parties to negotiate and conclude, at the request of any of the parties, bilateral agreements between them regulating the specific obligations for the readmission of their nationals. These agreements also allow, if one of the parties feels it is necessary, for provisions for the readmission of nationals of third countries.

The Euro-Mediterranean agreement signed between the European Community and Egypt came into force on the 1st of June 2004[102].

4-3 European and international cooperation in the fight against fraud

4-3-1 On the European level

➲ The "false documents" and "identity fraud" groups of the European Union
The DCPAF [Central Directorate of Border Police], being the first, given its position, to be aware of the latest international frauds, represents France in the "fake documents" and "identity theft" workgroups of the European Union.

➲ The Frontex agency
The DCPAF is regularly asked by the Frontex agency to take part in preparatory workshops for European operations. Similarly, the bureau of document fraud represents France at the Document Specialist Board, a body that develops European training on fraud.

➲ The e-MOBIDIG group (*mobile identity working group****) of the Joint Research Centre of the European Union***
France, in the form of the ANTS [National Agency for Secure Documents], is one of the most advanced States in terms of mobile identity paper readers and one of the most active in MOBIDIG. Represented by the ANTS security advisor, it has been the vice-president of the group since 2010. The main activities have been the drafting of recommendations and the creation by ANTS of the internet site www.e-mobidig.eu, a communication tool for e-mobidig, the IGC group and members of industry, allowing the sharing of information on the issues of identity and identification. France plays a critical role in the activity of this group, the scope of which continues to widen.

[102] Euro-Mediterranean agreement of the 25th of June 2001; Decree 2004-1074 of the 13th of July 2004

➲ ***The EDEWEG group (****European document expert working group****) of the ENFSI network (****European Network of Forensic Science Institutes****)***

The IRCGN [*Criminal Research Institute* of the National *Gendarmerie*], a member of the EDEWEG steering committee, represents 57 scientific police laboratories from 31 European States. This participation means that it is able to contribute to the drafting of European recommendations on the subject of quality and the accreditation mechanism in particular. To this end, the "document authenticity analysis" testing method of the IRCGN documents department has been accredited by the French accreditation committee, in compliance with ISO Standard 17025.

➲ ***The FADO database***

An effective decisional tool for controls is available to the appropriate personnel, in the form of the European database called FADO (False and Authentic Documents on Line).

This European file comprises national documents from each State, and also documents originating from third States that are available to it, on the subject of authentic documents. The States also enter into the database any false documents that they have detected.

For France, it is the DCPAF that has the responsibility for this updating. At the end of 2010, 1300 documents were held in the FADO database (535 in 2007 / 750 in 2008 / 1104 in 2009). France is the country that contributes most to the database (145 in 2010, 11% of the additions), showing its commitment to the fight against fraud.

The database is accessed via a secure Internet site. This type of access was opened in 2010 to almost a thousand gendarmes trained in the fight against document fraud.

➲ ***European funds for external borders***

The European fund for external borders has again been approached in 2010 to be forthcoming with resources made available by France for training and equipment for the fight against document fraud. A national action plan, supported by a growing number of players (seven departments, representing 3 ministries, a public institution [ANTS] and a company [SNCF]) has also been established. The cost of this plan, for both training in document fraud and also for equipment, is estimated at more than € 1,213,000 (+227% compared to 2009), with 50% co-financing validated by the European Commission.

4-3-2 On the international level

➲ ***Bilateral agreements***

Five of the agreements, relating to the concerted management of migratory flows and solidarity development, include clauses by which France undertakes to contribute expertise in prevention and the fight against document fraud (information exchange, security of the civil status, etc.).

Recourse to biometry is to be encouraged during the negotiation of the clauses of future agreements.

➲ ***United Nation Office on Drug and Crime (UNODC)***

The IRCGN represents France at meetings of the United Nations expert group on document fraud (UNODC). In 2009, the main objective of the group was to prepare a reference guide for the implementation of national structures for the analysis of documents for third countries. Emphasis was placed on the analysis of travel documents and identity papers. This guide was officially published, in a number of languages, at the Conference of States party to the United Nations Convention against trans-national crime held in October 2010 in Vienna.

➲ ***Immigration Fraud Conference (IFC)***

The IFC saw the light of day in 1986 and 21 European and North and South American countries are members.

Delegations of the member countries are composed of representatives of departments involved in the fight against document fraud that are working in the field of immigration. The aims of the IFC, in accordance with its statutes, are:

- The exchange of information between members;
- The creation of contacts in irregular migration;
- The fight against the use of fake and falsified identity documents.

5 – IMPACT OF EU POLICY AND LEGISLATION: THE TRANSPOSITION OF THE "RETURN" AND "SANCTION" DIRECTIVES IN FRENCH LAW

5-1 European policy

The measures taken by France to fight against irregular migration are in line with the European agreements:

5-1-1 The Schengen agreements

The convention of the 19th of June 1990 for the application of the Schengen agreement of the 14th of June 1985 stipulates, in terms of "supporting measures" for the elimination of internal border controls, that:

- measures must be taken by the contracting parties against carriers who transport across the territory of a Member State, by air or sea, foreigners who are not in possession of the required travel documents;
- appropriate sanctions shall moreover be used against anyone who helps or attempts to help a foreigner, for pecuniary advantage, to enter or reside in the territory of a contracting Party, in violation of the legislation of this contracting Party on the entry and residence of foreigners[103].

The Schengen acquis, which includes in particular the agreement of the 14th of June 1985 and the convention of the 19th of June 1990, has been included in the treaty of Amsterdam.

A Schengen border code, an EU code relating to the system for the cross-border mobility of people, came into force on the 13th of October 2006. It defines a common policy on crossing borders that are outside of the European Union. It must contribute to the fight against irregular migration and the trafficking in human beings, as well as to the prevention of any threat to internal security, public order, public health and the international relations between Member States[104].

[103] Convention of Schengen of the 19th of June 1990, Art. 26 and 27

[104] Ruling CE 562/2006 of the European Parliament and the Council of the 15th of March 2006

5-1-2 The treaty of Amsterdam

The treaty of Amsterdam of the 2nd of October 1997 came into force on the 1st of May 1999. The treaty instituting the European Community, as modified by the treaty of Amsterdam (EC treaty), includes a Title IV on visas, asylum, immigration and other policies associated with the free movement of people.

Article 62 of the EC treaty deals with border controls and visa policy. Article 63, Paragraph 3 anticipates a common immigration policy within the five years following the coming into force of the treaty of Amsterdam, in the area of clandestine immigration and illegal stay, including the repatriation of persons who are in illegal stay. The point is made that the implementation of these common measures does not prevent a Member State from maintaining or introducing national arrangements that are compatible with the EC treaty and international agreements.

Moreover, the treaty on the European Union of the 7th of February 1992 (the Maastricht treaty), as modified and consolidated by the Amsterdam treaty, includes, as one of the objectives of the Union, the maintenance and development of a "an area of freedom, security and justice, in which the free movement of persons is assured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime"[105]. To this end, the "3rd pillar" of the treaty bearing on police and legal cooperation in criminal matters and appearing as Title VI applies when it is a matter of fighting against networks and channels of irregular migration.

The provisions in the treaty of Amsterdam were implemented and detailed first of all by the Tampere European Council of the 15th/16th of October 1999, which was aimed at rebalancing the policy of the community, notably with measures aimed both at promoting the integration of third country nationals and at combating clandestine immigration at its source. It also emphasised the necessity of a more efficient management of migratory flows. With the European Councils of Laeken of the 13th/14th of December 2001 and of Seville of the 21st/22nd of June 2002, the fight against irregular migration came once again to the fore.

On the 15th of November 2001, the European Commission adopted a communication to the Council and the Parliament on the common policy on irregular migration. On the basis of this communication, the Council approved a global plan in February 2002 for the fight against irregular migration and the trafficking in human beings in the European Union.

5-1-3 The European Pact on Immigration and Asylum

In October 2008, the European Council "solemnly" adopted a European Pact on Immigration and Asylum. It made "five fundamental commitments, with their translation into concrete action to be pursued in particular in the programme that will follow on in 2010 from the Hague programme". Two of these commitments consist in the "fight against irregular migration, particularly in terms of the return to their country of origin or a transit country, of third country nationals in an illegal situation" and the reinforcement of the "efficacy of border controls"[106].

[105] EU Treaty of the 7th of February 1992, Art. 2
[106] European pact on immigration and asylum, European Council, 15th and 16th of October 2008

The European Council has thus reaffirmed its determination to fight against irregular migration and has reiterated the three fundamental principles in this area:

- The cooperation of the Member States and the Commission with the countries of origin and transit in order to fight against irregular migration must be strengthened as part of a global approach to migration;
- Third country nationals in an illegal situation on the territory of Member States must leave the territory;
- All States have the obligation of readmitting their nationals who are in an illegal situation on the territory of another State.

5-1-4 The Lisbon treaty

The new treaty on the functioning of the European Union, which came into force on the 1st of December 2009, stipulates in its Article 79 that *"The Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, irregular migration and trafficking in human beings"*.

In the third paragraph of the same article, it is affirmed that the Union (now a legal entity) *"The Union may conclude agreements with third countries for the readmission to their countries of origin or provenance of third-country nationals who do not or who no longer fulfil the conditions for entry, presence or residence in the territory of one of the Member States."*.

Finally, measures concerning "irregular migration and illegal stay, including the removal and repatriation of persons in illegal stay" and the "fight against the trafficking in human beings, in particular of women and children" are now adopted by the European Parliament and the Council, in compliance with the ordinary legislative procedure[107].

5-1-5 The EC communication of the 15th of November 2011

Irregular migration includes very diverse situations, described by the communication of the 15th of November 2001[108].

Some people enter the territory of a Member State by crossing the border illegally, or with fake or falsified documents. These illegal entries are most often of persons acting independently.

However, it is increasingly the case that illegal entry is organised by intermediaries, smugglers who provide the transport, temporary lodging, travel documents, information, surveillance and other support services between the country of origin and the destination, including transit countries. The cost of these services is generally very high. Thus, a large number of irregular migrants must give to the people smugglers a large part, or even all, of their savings. When they don't have sufficient means to pay, they often become victims of the smugglers who exploit them in order to be "reimbursed" for the cost of the journey. The

[107] EU operational treaty, Art. 79
[108] Doc. COM (2001) 672 final of the 15th of November 2001

phenomenon of migration has undergone a very strong development since the middle of the nineties and irregular migration has become a very lucrative trade. In this context, the fight against smuggling and trafficking in human beings and the economic exploitation of migrants is an integral part of the plans for the fight against irregualar migration.

Another example of irregular migration is that of a person who has entered a country of the European Union in a legal manner, with a visa or residence permit, or even with valid travel papers when the person is from a country that is not subject to visa obligations, but who stays illegally beyond the authorised period.

The presence finally becomes illegal when a person authorised for residence remains in a country of the European Union beyond the authorised period, or continues to work beyond this period, or infringes the rules relating to the stay, exercising, for example, an activity that the permit does not permit.

5-2 The transposition of directives

Law 2011-672 of the 16th of June 2011 provides for the transposition of two directives in particular.

5-2-1 The transposition of Directive 2009/52/CE of the 18th of June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, the "employer sanctions" directive

The directive imposes, in particular, obligations on employers and envisages financial sanctions. It also proposes pecuniary rights for third country nationals who are employed illegally. Finally, it institutes a presumption for the employment relationship.

For more effective sanctions, it obliges the States to adopt mechanisms that encourage the introduction of an appeal to, or the execution of, a judgement against an employer for any unpaid wage or for any request addressed to the competent authority for collection of debts. Such an arrangement had not been allowed for in the French Employment Code before the transposition of the directive.

Generally, the directive is stricter and more favourable on sanctions incurred and the pecuniary rights of the third country nationals respectively, than French law before the reform: it represents an improvement in the rights of workers and increases the obligations on employers.

The law of the 16th of June 2011 goes beyond the transposition of the directive. It includes other measures that aim to prevent recourse to illegal work in particular. Thus, it is a harmonisation of the prerogatives of inspectors, whatever the illegal employment violation committed. It also puts in place an exemption of responsibility in favour of employers who have hired irregular migrants in good faith.

5-2-11 Reinforcement of administrative sanctions against employers of irregular migrant workers

The new administrative sanctions against the employer of an irregular migrant supplement the criminal sanctions already in place and should mean that the prefectural authority can react rapidly when the employment of third country nationals in an illegal situation is discovered. They are:

➲ **non-payment**, for a maximum period of five years, of **public aid granted** or reimbursement of all or part of the aid received over the twelve months that precede the reporting of illegal employment. This new measure constitutes alteration modification to the previous arrangements of the code of employment, professional training and culture (the current law already allows for the exclusion of employers of irregular migrant workers from access to these aid arrangements);

➲ the **temporary administrative closing of the premises** where the violation was committed. This decision to temporarily close the premises of the employer may be for a maximum period of 3 months, taking into account the seriousness of the violations, whether or not it is a repetition and also the proportion of employees concerned. It may be accompanied by the provisional seizure of the professional equipment of the offenders.
It involves no termination or suspension of work contracts, or any pecuniary prejudice for the employees of the premises. It is lifted *ipso jure* in the event of case closure, a writ of *nolle prosequi* or an acquittal, or if the criminal court does not deliver the complementary penalty of definitive closure of the premises where the offences charged were committed, as set forth in the criminal code.

➲ **banning from public contracts:** The administrative authority may also order, by a reasoned decision against the person that committed the violation of illegal employment (concealed work, sub-contracting, illicit transfer of labour, employment of an irregular migrant), the banning from public contracts for a maximum duration of six months. This order is intended to reinforce the means of the administration to fight against illegal employment, as is the administrative closing of the establishment. Its institution is provided for in Article 7 of the 2009 directive. The order is lifted *ipso jure* in the event of case closure, a writ of *nolle prosequi* or an acquittal, or if the criminal court does not deliver the complementary penalty of definitive ban from public contracts, allowed for in Article 131-39, 4 of the criminal code.
Banning from public contracts is envisaged in the employment code as a criminal sanction. This is a complementary penalty incurred by physical persons for a maximum duration of five years and by legal persons either definitively or for five years.

5-2-12 Reinforcement of the rights of third country nationals

In compliance with the requirements of Article 6 of the directive, the rights of irregular migrants have been increased:

➲ the employee has the right to **payment of his/her wages** and any accessory payments, in compliance with the legal and "conventional" provisions, as well as the contractual stipulations applicable to the employment, deductions being made for any amounts previously paid for the period in question. Arrangements are now provided for to ensure the recovery of sums due to be paid by the employer to the irregular migrant. In application of the Employment Code, these sums are paid by the employer within the thirty days of the violation being reported. If the third country national is placed in administrative detention or assigned

to a residence, or if he/she is no longer on the national territory, these sums are transferred, within the same timescales, to the designated body which will then transfer the monies abroad. If the employer fails to meet these obligations, then the body will recover the sums due on behalf of the third country nationals;

➲ a **presumption of duration of the employment relationship** is added: in the absence of evidence to the contrary, the sums due to the employee correspond to a presumed employment relationship of three months duration. The employee may furnish, by any means, proof of work carried out. In the event of an ending of the relationship, the employee has the right to a lump sum payment equal to three months of wages (rather than one month, as was already the case), unless the application of other rules or corresponding contractual stipulations would result in a more favourable solution.

➲ the irregular migrant worker has the right, where appropriate, to expect the **employer to pay all of the expenses of sending the unpaid remunerations** to the country to which the foreigner has returned voluntarily or has been taken.

The procedures for informing foreigners of their rights, as well as the procedures for recovering the sums due from the employer, will be decided by decree.

5-2-2 The transposition of Directive 2008/115/CE of the 16th of December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, called the "return" directive

The application of the provisions of the "return" directive has necessitated a substantial review of the right to remove third country nationals for expulsion. We should note here that the directive does not apply to the execution of entry refusal at the border or to the execution of territorial prohibitions.

Law 2011-672 of the 16th of June 2011 relating to immigration, integration and nationality, supplemented by Application Decree 2011-820 of the 8th of July 2011 on the procedures for removal of foreigners, published on the 9th of July 2011 (modification of the Code on Entry and Residence of foreigners and Right to asylum – CESEDA) and Application Decree 2011-819 of the 8th of July 2011, also published on the 9th of July 2011, modifying the code of administrative justice, have introduced the following changes:

5-2-21 Unification of removal orders and affirmation of the right to voluntary return (I and II of Article L. 511-1 of the CESEDA)

➲ The **OQTF** (obligation to leave French territory) is now the only removal order applied to illegal stay; the APRF (order to escort to the border) has been discontinued. The possibilities of automatic execution are more flexible and pragmatic.

The OQTF, with a deadline, is based on the same hypotheses as a previous measure, targeting foreign nationals who have been refused a residence permit, a renewal of this permit (or its receipt), a provisional residence authorisation, or for whom a decision has been made to withdraw one of these permits. In these cases, for an OQTF, further grounds are not necessary over and above the decision on residence, which itself constitutes the basis for the OQTF. Moreover, the law has added three new hypotheses which had previously applied to the APRF. The foreign national may be the subject of an OQTF if he/she:

- cannot prove having entered legally or has remained on the territory beyond the duration of his/her visa, or beyond three months after entry if he/she was exempted from the requirement to have a visa;

- entered the territory without complying with the entry conditions indicated in Article 8 of the Schengen border codes, or has come directly from the territory of a State that is party to the Schengen Convention, while failing to satisfy all of the conditions required by Articles 19,§1 or 2 and 20,§1 or 2;

- has not requested renewal of his/her residence permit and has remained on the territory after expiry of this permit.

Finally, the OQTF must establish the country to which the foreign nationals will be removed in the case of automatic execution of the decision.

➲ The **period for voluntary departure** is 30 days. Automatic execution is possible upon expiry of the deadline for voluntary departure.
In compliance with the requirements of the "return" directive, the thirty day period granted to the foreigner to leave the territory may, at the justified request of the foreigner, be extended, at the discretion of the administrative authority and, exceptionally, for a duration to be determined independently. The period of extension may be removed under the same conditions and for the same reasons as the first period of thirty days.

The new Article L. 513-4 of the Code on Entry and Residence of foreigners and the Right of Asylum stipulates that, if a period for voluntary departure is allowed, the foreigner may be obliged to present him/herself to the administrative authority or a police department or gendarmerie in order to give evidence of the steps taken for his/her departure. The regulatory power has ruled that the frequency of presentation may not exceed three times a week and that the person in question may be required to deposit the original of his/her passport or any other identity papers.

Here it is not that Article L. 513-4 is creating a compulsory residence order, but merely an obligation to demonstrate the steps taken for departure. Failure to provide this proof may be sufficient for the prefect to withdraw the period for voluntary departure that has been granted.

➲ The **period for voluntary departure may be refused** if public order is threatened, or if the residence permit has been refused because the request is manifestly unjustified or fraudulent, as well as in the case where there is a risk of absconding, which is determined on the basis of the criteria listed in the new Article L. 511-1. The concept of risk of absconding, which does not exist as such in the CESEDA and the case law, has to be understood as a risk, which will be assessed on a case by case basis, that the person avoids the removal order.

➲ The **criteria for the risk of absconding** are the same as the current motives for escorting (to the border) adding the absence of guarantees of representation, left to the appraisal of the administrative authority but illustrated by the law (no identity papers or valid travel documents, no effective residence, a precedent of absconding following a previous removal order, absconding from supervision orders or from compulsory residence orders).

The law reserves the possibility of automatic execution during the period for voluntary departure, for example, if it appears that during this period the person in question has destroyed his/her travel documents.

5-2-22 Creation of a return ban (IRTF)

This measure, transposing the “return” directive, reinforces the efficacy of removal orders:

- It confers effects over time to OQTFs,
- It comprises a European dimension, being applied to the territory of all Member States.

Its scope and duration are defined and limited with a possibility of derogation for humanitarian cases and an abrogation mechanism taking into account the voluntary execution of return. A return ban may accompany any OQTF, even one that grants a period for voluntary departure. In compliance with the directive, it is issued automatically in cases where the OQTF does not include a departure period and when the OQTF has not been respected.

The law establishes maximum durations, starting from the notification of the OQTF:

- 2 years at the most for an OQTF with departure period and if the departure period is exceeded
- 3 years at the most starting from the notification for an OQTF without departure period.

The return ban may be extended by up to 2 further years if the foreigner remains, or returns to the territory while the order is still in effect.

The order is effective over the entire European Union (mechanism of mutual recognition of removal orders - registration in the SIS; the law stipulates that the third country nationals must be informed).

The abrogation mechanism follows the same principles as for expulsion. However, except for a new motive associated with public order, the ban is rescinded when the third country nationals has respected the deadline for voluntary departure.

The IRTF may be rescinded on the initiative of the administration, or at the request of the foreigner, if he/she satisfies the conditions of admissibility. The admissibility of an abrogation request depends on the known classic conditions for a request to abrogate an expulsion order or a request to lift a ban from French territory. Thus, third country nationals may only ask for abrogation of a return ban if he/she can prove residence outside France, unless he/she is serving a prison sentence or a compulsory residence order on the basis of Articles L. 561-1 and L. 561-2 of the CESEDA.
Furthermore, the return ban is rescinded *ipso jure* under two cumulative conditions. The foreigner must have:

- executed the OQTF within the period prescribed;
- demonstrated this fact to the administrative authority within the two months following the expiry of the deadline for voluntary departure.

However, the rescinding may be refused “with regard to particular circumstances due to the situation or the behaviour of the person in question”. This opposition to the abrogation must be the subject of a specially reasoned decision.

5-2-23 Reform of detention

➲ The law organises the control of the legality of the decision to place in detention by the single administrative judge in accordance with an expedite dispute procedure: 48 hours to challenge the decision to place in detention or the alternative decision of a compulsory residence order, 72 hours to deliver a ruling.

➲ The duration of the detention, on the prefectural decision, is 5 days, in order to allow the administrative judge (referred to within 48 hours, judgement within 72 hours) to give a ruling before the matter is referred to the judicial judge for the extension of the detention after the fifth day.

➲ The maximum duration of the detention is increased from 32 to 45 days (5 days decided by the prefect + 2 extensions of 20 days ordered by the JLD (judge of release and detention), the magistrate for custody and release) to take into account the high proportion of failures to remove due to the failure to issue consular passes within the detention period (31% of reasons for failure in 2008, 34% in 2009).

This duration is still the shortest in Europe, very much lower than the 6 months extendable to 18 months authorised by the "return" directive. This choice of the French authorities is based on the principle of not detaining for a period beyond which the perspective of obtaining a consular pass becomes unlikely.

However, by derogation, a foreigner who is expelled or prohibited from the territory for acts of terrorism shall have his/her detention extended by the JLD by a month, renewable up to a maximum of six months.

5-2-24 Alternatives to detention

Reform of detention is also associated with the reorientation of the right to return imposed by the transposition of the directive, according to which the necessity of detention is assessed on a case by case basis, with regard to the inadequacy of less coercive alternative orders in eliminating a risk of absconding, or a threat to public order (Paragraph 2 of Article 30 modifying Article L. 551-1 of the CESEDA).

The compulsory residence order, alternative to detention, represents a significant change in the laws of detention. This is a real alternative, for the duration necessary for departure, for which the administrative authority must exercise great care. It triggers an expedite dispute procedure under conditions that are identical to those of detention. The maximum duration of an alternative compulsory residence order is 45 days. It may be renewed once.

Any placement in detention is subject to the prior examination of the possibility of applying this alternative measure, which may be refused if a threat to public order, a risk of absconding following the removal order, or an absence of guarantees of representation exist.

For third country nationals who are parents of minors for whom a simple alternative residence order is not appropriate, a compulsory residence order with electronic bracelet is proposed. The aim is to limit the detention of families as far as possible. In this case, the agreement of the foreigner needs to be obtained.

5-2-25 Limitation of precariousness and guarantee of removal when this is impossible within the timescales of detention and its alternative

The law creates a compulsory residence order if removal proves impossible in the short or medium term, when there is still a reasonable perspective of removal beyond the duration of detention and its alternative. The "return" directive is transposed, requiring an order to ensure minimum legal security for the persons who are the subject of a removal order and cannot comply with it in the short or medium term for reasons beyond their control.

It is very clearly distinct from the compulsory residence order as an alternative to detention: it is not associated with preparation for short notice departure, but guarantees the third country nationals a right to remain on the territory until removal is no longer impossible.

It may be accompanied by an authorisation to travel, assessed on a case by case basis.

Except in the case of expulsion and a legal ban from French territory, this order is limited to 6 months, renewable once. This duration corresponds to the concept of reasonable prospect of removal, a criterion of the directive, and is consistent with the Court of Appeal's jurisprudence according to which failure to execute a removal order over a period greater than one year no longer authorises detention.

5-2-26 Clarification of the law relating to waiting zones

Under the current law in force, permanent waiting zones may be created at border crossing points; they may also be created provisionally, when necessary, in particular in the case of migrants arriving at the border but not at the crossing points. They extend from boarding and disembarkation points to those points at the border where persons are checked.

The law does not fundamentally modify these principles. It is intended to clarify the provisions in force that have proven to be insufficiently explicit when the chronology and the places cannot be established with certainty by the administrative authority, but where serious and concordant elements can be used to deduce a presumption for the application of the appropriate legal system, this presumption may be reversed by showing contrary evidence.

Thus, the discovery of a group of at least 10 third country nationals outside a border crossing point, at the same place, or places that are less than 10 kilometres apart, allows the creation of a waiting zone between the place(s) where these persons were discovered and the closest border crossing point.

Moreover, in order to limit litigation that is clerical in nature, the law sets forth, in accordance with constitutional and conventional requirements and in line with the Court of Appeal's jurisprudence, the conditions for the exercising of the rights of the persons held in a waiting zone, or detained, so that the judge may take into account certain particular objective constraints associated with the obligation to deal with the largest possible number of individual cases.

5-2-27 Explanation of criminal immunity for persons exercising a humanitarian activity for the benefit of irregular migrants

Article L. 622-4 of the CESEDA protects any person providing irregular migrants with emergency humanitarian aid from prosecution. The text must merely be adapted to the legal case law that applies to the concept of necessity.

5-2-28 Compatibility of Article L. 621-1 of the CESEDA with Articles 15 and 16 of the "return" directive

This question was raised following the order of the Court of Justice of the European Union (CJUE) of the 28th of April 2011[109]. The CJUE has pronounced on the compatibility of national legislation with the provisions of "return" directive Articles 15 and 16, indicating a prison term for irregular migrants who remain on the territory illegally despite a removal order being served.

Following this order, a number of decisions in case law cancelled police detention procedures against irregular migrants because they were motivated by violation of the legislation on foreigners set forth in Article L.621-1. The argument goes as follows: The CJUE case law prohibits imprisoning persons for the simple fact that they are illegally present on the territory. Article 67 of the criminal procedure code limits recourse to police detention (when caught in the act of committing an offence) on the basis that the offence is punishable by a prison term, it then follows that the placing in police detention of third country nationals for a violation no longer sanctioned by a prison term is not legal[110].

On the other hand, other decisions have rejected the application of European case law if the third country national is pursued on the basis of Article L.621-1[111].

The Chancellery clarified its position in a circular of the 12th of May 2011. The provisions of the directive and their interpretation by the CJUE do not affect police detention and criminal proceedings based on Article L.621-1, or the detention procedures that may follow these procedures: it is only if a removal order has been issued that the directive opposes the pronouncing of a prison sentence and being placed in detention. Consequently, it requests that the public prosecutor's offices appeal against decisions that refuse the extension of detention orders for the reason that Article L.621-1 would be contrary to the directive.

[109] CJUE, 28th of Apr. 2011, C-61/11 PPU, El Druid

[110] CA Paris, ord., 4th of May 2011, n° 11/01909 ; TGI Toulouse, ord. JLD, 7th of May 2011, n° 11/00508, El Yagoubi ; CA Rennes, ord., 6th of May 2011, n° 11/00141, Baimoursaiev ; CA Douai, ord., 10th of May 2011, n° 11/00249 ; CA Metz, ord., 11th ofMay 2011, n° 11/00132

[111] CA Paris, ord., 7th of May 2011, n° B 11/02050, Zinelabidine c/ Prefecture of police; CA Aix-en-Provence, ord., 9th of May 2011, n° 11/00128 ; CA Versailles, ord., 9th of May 2011, n° 11/03638

6 - ESTIMATES AND STATISTICS ON THE ILLEGAL FOREIGNER POPULATION

6-1. National statistics on illegal immigration

6-1-1 Third country nationals found to be illegally present

6-11-1: Overall trend

	2005	2006	2007	2008	2009	2010
Total number of third-country nationals found to be illegally present				111,690	76,355	56,220

Source: Department of Statistics, Studies and Documentation, Ministry of Interior, Overseas Territories, Local Authorities and Immigration (Eurostat data from 2008)

6-11-2: Age of migrants found to be illegally present

	2005	2006	2007	2008	2009	2010
Fewer than 14 years				0	160	130
From 14 to 17 years				6,600	4,810	6,955
From 18 to 34 years				105,090	60,395	38,425
35 years or over				0	10,995	10,715

Source: Department of Statistics, Studies and Documentation, Ministry of Interior, Overseas Territories, Local Authorities and Immigration (Eurostat data from 2008)

6-11-3: Sex of migrants found to be illegally present

	2005	2006	2007	2008	2009	2010
Male				104,855	70,550	51,335
Female				6,840	5,805	4,885

Source: Department of Statistics, Studies and Documentation, Ministry of Interior, Overseas Territories, Local Authorities and Immigration (Eurostat data from 2008)

6-11-4: Main 10 countries of citizenship

	2008		2009		2010	
Position of the country of citizenship	Name of the country of citizenship	Total	Name of the country of citizenship	Total	Name of the country of citizenship	Total
1st main	Afghanistan	21,125	Afghanistan	20,765	Afghanistan	7,230
2nd main	Eritrea	15,600	Eritrea	5,330	Morocco	4,745
3rd main	Iraq	14,795	Morocco	5,255	Sudan	4,295
4th main	Morocco	6,755	Iraq	4,785	Algeria	3,650
5th main	Algeria	5,780	Viet Nam	4,610	Tunisia	3,230
6th main	India	4,895	Tunisia	4,130	Iraq	3,135
7th main	Tunisia	4,745	Algeria	4,015	Iran	3,040
8th main	Iran	3,840	Iran	2,835	Eritrea	2,855
9th main	Palestinian territory	3,075	India	2,705	Viet Nam	2,740
10th main	Turkey	2,760	Palestinian territory	2,035	Palestinian territory	2,245

Source: Department of Statistics, Studies and Documentation, Ministry of Interior, Overseas Territories, Local Authorities and Immigration (Eurostat data from 2008)

6-1-2 Refusal

6-12-1: Overall trend

	2005	2006	2007	2008	2009	2010
Total number of third-country nationals refused entry				16,695	14,280	9,840

Source: Department of Statistics, Studies and Documentation, Ministry of Interior, Overseas Territories, Local Authorities and Immigration (Eurostat data from 2008)

6-12-2: Grounds for refusal

	2005	2006	2007	2008	2009	2010
No valid travel document				1,920	1,620	1,290
False/counterfeit/forged travel document				1,165	875	740
No valid visa or residence permit				5,075	2,835	1,480
False visa or residence permit				430	490	330
Purpose and conditions of stay not justified				3,310	4,340	2,460
Person already stayed 3 months in a 6-months period				0	10	5
No sufficient means of subsistence				640	600	1,380
An alert has been issued				260	365	485
Person considered to be a public threat				5	5	5

Source: Department of Statistics, Studies and Documentation, Ministry of Interior, Overseas Territories, Local Authorities and Immigration (Eurostat data from 2008)

6-12-3: Type of border where entry was refused

	2005	2006	2007	2008	2009	2010
Land				3,135	2,565	1,060
Sea				755	580	600
Air				12,805	11,135	8,175

Source: Department of Statistics, Studies and Documentation, Ministry of Interior, Overseas Territories, Local Authorities and Immigration (Eurostat data from 2008)

6-12-4: Main 10 countries of citizenship of third-country nationals refused entry

	2008		2009		2010	
Position of the country of citizenship	Name of the country of citizenship	Total	Name of the country of citizenship	Total	Name of the country of citizenship	Total
1st main	China (including Hong-Kong)	3,725	Unknown	2,035	Unknown	1,435
2nd main	Unknown	1,680	China (including Hong-Kong)	1,570	Brazil	680
3rd main	Brazil	1,105	Brazil	1,505	Morocco	525
4th main	Algeria	540	Morocco	650	Algeria	435
5th main	Senegal	490	Algeria	640	China (including Hong-Kong)	350
6th main	Morocco	450	Senegal	440	Mali	340
7th main	Congo	430	Mali	380	Paraguay	320
8th main	Serbia	355	India	355	Tunisia	295
9th main	Nigeria	330	Turkey	315	Guinea	290
10th main	India	325	Congo	310	Senegal	285

Source: Department of Statistics, Studies and Documentation, Ministry of Interior, Overseas Territories, Local Authorities and Immigration (Eurostat data from 2008)

6-1-3 Third country nationals ordered to leave (after being found illegally present)

6-13-1: Overall trend

	2005	2006	2007	2008	2009	2010
Total number of third-country nationals ordered to leave (after being found to be illegally present)	66,939	71,327	107,760	98,358	89,854	77,705

Source: Department of Statistics, Studies and Documentation, Ministry of Interior, Overseas Territories, Local Authorities and Immigration (Eurostat data from 2008)

6-13-2: Main 10 countries of citizenship of third-country nationals ordered to leave

	2005		2006		2007	
Position of the country of citizenship	Name of the country of citizenship	Total	Name of the country of citizenship	Total	Name of the country of citizenship	Total
1st main	Algeria	8,464	Algeria	7,063	Algeria	11,977
2nd main	Morocco	6,124	Morocco	6,663	Morocco	10,236
3rd main	China (including Hong-Kong)	5,909	China (including Hong-Kong)	6,070	Turkey	6,638
4th main	Turkey	4,889	Turkey	4,498	China (including Hong-Kong)	6,114
5th main	Mali	2,845	Tunisia	3,253	Tunisia	5,363
6th main	Tunisia	2,631	Mali	3,007	Iraq	5,171
7th main	Congo (Kinshasa)	2,099	Pakistan	2,895	Mali	4,970
8th main	Iraq	2,071	India	2,744	India	3,917
9th main	India	1,902	Iraq	2,712	Pakistan	3,249
10th main	Moldova	1,752	Iran (Islamic Republic of)	1,869	Serbia	2,838
	2008		**2009**		**2010**	
Position of the country of citizenship	Name of the country of citizenship	Total	Name of the country of citizenship	Total	Name of the country of citizenship	Total
1st main	Algeria	11,007	Algeria	9,830	Algeria	8,452
2nd main	Morocco	9,511	Morocco	8,970	Morocco	8,012
3rd main	Tunisia	5,509	Tunisia	6,449	Tunisia	5,492
4th main	Mali	5,399	Afghanistan	4,893	Turkey	3,656
5th main	Turkey	5,141	Mali	4,335	China (including Hong-Kong)	3,448
6th main	Iraq	4,551	Turkey	4,236	India	2,986
7th main	China (including Hong-Kong)	4,388	India	3,807	Mali	2,761
8th main	Afghanistan	4,272	China (including Hong-Kong)	3,509	Egypt	2,258
9th main	India	4,154	Egypt	2,537	Afghanistan	1,909
10th main	Egypt	2,541	Iraq	2,064	Pakistan	1,753

Source: Department of Statistics, Studies and Documentation, Ministry of Interior, Overseas Territories, Local Authorities and Immigration (Eurostat data from 2008)

6-1-4 Third country nationals having returned following an order to leave

6-14-1: Overall trend

	2005	2006	2007	2008	2009	2010
Total number of third-country nationals having returned following an order to leave		17,053	19,434	20,308	19,451	17,918
Number of third-country nationals having returned *to a third country* following an order to leave		13,919	15,056	15,181	15,313	14,425

Source: Department of Statistics, Studies and Documentation, Ministry of Interior, Overseas Territories, Local Authorities and Immigration (Eurostat data from 2008)

6-14-2: Main 10 countries of citizenship of persons having returned

	2005		2006		2007	
Position of the country of citizenship	Name of the country of citizenship	Total	Main country of citizenship	Total	Main country of citizenship	Total
1st main			Algeria	3,170	Algeria	3,194
2nd main			Morocco	2,062	Morocco	2,507
3rd main			Turkey	2,052	Turkey	1,944
4th main			China (including Hong-Kong)	898	Tunisia	1,124
5th main			India	861	India	1,002
6th main			Tunisia	748	China (including Hong-Kong)	973
7th main			Mali	509	Brazil	507
8th main			Moldova, Republic of	376	Moldova, Republic of	436
9th main			Ukraine	361	Mali	427
10th main			Serbia	326	Pakistan	374
	2008		**2009**		**2010**	
Position of the country of citizenship	Name of the country of citizenship	Total	Name of the country of citizenship	Total	Name of the country of citizenship	Total
1st main	Algeria	3,078	Morocco	2,979	Morocco	2,572
2nd main	Morocco	2,743	Algeria	2,972	Algeria	2,523
3rd main	Tunisia	1,562	Tunisia	1,669	Tunisia	1,544
4th main	Turkey	1,546	Turkey	935	Turkey	810
5th main	India	1,373	China (including Hong-Kong)	820	China (including Hong-Kong)	781
6th main	China (including Hong-Kong)	833	India	818	Iraq	617
7th main	Brazil	674	Brazil	698	Brazil	511
8th main	Mali	501	Kosovo	521	Kosovo	479
9th main	Russian Federation	462	Iraq	505	Afghanistan	471
10th main	Iraq	394	Afghanistan	464	Russian Federation	467

Source: Department of Statistics, Studies and Documentation, Ministry of Interior, Overseas Territories, Local Authorities and Immigration (Eurostat data from 2008)

6-1-5 Third country nationals whose application for asylum has been rejected

6-15-1: Overall trend

		2005	2006	2007	2008	2009	2010
Total number of third country nationals whose application for asylum has been rejected	in the first instance	47,088	34,786	25,922	26,648	30,283	32,571
	following a final decision	41,566	17,351	15,853	14,461	11,685	13,448

Sources:
OFPRA (French Office for the Protection of Refugees and Stateless Persons): figures relating to application for asylum rejected in the first instance
CNDA (National Court for Asylum): figures relating to applications for asylum rejected following a final decision

6-15-2: Sex of migrants whose application for asylum has been rejected

		2005	2006	2007	2008	2009	2010
Applications rejected in the first instance	Male	31,874	23,805	not available	18,227	20,534	21,765
	Female	15,214	10,981	not available	8,421	9,749	10,806
	Unknown						
Applications rejected following a final decision							
	Male	28,453	11,865	10,894	9,860	7,875	9,102
	Female	13,113	5,486	4,959	4,601	3,810	4,346
	Unknown						

Sources:
OFPRA (French Office for the Protection of Refugees and Stateless Persons): figures relating to application for asylum rejected in the first instance
CNDA (National Court for Asylum): figures relating to applications for asylum rejected following a final decision

6-15-3a: Main 10 countries of citizenship of applicants whose application has been rejected in the first instance

	2005		2006		2007	
Position of the country of citizenship	Name of the country of citizenship	Total	Main country of citizenship	Total	Main country of citizenship	Total
1st main	Turkey	4,796	Turkey	4,285	Turkey	2,702
2nd main	Congo, (Democratic Republic)	3,617	Haiti	3,695	Sri Lanka	2,639
3rd main	Haiti	3,447	Congo, (Democratic Republic)	2,663	Serbia	2,471
4th main	China (including Hong-Kong)	2,904	Sri Lanka	2,658	Congo, (Democratic Republic)	1,874
5th main	Sri Lanka	2,558	Serbia	2,475	Armenia	1,607
6th main	Serbia	2,348	Russian Federation	1,727	China (including Hong-Kong)	1,401
7th main	Moldova, Republic of	2,345	Armenia	1,293	Russian Federation	1,377
8th main	Bosnia and Herzegovina	1,910	China (including Hong-Kong)	1,226	Haiti	1,102
9th main	Algeria	1,803	Algeria	1,141	Bangladesh	1,050
10th main	Russian Federation	1,568	Bangladesh	1,133	Algeria	973
Other*		19,792		12,490		8,726
	2008		**2009**		**2010**	
Position of the country of citizenship	Name of the country of citizenship	Total	Name of the country of citizenship	Total	Name of the country of citizenship	Total
1st main	Sri Lanka	2,666	Kosovo	2,353	Kosovo	3,376
2nd main	Turkey	2,455	Turkey	2,306	Bangladesh	2,386
3rd main	Russian Federation	2,074	Congo, (Democratic Republic)	2,076	Armenia	2,329
4th main	Armenia	1,923	Sri Lanka	2,002	Sri Lanka	2,287
5th main	Congo, (Democratic Republic)	1,668	Armenia	1,893	Russian Federation	2,279
6th main	Bangladesh	1,627	Bangladesh	1,747	Turkey	1,895
7th main	Serbia	1,190	Russian Federation	1,721	Congo, (Democratic Republic)	1,828
8th main	Mali	1,108	Haiti	1,467	Haiti	1,411
9th main	Haiti	1,000	Guinea	1,374	Guinea	1,308
10th main	Guinea	933	China (including Hong-Kong)	1,212	China (including Hong-Kong)	1,307
Other*		10,004		12,132		12,165

Source: OFPRA (French Office for the Protection of Refugees and Stateless Persons)

6-15-3b: Main 10 countries of citizenship of applicants whose application has been rejected following a final decision

	2005		2006		2007	
Position of the country of citizenship	Name of the country of citizenship	Total	Name of the country of citizenship	Total	Name of the country of citizenship	Total
1st main	Democratic Republic of Congo	4,705	Turkey	1,789	Turkey	1,787
2nd main	Turkey	4,393	Democratic Republic of Congo	1,427	Democratic Republic of Congo	1,365
3rd main	Sri Lanka	2,500	Sri Lanka	981	Sri Lanka	963
4th main	Congo	1,712	Mauritania	775	Armenia	680
5th main	Mauritania	1,530	Russia	587	Russia	643
6th main	Russia	999	Armenia	542	Mauritania	565
7th main	Armenia	919	Congo	487	Bangladesh	539
8th main	Bangladesh	913	Bangladesh	480	Congo	499
9th main	Guinea	896	Guinea	461	Guinea	468
10th main	Unknown	Unknown	Kosovo	4	Kosovo	5
	2008		**2009**		**2010**	
Position of the country of citizenship	Name of the country of citizenship	Total	Name of the country of citizenship	Total	Name of the country of citizenship	Total
1st main	Democratic Republic of Congo	1,619	Armenia	1,253	Sri Lanka	1,577
2nd main	Turkey	1,568	Turkey	1,212	Democratic Republic of Congo	1,273
3rd main	Armenia	1,041	Democratic Republic of Congo	1,171	Armenia	1,230
4th main	Sri Lanka	879	Bangladesh	846	Turkey	1,202
5th main	Russia	745	Russia	776	Bangladesh	1,041
6th main	Congo	625	Sri Lanka	747	Kosovo	936
7th main	Bangladesh	617	Congo	482	Russia	774
8th main	Mauritania	483	Guinea	432	Guinea	667
9th main	Guinea	477	Kosovo	352	Mauritania	469
10th main	Kosovo	17	Mauritania	275	Congo	423

Source: CNDA (National Court for Asylum)

6-1-6 Third country nationals whose status has been withdrawn (following a final decision)

6-16-1: Overall trend

	2005	2006	2007	2008	2009	2010
Total number of third country nationals whose status has been withdrawn	111	23	96	146	85	79

Source: OFPRA (French Office for the Protection of Refugees and Stateless Persons)

6-16-2: Main 10 countries of citizenship of migrant whose status has been withdrawn

	2005		2006		2007	
Position of the country of citizenship	Name of the country of citizenship	Total	Name of the country of citizenship	Total	Name of the country of citizenship	Total
1st main	Sri Lanka	27	Serbia and Montenegro	7	Turkey	23
2nd main	Turkey	24	Turkey	2	Congo, (Democratic Republic)	10
3rd main	Congo (Democratic Republic)	14	Romania	2	Chile	9
4th main	Vietnam	7	Bosnia and Herzegovina	2	Serbia and Montenegro	6
5th main	Romania	6	Congo (Democratic Republic)	1	Sri Lanka	6
6th main	Chile	5	Vietnam	1	Vietnam	5
7th main	Guinea-Bissau	3	Chile	1	Haiti	5
8th main	Bangladesh	3	Cambodia	1	Cambodia	4
9th main	Cambodia	3	Iraq	1	Iran	3
10th main	Iraq	3	Iran	1	Tunisia	3
other		16		4		22
	2008		2009		2010	
Position of the country of citizenship	Name of the country of citizenship	Total	Name of the country of citizenship	Total	Name of the country of citizenship	Total
1st main	Turkey	26	Turkey	16	Serbia and Montenegro	14
2nd main	Serbia and Montenegro	20	Serbia and Montenegro	8	Turkey	11
3rd main	Haiti	15	Congo, (Democratic Republic)	8	Vietnam	10
4th main	Congo, (Democratic Republic)	14	Vietnam	8	Congo, (Democratic Republic)	6
5th main	Vietnam	14	Sri Lanka	7	Iraq	4

6th main	Bosnia and Herzegovina	5	Iraq	5	Bangladesh	4
7th main	Chile	4	Haiti	4	Cambodia	4
8th main	Cambodia	4	Bangladesh	3	Chile	3
9th main	Albania	4	Russia	3	Brazil	3
10th main	Poland	4	Algeria	3	Sri-Lanka	2
Other*		36		20		18

Source: OFPRA (French Office for the Protection of Refugees and Stateless Persons)

6-2 Other national statistics relating to irregular migration

6-2-1 Presentation of the issue.

It should be remembered that the presentation of results obtained in the fight against irregular migration in France is made complex by the impossibility of quantifying, even approximately, the number of third country nationals who have entered, or reside, illegally on the national territory.

Third country nationals illegally entering French territory are not by definition subject to any registration and cannot therefore be counted using administrative sources. Irregular migrants on French territory may enter legally or illegally at any point of the Schengen area before making their way to the national territory and may, in the contrary sense, leave France at any moment to reach another Schengen country. Furthermore, the situation of a person may change, passing from that of a legal to an irregular migrant once he/she continues to be present on the territory after the expiry of the authorised residence.

The analysis that follows is therefore based on a double reasoning. The first, in terms of the changes in the migratory phenomenon in France, is based on indicators that show the main trends observed in 2010. The second, in terms of the action of departments, reflects the policy by objective that makes it possible to measure, in particular, the degree of mobilisation of actors involved in the fight against irregular migration and the effectiveness of the action taken.

All of the data collected in the two registers is used to make the following observations for 2010:

- A noticeable reduction in waiting zone, detention and forced returns to the border;
- A significant increase in the number of irregular migration networks that have been dismantled (183 in 2010 against 145 in 2009);
- A reduction in the number of orders issued (-11%);
- A smaller reduction in the number of removal orders executed, from 29,288 in 2009 to 28,026 in 2010, which nevertheless meets the target set at 28,000;
- A rise in the rate of the execution of orders issued (accumulation of APRFs and OQTFs), from 19% in 2009 to 20.6% in 2010;
- A still worrying stagnation in the rate of issuing consular passes in good time (from 31.3% in 2009 to 32.7% in 2010), which continues to represent, along with the difficulties associated with the legal proceedings, a major obstacle for the fight against irregular migration;

- Confirmation of fraud as a clear factor in making the fight more complex for all actors.

6-2-2 Estimation of the stock of irregular migrants

An evaluation of the number of persons residing illegally on the territory is not currently possible. An analysis of a number of indicators can be used to identify a trend. These indicators may either register the activity of departments or reflect an assessment of the situation.

6-2-21 In terms of the activity of departments

Indicator No. 1: Number of persons investigated for violations of the legislation relating to foreigners

➲ ***In the case of Index 70 of the 4001 Report[112] (assistance in illegal entry, circulation and illegal residence of foreigners)***, the procedures established by the police departments and gendarmerie units affect both French nationals, for example, the employers of irregular migrant workers, and legal foreigners, for example, those who give lodging to an irregular migrant.

The irregular migration support networks have greater and greater recourse to unduly obtaining valid administrative residence and travel documents. The networks supply their "customers" with "turnkey" files, consisting of false statements (birth and marriage certificates and documents relating to employment, resources, lodging, etc.) to obtain authentic visas for the third country nationals in the European Consulates and, once on European soil, residence permits or authentic nationality papers. Operational coordination has become increasingly necessary to fight jointly against a multiform situation, with a global approach, taking into account both trafficking in human beings and smuggling of migrants.

In 2010, 5802 persons were investigated (as against 4663 in 2009) for assisting in the illegal entry, movement and stay of third country nationals. This annual total is a great increase compared to that of the previous year (+24.42%). The departments of the DCPAF were responsible for 83.40% of this total (77.8% in 2009).

Assistance for illegal entry, movement and stay of third country nationals – Changes in the activity of the departments – Index 70

Persons investigated Index 70	**2009**	**2010**	**Change**
DCSP	229	184	-19.7%
Gendarmerie	700	683	-2.4%
Police prefecture (including the inner suburbs)	102	74	-27.5%
DCPAF	3,629	4,839	33.3%
Other police departments	3	22	633.3%
Total	4,663	5,802	24.4%

[112] see Appendix 2

➲ ***Index 69 of the 4001 Report concerns entry and residence offences by foreigners***

In 2010, the number of persons investigated for entry and residence violations fell, from 96109 in 2009, to 85,137 (–11.4%).

The dismantling of the "Jungle" camp in Calais on the 22nd of September 2009, which at its height comprised around 700 migrants, essentially Afghans, contributed a great deal to destabilising the smuggling networks that were operating in the sector and led to a fall in the main indicators. The dismantling of the Calais "jungle" had a dissuasive effect.

Offences recorded at the foreigner registration office– the activity of departments - Index 69 of the 4001 Report

Metropolitan France	**2008**	**2009**	**2010**
All services	111,692	96,109	85,137
National Gendarmerie	9,553	9,352	7,296
National police *	102,139	86,757	77,841
Amount of which were public safety offences	*22,541*	*12,716*	*11,951*
Amount of which were dealt with by the Prefecture of Police (Paris and the inner suburbs)	*8,639*	*17,436*	*15,745*
Amount of which were dealt with by other police departments	*25*	*15*	*8*
Amount of which were dealt with by border police	*70,934*	*56,590*	*50,137*

Source: MIOMCTI – DCPJ - DCPAF

Moreover, the fight against networks has also had a direct impact on the number of arrests of irregular migrants by dealing a blow to the criminal activity of very organised and professional structures.

Indicator no. 2: Number of administrative detentions

This indicator takes into account irregular migrants who are waiting to be escorted to the border under an obligation to leave the territory, an order for an escort to the border, a prefectural or ministerial expulsion order, a readmission order or those who have received an entry ban, whether this is a principal or supplementary order.

6-2-22 In terms of the situation of the third country nationals

Number of refused asylum seekers

Asylum applications contribute indirectly to changes in the number of irregular migrants in France.

It is reckoned that a large proportion of foreign asylum seekers remain on French territory after being refused by the French Office for the Protection of Refugees and Stateless Persons

(*Office Français Pour les Réfugiés et Apatrides*, OFPRA) and, where appropriate, by the National Court for Asylum (*Cour Nationale du Droit d'Asile*, CNDA). The proportion of those refused who remain on French soil and the percentage of irregular migrants who are dismissed are not however quantifiable.

It should be noted that, after several years of decreasing asylum applications, a shift back to a rising trend, observed in the last quarter of 2008, has continued throughout 2010, and the OFPRA has recorded 52,762 applications (re-examinations and accompanying minors included), which represents an increase in overall demand of 10.6% compared to the previous year.

Number of administrative detentions

	2006	**2007**	**2008**	**2009**	**2010**
Theoretical capacity - metropolitan - overseas	**1,524** 1,380 144	**1,835** 1,691 144	**1,659** 1,515 144	**1,718** 1,574 144	**1,710** 1,566 144
Number of persons detained in CRA (*Centres de Rétention Administrative*): - metropolitan - overseas	**32,817**	**35 546**	**34 592**	**30 270** 27 699 2 571	**32 880** 27 401
Average rate of occupation - metropolitan - overseas	74%	76%	68%	60% 69%	55% 57%
Average duration of detention (in days) - metropolitan - overseas	9.9	10.5	10.3	10.2 1.3	10.03 0.90

<u>Number of permits issued to third country nationals declaring illegal entry onto the territory</u>

In 2009, 31,755 third country nationals entered France illegally and obtained a residence permit, this figure was 30,300 in 2008. Examination of permits issued for professional reasons show a preponderance of residence permits marked as "*salarié*" (employee).

Illegal entries recorded in AGDREF for first permits issued

	2006	**2007**	**2008**	**2009**	**2010**
Permits issued after illegal entry	32,001	27,827	30,300	31,755	

Source: MIIINDS-DSED/ MIOCT-DCPAF

Number of removal orders not executed

Prefectural orders for escort to the border not executed

Year	APRF pronounced	APRF executed	APRF not executed	Rate of non-execution
2006	64,609	16,616	47,993	74.3%
2007	50,771	11,891	38,880	76.6%
2008	43,739	9,844	33,895	77.5%
2009	40,116	10,424	29,692	74.0%
2010	32,519	9,370	23,149	71.2%

Source: MIOMCTI -DCPAF

Prefectural orders for escort to the border and obligations to leave the territory not executed

Year	APRF and OQTF pronounced	APRF and OQTF executed	APRF and OQTF not executed	Rate of non-execution
2008	85,869	12,894	72,975	85.0%
2009	80,307	15,370	64,937	80.9%
2010	71,602	14,753	56,849	79.4%

Source: MIOMCTI -DCPAF

The number of foreign nationals that may be staying illegally on the territory remains however difficult to quantify and this indicator needs to be regarded with prudence and purely as an indicator of a trend. It is not possible today to count this part of the foreign population that is staying illegally with any precision, primarily for two reasons:

- Firstly, the same foreign nationals may be the subject, during the course of the same year or over several years, of successive removal orders;
- Secondly, some foreign nationals who have been served a removal order leave the territory of their own accord.

6-2-23 Number of beneficiaries of State medical aid

Since the 1st of January 2000, the date of coming into force of the law of the 25th of July 1999 on the creation of the Universal Health Insurance (*Couverture Maladie Universelle*, CMU), it is the State Medical Aid (*Aide Médicale d'État*, AME) that is intended to pay, subject to financial resources, the cost of health care for persons whose status is illegal regarding their right to residence and who do not fulfil the conditions of legal residence and residential stability required to benefit from the CMU.
Since the 1st of January 2004, admission is conditional on continuous residence in France for more than three months.

At the end of 2010, 228,000 foreigners benefitted from the AME, at a cost of 580.2 million Euros, an increase of 7.4% compared to 2009.

The increase in the number of beneficiaries (an average of 5% per year for the last five years) is explained partly by the increase in the number of refused asylum seekers. These are effectively eligible for the AME when, not being regularised in any other manner, and remaining on French territory, they are present illegally. Since the circular of January 2008, EU nationals whose situation is legal are now eligible for the AME rather than the CMU. And finally, minors whose parents are receiving urgent care have a right to the AME, also since 2008. 38% of the beneficiaries of the AME remain in France for less than a year, 35% for less than 2 years and 27% for more than 2 years.

Number of beneficiaries of State Medical Aid (AME)

Date	France
31-Dec-06	191,067
31-Dec-07	194,615
31-Dec-08	202,503
31-Dec-09	215,763
31-Dec-10	228,036

In the case of current projects, deployment of the generalisation of a secure identity document issued to each beneficiary is in progress. Moreover, a national database of beneficiaries of the AME is to be set up at the initiative of the National Illness Insurance Fund (*Cuisse Nationale d'Assurance-Maladie*) which is going to manage it.

6-2-3 Attempts to evaluate the flow of entries

For an evaluation of migratory pressure at the borders, the three flow indicators given below may shed some light on the question (for metropolitan borders).

6-2-31 Detentions in waiting zones

The fall in the number of foreigners in waiting zones recorded in 2009 increased in 2010 during which year 8910 third country nationals were held in waiting zones, which is a reduction of 30.5% from the figure for 2009 (12,820).

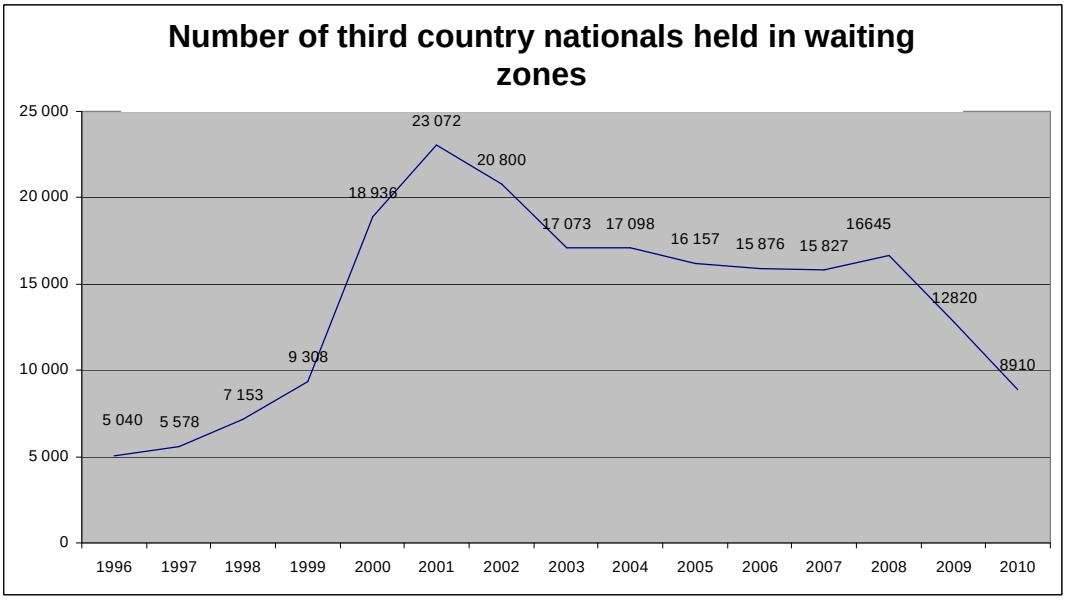
At Roissy-Charles de Gaulle Airport the daily average of decisions to hold in the waiting zone was 20.5 against 30.5 in 2009. As in the previous year, the maximum capacity of the ZAPI 3, 164 places, was never attained in 2010. The average rate of occupation is 39%, compared to 50% the previous year. The average stay in a waiting zone lengthened slightly to 3.1 days overall, but fell steeply for spontaneous asylum seekers, from 5.5 days in 2009 to 2.2 days in 2010.

The number of unaccompanied minors held in a waiting zone also underwent a steep decline, to 519. After the drop recorded in 2009, it is below the levels reached in 2005 and 2006.

The reduction in commercial air traffic, an average of 30 to 20%, depending on whether it is long or medium haul that is being looked at, has, it seems, had an effect on the number of third country nationals held in waiting zones. Similarly, the extension of the Schengen space to the East has also contributed to the opening of new immigration routes and hence to a transfer of migratory pressure to the land borders.

Contrary to 2009, the year 2010 has been characterised by noticeable modifications in the main nationalities, with a strong reduction in the presence of Afghan nationals (-65%) and a large number of arrivals from the Sudan.

While Chinese and Brazilian remain very clearly the most numerous of those held in waiting zones, it should be noted that there has been a significant reduction in migratory pressure for both nationalities (-70.6% for Chinese, from 1959 in 2009 to 575, and -55% for Brazilians, 732 held in 2010 against 1630 in 2009).



Source: MIOCTI/DCPAF.

6-2-32 Turning back at the border: refusal of admission onto the territory and simplified readmissions

This indicator is used for the number of persons who have been notified of a non-admission order when at the border, whether the order is followed up or not.
It should be remembered that the readmissions, commonly called “simplified readmissions”, cover all of the simple returns carried out immediately by the police, by formal delegation of the prefectural authority, without any formality being implemented by the border authorities at the moment when the third country nationals who has illegally crossed the border is apprehended.
They are to be distinguished from readmissions that are subject to a particular formality (prefectural decision), which are executed over a certain period (organisation of the return of the foreigner, placing in detention, etc.).

Simplified readmissions are measures that contribute to controlling entry / residence permits at the border zone and are not counted in the removal orders, while readmissions executed in application of a prefectural decision are (3504 in 2010).
The global indicator for turning back at the border shows a rising trend up until 2005, which was then reversed in 2006, with a reduction of non-admissions and simplified readmissions in 2007. There was an increase in 2008, which again attenuated in 2009, followed by a fall in 2010. A global trend cannot be deduced from these global fluctuations.

Number of tunrings back at the border

	2006	**2007**	**2008**	**2009**	**2010**
Number of admission refusals	21,235	16,374	17,628	15,819	10,481
Number of simplified readmissions (from France to another country)	12,892	10,219	11,844	11,178	9,255
Total	34,127	26,593	29,472	26,997	19,736

Source: MIOCTI-DCPAF (PAFISA).

Refusals of admissions, via air and land borders, show a fall, and for land borders this is in part because of the absence in 2010 of any special event (international summit, street demonstration, etc.) causing a tightening of controls at the borders. The nationalities involved are mostly Brazilian, Moroccan and Algerian. Chinese are only the 5th most numerous.

With a total of 9255 in 2010, simplified readmissions fell by 17.2% from the level in 2009. Moroccan, Afghan and Tunisian nationals are the most preponderant.

6-2-33 Applications for asylum at the border

After a continuous increase between 2005 and 2008, the fall in the number of requests recorded in 2009 was confirmed in 2010 (-22%).

This trend should however be seen in perspective as 2007 and 2008 were two record years with more than 5000 asylum seekers in both years, half of which were spontaneous. This situation was due to a wave of Russian asylum seekers, declaring themselves to be Chechen, as well as a massive arrival of nationals from Togo and the Dominican Republic in the first quarter of 2008.

Applicaions for asylum remain at a high level, far higher than that recorded in 2005 and 2006, and abuse of asylum at the border is still a method used to try to enter the territory. Even though a slight drop in numbers has been observed, the entry onto French soil of asylum seekers reached 89% even though the rate of admission of asylum seekers is only 23%. Thus, of 3576 asylum seekers, 3021 entered the territory, and 788 of these had their request for asylum granted. The other entries are essentially of people who have been liberated by magistrates, irrespective of jurisdiction (court of first instance, social security appeals tribunal, or administrative court).

Year	Number of requests
2006	2,984
2007	5,123
2008	5,992
2009	3,576
2010	2,789

Source: MIOCTI-DCPAF (PAFISA)

7- CONCLUSION

Given the scale and complexity of the phenomenon of irregular migration, the mechanisms to combat it cover a wide range.

- Illegal entry and residence

Illegally entering and/or staying migrants are those concerned in this case. The fact of entering, or residing in France in violation of the Code on Entry and Residence of Foreigners and Right of Asylum (CESEDA) or the Schengen convention is subject to a criminal sanction. In internal law, the sanctions are listed in Article L.621-1 and subsequent articles of the CESEDA.

- Assisting illegal entry, circulation or residence

The fight against irregular migration also targets any person who, being in France or a territory of a State that is party to the Schengen convention, has, in aiding directly or indirectly, facilitated or attempted to facilitate the illegal entry, circulation or residence of a foreigner in France. One of the objectives is to penalise people smugglers and labour traffickers. No precision as to the lucrative aim of such acts is given in the code so, as a result, the scope of incrimination is particularly wide as it targets “any person” and this could therefore mean anyone who knows the irregular migrant. The only restriction is that assistance given to a foreigner to reside illegally may not result in criminal proceedings if it concerns the actions of certain members of the foreigner’s family or certain associations.

- The control of passengers by carriers

Carriers are subject to certain obligations with regard to the control of passengers. These obligations have been made stricter with the coming into force of the Schengen agreements. Carriers are now liable to be subjected to sanctions if they transport irregular migrants in a State that is in the Schengen Area. They are also acting illegally if they do not transmit certain data relating to passengers to the competent authorities.

- Illegal employment

Finally, undeclared work by persons in an illegal or legal situation is the subject of a number of sanctions.

Human trafficking and the economic exploitation of migrants are both covered by criminal repression that does not come within the scope of this study.

APPENDICES

1. Readmission agreements signed by France
2. The 4001 Report
3. Bibliography
4. List of acronyms used

Appendix 1: Readmission agreements signed by France

Country	Year of signature	Country	Year of signature
Argentina	1995	Latvia	1997
Austria	2007	Lithuania	1998
Benelux	1964	Macedonia	1998
Bolivia	1999	Mauritius	2007
Bosnia and Herzegovina	2006	Mexico	1997
Brazil	1996	Nicaragua	1999
Bulgaria	1996	Panama	1999
Chile	1995	Paraguay	1997
Costa Rica	1998	Poland	1991
Croatia	1995	Portugal	1993
Czech Republic	1997	Romania	1994
Dominica	2006	Saint Lucia	2005
Ecuador	1998	Serbia	2006
El Salvador	1998	Slovakia	1997
Estonia	1998	Slovenia	1993
Germany	2003	Spain	2002
Greece	1999	Surinam	2004
Guatemala	1998	Sweden	1991
Honduras	1998	Swiss and Liechtenstein	1998
Hungary	1996	Uruguay	1996
Italy	1997	Venezuela	1999
Kosovo	2009		

Appendix 2: The 4001 report

Created in 1972, the 4001 Report is the administrative source compiled by the police services (the gendarmeries and the police prefecture of Paris) recording the acts (offences and crimes), that is to say crimes or offences, that have been brought to the attention of, or discovered by, these services. The report deals exclusively with acts that are the subject of a judicial procedure communicated to the public prosecutor's office (following a complaint or police investigation for the more serious cases).

The central Directorate of the judicial police takes care of collection and classification. Analysis and diffusion of the results of the crimes and offences that are recorded is the responsibility of the National observatory of delinquency. The distribution of the results of the activity of the services is the responsibility of the general Directorate of the National Police and the General Directorate of the Gendarmerie.

Only the following are recorded in the 4001 statistics:

⇨ crimes and offences,

⇨ committed or attempted,

⇨ brought for the first time to the attention of the police or gendarmerie,

⇨ included in the record of any procedure transmitted to the judicial authorities, whatever the mode of investigation (preliminary, in flagrant *delicto* or on a letter of request).

The following are not recorded in the 4001 statistics:

⇨ infringements,

⇨ violations under the highway code, as well as accidental deaths and injuries that may result,

⇨ violations recorded by another institution (customs, tax authorities, *DGCCRF* (Departmental Directorate for Competition, Consumption and Fraud control), *URSAFF* (Union for the collection of compulsory professional social security contributions and for distribution of family allowances)

⇨ acts communicated by the public prosecutor of the Republic to the police or gendarmerie, for notification of no action,

⇨ anything recorded as diverse and unclassified,

⇨ administrative police actions.

A unit of account is assigned to each index, that is: *the procedure, violation, plaintiff, victim, author, the vehicle that is stolen or the stolen or falsified cheque that is used*.

A person is considered to be under investigation if there is, as part of an investigation (preliminary, in flagrant delicto or on a letter of request) a procedure involving:

⇨ its minute proceedings,

⇨ serious or concordant indices that make it likely that the person had taken part, as author or accomplice, in the committing of a violation that is within the scope of the 4001 statistics.

In one and the same procedure a person under investigation for several violations shall only be counted once, under the index corresponding to the most serious of the violations, thus avoiding double jeopardy.

The 4001 Report has 107 indices. Listed below are those that have been used in the study, and the corresponding violations:

⇨ Indices 69 to 71: Offences recorded at the foreigner registration office

Index 69:
- Foreigners: violations of general conditions of entry and residence
- Violations of general conditions of entry and residence
- Residence: violations of general conditions of entry and residence

Index 70:
- Assisting the illegal entry, circulation or residence of a foreigner
- Foreigners: assisting the illegal entry, circulation or residence of a foreigner
- Foreigners: people smugglers, carriers and Procedure intermediaries
- People smugglers, carriers and intermediaries
- Residence: assisting in the illegal residence of a foreigner

Index 71:
- Foreigners: other violations recorded at the foreigners' registration office
- Foreigners: violation (non-respect) of an expulsion order, entry ban or escort to the border
- Foreigners: refusal to embark
- Non-respect of a prefectural order for escort to the border, an entry ban or expulsion order
- Refusal to board

⇨ Index 81 to 83

Index 81: Fake identity documents
- Fabrication or use of a fake identity card
- Forgery and use of official identity documents
- Fabrication and use of fake official identity documents
- Forgery and use of fake identity documents
- Fabrication (or use) of a fake passport

Index 82: Fake documents relating to the circulation of vehicles
- Fabrication or use of a fake vehicle identity card
- Fake (and use) of documents relating to the circulation of vehicles
- Fabrication (and use) of fake documents relating to the circulation of vehicles
- Forgery and use of fake documents relating to the circulation of vehicles
- Fabrication or use of a fake driving licence

Index 83: Other fake administrative documents
- Forgery (and use) of administrative documents other than official identity and vehicle circulation documents
- Fabrication and use of fake administrative documents other than official identity and vehicle circulation documents
- Forgery and use of fake administrative documents other than official identity and vehicle circulation documents

⇨ Index 93 to 95

Index 93:
- Registration of an employee (non-respect)
- Registration (non-respect) with social and fiscal bodies
- Failure to register an employee
- Failure to register with social and fiscal bodies
- Illegal Employment

• Illegal employment involving the hiding of an employee

Index 94:
• Hiring of a foreigner not in possession of a work permit
• Foreigners: employment of a foreigner not in possession of a work permit
• Maintaining an employment relationship with a foreigner not in possession of a work permit
• Work: employment of a foreigner deprived of a work permit

Index 95:
• Sub-contracting of labour
• Service provision using labour under illegal conditions
• Loan of labour
• Labour smuggling
• Use of labour under illegal conditions

Appendix 3: Bibliography

French legislation:

- Code en Entry and residence of foreigners and right of asylum
- Labour code

Reports:

- Ministry of the Interior, Overseas Territories, Local Authorities and Immigration
  The orientations of the immigration and integration policy – Report to Parliament, drafted in application of Article L.11-10 of the CESEDA

Studies:

- Legislative publications – Permanent dictionary of foreigners' rights
  - The fight against irregular migration
  - Violations of legislation on foreigners

Appendix 4: List of the acronyms used

AGDREF :	Application de gestion des dossiers de ressortissants étrangers en France	Managing application for foreign nationals' files in France
AME :	Aide médicale de l'Etat	France's state medical aid
ANTS :	Agence nationale des titres sécurisés	French National Agency for Secure Documents
APRF :	Arrêté préfectoral de reconduite à la frontière	Prefectural order for escort to the border
AR :	Aide au retour	Assisted return
ARH :	Aide au retour humanitaire	Assisted humanitarian return
ARV :	Aide au retour volontaire	Assisted voluntary return
ASSFAM :	Association service social familial migrants	Association for migrants' familial and social service
CA :	Cour administrative d'appel	Administrative court of appeal
CE :	Conseil d'Etat	Council of State
CESEDA :	Code de l'entrée et du séjour des étrangers et du droit d'asile	Code on Entry and residence of Foreigners and Right of Asylum
CICI :	Comité interministériel de contrôle de l'immigration	Inter-ministerial committee for immigration control
CJUE :	Cour de justice de l'union européenne	Court of Justice of the European Union (CJEU)
CMU :	Couverture maladie universelle	Universal Health Insurance
CNDA :	Cour nationale du droit d'asile	National court for Asylum (similar to British AIT)
CNIL :	Commission nationale de l'informatique et des libertés	Information Commissioner's Office
CODAF :	Comité opérationnel départemental anti-fraude	Anti-Fraud Departmental Operations Committees
CRA :	Centre de rétention administrative	Administrative detention centre
DCI :	Direction de la coopération intenationale (MIOMCTI-DGPN)	International Cooperation Directorate

DCPAF :	Direction centrale de la police aux frontières (MIOMCTI-DGPN)	Central directorate of border police
DCPJ :	Direction centrale de la police judiciaire (MIOMCTI-DGPN)	Central Directorate of Judicial Police
DCRI :	Direction centrale du renseignement intérieur (MIOMCTI-DGPN)	Central Directorate of Internal Information
DCSP :	Direction centrale de la sécurité publique (MIOMCTI-DGPN)	Central Directorate of Public Security
DGGN :	Direction générale de la gendarmerie nationale (MIOMCTI)	Directorate-General of the National Gendarmerie
DGPN :	Direction générale de la police nationale (MIOMCTI)	Directorate-General of the National Police
DIMM :	Direction de l'immigration (MIOMCTI-SGII)	Immigration directorate
DLPAJ :	Direction des libertés publiques et des affaires juridiques (MIOMCTI)	Public and Legal Affairs Directorate
DMAT :	Direction de la modernisation et de l'administration territoriale (MIOMCTI)	Territorial Modernisation and Administration Directorate
DNLF :	Délégation nationale à la lutte contre la fraude (rattachée au ministère du budget, des comptes publics et de la réforme administrative)	National Delegation for the Fight against Fraud (belongs to French ministry of budget, public accounts and administrative reform [similar to UK's Exchequer])
EUROPOL :	Office européen de police	European Police Office
FOVeS :	Fichier des objets et véhicules signalés	Flagged object and vehicles file
FPR :	Fichier des personnes recherchées	Investigated individual file
FRONTEX :	Agence européenne pour la gestion de la coopération opérationnelle aux frontières extérieures	European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union

GAV :	Garde à vue	Temporary police custody (no longer than 48h)
GIELFI :	Groupe interministériel d'expertise de la lutte contre la fraude à l'identité	Expert Inter-Ministerial Group for Combating Identity Fraud committed by foreign nationals
INTERPOL :	Organisation internationale de police criminelle	International criminal police organisation
IRCGN :	Institut de recherche criminelle de la gendarmerie nationale (MIOMCTI-DGGN)	French Gendarmerie's forensic science institute
IRTF :	Interdiction de retour sur le territoire français	Return ban to French territory
JLD :	Juge des libertés et de la détention	Judge of release and detention (decides on temporary custody of an indicted individual and on his/her potential bail request)
LPC :	Laissez-passer consulaire	Consular free pass
LRA :	Local de rétention administrative	Administrative detention place
MIOMCTI :	Ministère de l'intérieur, de l'outre-mer, des collectivités territoriales et de l'immigration	Ministry of the Interior, Overseas Territories, Local Authorities and Immigration (Similar to British Home Office)
OCLCO :	Office central de lutte contre le crime organisé (MIOMCTI-DGPN-DCPJ)	Central Office for the Fight against Organised Crime
OCRIEST :	Office central pour la répressionde l'immigration irrégulière et de l'emploi des étrangers sans titre (MIOMCTI-DCPAF-SDIIST)	Central office for irregular migration and unauthorized migrant employment repression
OFII :	Office français de l'immigration et de l'intégration	French office for immigration and integration
OFPRA :	Office français de protection des réfugiés et apatrides	French office for the protection of refugees and stateless people
OLI :	Officier de liaison "immigration	Immigration liaison officer

ONUDC :	Office des Nations Unies contre la drogue et le crime	UNODC (global leader in the struggle against illicit drugs and transnational organized crime)
OQTF :	Obligation de quitter le territoire français	Removal order
OSCAR :	Outil statistique et de contrôle de l'aide au retour	Tool for statistics and control of assisted return
PAFISA :	Programme d'analyse des flux et indicateurs d'activité	Programme for the analysis of flows and statistical indicators of activity (managed by the border police.)
PIE :	Pôle interservice éloignement	Inter-service Removal Division (Watches over applications for asylum, makes up files and transmit applications for asylum)
PMC :	Personne mise en cause	Charged individual
SAS :	Service de l'asile (MIOMCTI-SGII)	Asylum Service
SCEC :	Service central de l'etat civil (Ministère des affaires étrangères et européennes)	Civil Status Central Service
DSED :	Département des statistiques, des études et de la documentation (MIOMCTI-SGII)	Statistics, Studies and Documentation Department
SDEC :	Sous direction de la lutte contre les fraudes, des contrôles et de l'éloignement (MIOMCTI-SGII-DIMM)	Sub-department for Fraud Prevention, Control and Removal
SDIIST :	Sous direction de l'immigration irrégulière et des services territoriaux (MIOMCTI-DCPAF)	Sub-Directorate of Irregular migration and Territorial Services
SDST :	Sous direction du séjour et du travail (MIOMCTI-SGII-DIMM)	Sub-Directorate for Residence and Work
SGII :	Secrétariat général à l'immigration et à l'intégration (MIOMCTI)	General Secretariat for Immigration and Integration
SNCF :	Société nationale des chemins de fer	French National Railroad Company

SRIJ :	Service régional d'identité judiciaire	Regional Forensic Identification Services
TA :	Tribunal administratif	Administrative court
TGI :	Tribunal de grande instance	District Court
UAS :	Unité d'analyse stratégique (MIOMCTI-DCPAF)	Strategic analysis unit
UCOLLI :	Unité opérationnelle de la lutte contre l'immigration irrégulière(MIOMCTI-DCPAF-SDIIST)	Operational coordination unit for the fight against irregular migration