



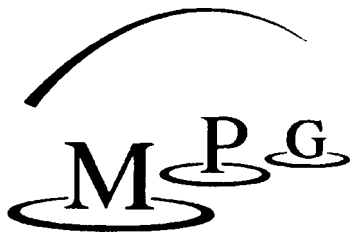
EU and US approaches to the management of immigration

Jan Niessen, Yongmi Schibel and
Raphaële Magoni (eds.)

France

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With the support of the German Marshall Fund of the United States

The Migration Policy Group (MPG) is an independent organisation committed to policy development on mobility, migration, diversity, equality and anti-discrimination by facilitating the exchange between stakeholders from all sectors of society, with the aim of contributing to innovative and effective responses to the challenges posed by migration and diversity.

This report is part of a series of 18 country reports prepared in the framework of the project *EU and US approaches to the management of immigration*, which was carried out by MPG with the support of the German Marshall Fund of the United States and in co-operation with partners in the European Migration Dialogue. Countries included in the project are Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, the Netherlands, Poland, Portugal, Spain, Switzerland, and the UK.

Reports on these countries are available from MPG's website individually or jointly, together with EU-US comparative perspectives and European comparative perspectives. See Jan Niessen and Yongmi Schibel, *EU and US approaches to the management of immigration – comparative perspectives*, MPG/Brussels, May 2003.

All papers were presented and discussed at a transatlantic dialogue meeting preceding the official launch of the European Migration Dialogue attended by Commissioner António Vitorino (Brussels May 2003).

Brussels/Paris, May 2003

Preface

The European Union and the United States are areas of immigration, and both are entities of multi-level governance facing the task of managing international migration. However, unlike the United States most European states do not consider immigration as a matter of national interest.

In the US a regulated immigration system aims to enhance the benefits and minimise the drawbacks of immigration. The country's bi-partisan immigration policy receives strong support from a wide variety of stakeholders.

In Europe the emphasis is on immigration restriction and prevention, reflecting the position of most stakeholders that the costs of immigration outweigh its benefits. Immigration is a sensitive and sometimes controversial issue, as is demonstrated in recent elections in a number of European countries.

On both sides of the Atlantic migration ranked high on the agenda throughout the nineties. Changes in the size and direction of migratory movements as a result of global developments, EU enlargement and NAFTA received a great deal of attention. The ways in which migration policies are designed and implemented were reviewed and underwent some important changes.

In 1997, the US Commission on Immigration Reform presented its final report to Congress, proposing important changes in US immigration policies and management.

In Europe the 1997 Amsterdam Treaty empowered the European Union's institutions to act on migration, changing intergovernmental co-operation among member states into the development of joint policies on immigration and immigrant integration. A new debate emerged on the role of immigration to address economic and demographic imbalances.

The events of September 11 did not in themselves have an impact on the foundations of immigration policies' governance structures, or lead to changes in them, other than those already proposed. The events added, however, a range of other issues to the overall policy agenda (issues related to the fight against terrorism became a top priority) and the immigration agenda (where security issues became a priority). This resulted in a stagnation of the further development of immigration policies (the best example probably being the US- Mexico migration agreement) and in a refocusing of attention on countering the victimisation of immigrants and the straining of community relations.

It is against this backdrop that MPG launched the project *EU and US approaches to the management of immigration* in an attempt to identify the main drivers of immigration management in EU and US systems of multi-level governance. Building on an understanding of how migration needs are assessed and translated into policy on the national or state level, the project focused on the way in which national or state governments promote their immigration related interests within the federation (in the case of the United States) and the Union (in the case of the European Union). How successful are the different entities in shaping common policies according to their needs? Do they consider centralisation (which the extension of EU powers suggests), or decentralisation (as the campaigns of some states for a greater say in immigration matters suggest) more useful for realising their immigration-related goals?

The reports on fourteen EU Member States, three candidate countries and one associated state each have four chapters:

- The first chapter reviews the (emerging) debates on migration and pays particular attention to the terms of the debate. It examines whether migration is debated in terms of control, security and restriction, or rather in terms of migration management and the assessment of migration needs. It asks whether the terms of the debate are different for different types of migrants, for instance irregular migrants vs. highly qualified migrants. The chapter analyses whether immigration has been linked with and embedded in larger discussions about social and economic policies for the future. In particular, it looks at the debates around the labour market and demography and considers whether and how immigration has been considered as an option for meeting emerging challenges in these areas.
- The second chapter provides an inventory of stakeholders and an analysis of their activities. It gives a detailed account of who is responsible for which area of migration management in the different government departments. It also covers the activities of the various non-governmental organisations active in this field. The central question is which groups (within government, employers, trade unions, NGOs, academics and other experts) assess national migration needs, which instruments and mechanisms they use to make these assessments, and how they assert influence in the political decision-making process to translate these assessments into policies.
- The third chapter provides an analysis of migration management in the areas covered by three of the most important Directives proposed by the European Commission (on admission for employment, family reunification¹, and long-term residents). Rapporteurs compare the national legal framework with the proposed European measures, and assess the degree of convergence between the two. The chapter addresses each of the substantive points dealt with in the Commission's proposals and sets out the corresponding national provisions, if such provisions exist under the current system. Recent and impending changes of national law are also examined, with a view to assessing whether immigration management rules are moving closer to or further away from the proposed European legislation.
- The fourth chapter offers concluding remarks and evaluations by the rapporteurs. It addresses the Commission proposal for an Open Method of Co-ordination and considers whether such a mechanism would fit well with existing policy-making structures. Where appropriate, the chapter looks more closely at the proposed Guidelines and evaluates the degree to which they are already tackled in national policy. The impact of the European Employment Strategy on immigration management is also assessed. The fourth chapter also gives the rapporteurs an opportunity to make recommendations and to suggest alternative benchmarks for future debates and policy developments.

¹ Reports were drafted before the definition of a common approach to family reunification, which Member States agreed to at the Justice and Home Affairs Council of 27/28 February 2003. Rapporteurs base their comments on the text of draft Directive COM (2002) 225, published on 2 May 2002.

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Chapter 1: Terms of the debate

In France, recently and indirectly, the national debate on immigration has been focused around three words: security, control and repression.

In public and political debates, a dominant discourse remains available, especially since the last presidential elections in April 2002. Security is the main aspect that media referred to systematically and that policy decision makers put at the front of the political scene. There is a growing tendency to promote a policy of repression against illegal migration to respond to the feeling of insecurity from nationals. Border control is one of the major aspects of the policy.

1.1. Preliminary remarks

During the 1980's and the 1990's, France remained a country of immigration, but not without reluctance. This reluctance has focused around an obsession with migration flows, the reappraisal of the concept of national identity and a feeling that illegal aliens are challenging the integration process of those already settled.

France has officially stopped its flows of foreign salaried labour force for more than 25 years (1974). It took time to recognise immigration as part of its collective identity and it went on restraining borders in spite of the labour force shortages.

Foreigners in France have different social, cultural and geographical backgrounds. Usually, France has been concerned, not exclusively but mainly, by migration flows coming from former French colonies, mandates, protectorates and departments. Above the historical, affective and cultural reasons, there are economic, commercial and linguistic ties motivating these flows coming from North Africa (Algeria, Morocco, and Tunisia) and also from countries of sub-Saharan Africa.

However, during the last 20 years, France has known a real diversification of its immigration with, for example, the arrival of people coming from South Asia (India, Pakistan or Sri Lanka). France is now considered as the second host country in Europe with 3.3 millions foreigners, 5.6% of its total population.

Several institutions have been set up since the post war period to regulate migration flows, such as ONI (*Office national de l'immigration* - National Immigration Office) in 1945, now called OMI (*Office des migrations internationales* - Office for International Migrations), FAS (*Fonds d'action sociale* - Social Action Fund) in 1959, now called FASILD (*Fonds d'action sociale pour l'intégration et la lutte contre les discriminations* - Social Action Fund for Integration and Anti-Discrimination) and, in 1966, DPM (*Direction de la population et des migrations* - Central Office for Population and Migrations), under the authority of the Ministry of Social Affairs. During the 1980's, when immigration began to raise the question of long-term settlement, culturally, locally and on a national scale, other institutions were set up to manage the "urban" policy (*politique de la ville*) locally, culturally and/or at a national level, based on a territorial approach focusing mainly on the exclusion of the so-called "second generation of immigrants" (children of immigrant parents).

There has been an increase in the number of laws on entrance and residence during the 1980's, on nationality and citizenship in the 1990's, and on asylum and European status along with the implementation of European rules of Schengen (1985), Dublin (1990), Maastricht (1992) and Amsterdam (1997).

However, in France, like in many areas of the world, migration flows are not really affected by border controls and integration policies established in host countries. Borders are crossed by networks that perpetuate modern slavery, using the opportunities given by the gap between national and European policies, the economic needs of labour, but also the extreme mobility and diversity observed today with migration flows.

On the one hand, faced with a fear of invasion – a general feeling prevailing in French society for the past 20 years, which, in fact, did not materialise – most of the reforms of immigration policy in France have been based on border closure and controls, seen as a general and permanent framework.

On the other hand, considering the need for labour force in France, the main question is to know whether migration and mobility will be seen as an answer to this shortage of skilled labourers. Compared to the other European member states, France is not yet facing a demographic challenge. However, the remaining question is also whether these new policies will give more rights to mobility and migrants, taking into account the interests of home countries? What can be the remedies to the latent fear of migration, mainly coming from the feeling of labour competition that nationals have with the entry of new migrants? Consequently, the main issue for the French government and the society as a whole is to rethink and to reform immigration policy, in relation with the European framework, national public opinion, the respect for human rights and labour market requirements.

1.2. Security and controls of borders within a “transnational” collaboration

The French Home Secretary - Nicolas Sarkozy - decided to give priority to an action plan to "consolidate a sustainable control of illegal immigrants" following three major principles: mobilisation of police forces at the borders, use of other security forces and reinforcement of police collaboration at the borders (circular n°nor/int/c/02/00178/c, 09/24/2002).

With his new law on “national security” voted by the French parliament in February 2003, the minister points out new groups seen as dangerous, such as: delinquent foreigners, prostitutes, beggars, squatters and gypsies. All these categories - seen as potential sources of disturbance to public order and citizens - will be penalised under this law, designed to protect public security and peace. This law aims at increasing and reinforcing repressive measures and at defining new kinds of offences.

Gypsies are not directly targeted but they are subject to the interdiction of settling in a public or a private property with “a motor vehicle”. Public security forces will be able to impound the vehicle and to suspend the driver's licence of the offender for a maximum of 3 years.

Prostitution is the second disturbance to public order. Prostitutes are liable to six months imprisonment and the authorities may withdraw their residence permit. In fact, this law aims at reducing and maybe breaking prostitution networks coming from Eastern Europe and Africa.

Foreigners with a short-term residence permit convicted of threatening behaviours disturbing public order, may be brought back to the border (this practice is known as *"double peine"*, i.e. double penalty). Until now, double penalty has been applied to all foreigners convicted for a crime, such as drug trafficking or murder. Double penalty is motivated by the threat that the offender represents to public order.

In fact, all these new restrictions, even if they tend to increase the control on immigration, will not prevent new forms of mobility linked to the diversification of migrant profiles, such as feminisation, urban middle classes, isolated minors, brain drain, movements of traders and businessmen, trafficking networks, but also unqualified labour force, and so forth.

France has to face a new type of settlement that takes a more mobile character, a continuous circulation, with a co-presence "here", in the host country and "there", in the country of origin. Moreover, migrants are becoming anonymous actors of globalisation: transgression of state borders, remittances, contribution to self-centred development, building of transnational networks, plurality of allegiances, references and choices.

Conditions of entry in France: historical background - The French immigration policy has always followed two principles: equality and integration. Equality aims at giving the same rights with no national, religious, racial or cultural distinction. The second one corresponds to the presumption of capacity and degree of integration in the French society depending on the immigrants' origin.

After the Second World War, the Decree of 19 October, 1945 completed by the Decree of 2 November, 1945 declared France officially open to immigrant workers and their family in order to increase the birth rate in France. It specified *"that every foreigner residing in France for more than three months has to hold a residence permit"* (Article 6, Decree of 2 November, 1945).

After a period of thirty years of economic growth (between 1945 and 1975), economic recession led to the closing of borders to immigrant workers. At the same time, many agreements were discussed between France and the countries of origin. Schools started teaching immigrants' mother tongue in the name of the right to be different and Islam was allowed to be practiced at work. All these initiatives - aiming at maintaining a relation with the area of origin - were seen also as a means to prepare the return of many communities to their country of origin.

In 1977, the return of immigrants became a major goal to decrease the unemployment rate in France. Financial help (around €1,524 per person) was offered to unemployed immigrants and to those who had been in France for more than five years. At the same time, the entry of students and families became more restricted.

This practice of voluntary return was not efficient. Consequently, a new law was voted, the "Bonnet" law of 10 January, 1980, which stated that the entry or residence of illegal immigrants was considered a threat to public order and that,

therefore, they had to be expelled from the French territory. The “Peyrefitte” law in February 1981 legalised the control of immigrants' identity by the police as a means to prevent illegal immigration. The “Pasqua” law of 9 September, 1986, gave the right to regional authorities to decide whether on the possibility to escort illegal aliens back to the border. This law also reduced the number of immigrants who could get a residence permit.

As the years went by, all these laws were reinforced and aimed at stopping immigration. For example, the law of 31 December, 1991 introduced a penalty for people who help illegal aliens. The “Pasqua” law (24 August, 1993) reviewed the terms of the Decree of 2 November, 1945 regarding the acquisition of French nationality. It reinforced the repressive tools to keep illegal aliens far from the French territory and limited the entry and residence of many categories of immigrants.

From 1996 onwards, the “*sans-papiers*” movement revealed a far too repressive policy of immigration with its unreal aim of “zero immigration”. In June 1997, the government decided to launch a policy of regularisation on a case-by-case basis (Circular of 24 June, 1997). At the same time, many dispositions were implemented to complete the insertion policy regarding immigrants, including special programmes for people invited to leave the French territory. The Circulars of 24 June, 1997 and of 4 November, 1998 established a “contract of reintegration in the country of origin” (*Contrat de reinsertion dans le pays d'origine* “CRPO”). These two circulars are in line with the “Chevenement” laws of 1998 which transposed articles 8 and 3 (regarding foreigner’s stay) of the European Convention on Human Rights into French legislation to make it comply with the European treaties ratified by France. In addition, these laws established territorial and constitutional asylum, and completed the current asylum procedure. Finally, the “Guigou” laws of 1998 complemented this reform by reintroducing the automatic right to French citizenship for children born in France from foreign parents.

Other laws were voted on family reunification (1 March, 2000) and on citizenship (2 May, 2000). These laws were created to fight discrimination. Regional commissions of access to citizenship were also created (CODAC: *commissions départementales d'accès à la citoyenneté*). The reversal of the burden of proof, introduced by the May 2000 laws, represents a major advance regarding citizenship and the fight against discrimination. In French law, and contrary to Anglo-Saxon law, is upon the plaintiff. Since May 2000, this new law has introduced a “reversal” of the burden of proof in cases of discrimination, i.e. the defendant needs to prove that s/he is not guilty of discrimination. This is a fundamental change in French law, as very often, discrimination in employment or housing could not be proved.

Since 13 February, 2003, the Home Office has voted the following measures:

- the reinforcement of the housing certificate (*Attestation d'accueil*) delivered by the City Hall to foreigners coming for a private visit,
- the strengthening of the sanctions against border trespassers and channels of illegal immigration,
- the abolition of residence permits for E.U. citizens.

On 17 February, 2003, the Home Secretary presented a preliminary project, which increased the duration of administrative detention from 12 to 60 days for illegal immigrants. A bill will be presented to the State Council (*Conseil d'Etat*) in the next few months. Many organisations protecting human rights and

immigrants have already reacted against this bill, which cannot "*bring an answer to existing problems*".

In France, immigration is seen as a security issue at national and international level. It immediately evokes the fear of demographic invasion, the loss of border control, the changing cultural identity, the collapse of the welfare state, and most of all, the danger of Islam.

The events of 11 September have increased this trend, and this led to reinforced control and security policies. It intensified the fight against illegal migration and made European nationals more suspicious towards the already settled "immigrants". All these factors reinforced the feeling that immigration policy is linked to security issues.

Immigration is more often seen as a real issue for internal security, mainly in relation with urban suburbs, exclusion, discrimination, violence generating trouble and gaps in social links, as well as extremism and religious radicalisation.

Issues related to multiculturalism such as the right to difference, pluralism of belonging, the plural citizenship model, the intercultural relations' projects, the expression of groups and minorities - referring to a "France of minorities" - are taboo. On the political scene, immigration has often raised debates among politicians or policy-makers in relation with assimilation, integration (term more often used today in official discourses), social cohesion (Jacques Chirac in his speech during the 2002 presidential campaign), republican and national citizenship (Jean-Pierre Chevènement), equality of rights (the French reference to the fight against discrimination), social contract of rights and duties (*La communauté des citoyens*, Dominique Schnapper), public order and public security to live together (definition of the Home Secretary).

Today, social and economic realities have opened new debates, mainly in relation with the potential imbalances in some sectors of the labour market where the unemployment rate is still high. This data clearly shows the need for France to determine the type of labour force required to cover these imbalances.

Thus, France appears to face a paradoxical situation that would require reliable socio-economic studies to be resolved. The unemployment rate remains, indeed, one of the major arguments to justify a restrictive immigration policy. In addition, sectorial workforce deficits, particularly in the field of computer sciences, have recently justified the resort to a targeted immigration policy. Despite this underlying paradox, few socio-economic or demographic studies have been carried out recently to assess better France's needs for population and/or workforce. The main demo-economic data available is provided by the latest population census (March 1999). It shows a certain demographic vitality in France, unlike other EU countries, but also sectorial deficits in workforce, proven or to come. Thus, the new debate France is engaged in today regarding a possible recourse to immigration deals with the gaps on the labour market, but does not tackle, as is usually the case in Europe, the demographic decline, i.e. the necessary renewal of generations to ensure the sustainability of the French social security system (pension and health).

1.3. The exception of highly qualified migrants - Immigration as a social and economic issue

With regard to foreign students applying for a work permit, France has started diversifying its immigration rules, depending on whether immigrants are highly or low-qualified. (*Circular DPM/DMI 2, n°2002-26, 01/16/02, on the conditions of admission of foreign persons for economic purposes*)

A strict evaluation of the global employment situation in France enables the State to reject the first request of foreign students applying for a work permit. However, every regional office has to examine the request of foreign students just finishing their studies, who apply for a modification of their administrative status. Students need to fill an application and provide a signed contract with a French company which has a technological and commercial interest in recruiting them. Employers have to explain the skills that justify their choice, such as the knowledge of a foreign language and how the potential employee is related to industrial and commercial trends in his/her country of origin. Employers also need to justify the amount of the salary offered.

This new possibility for French companies to recruit foreigners, introduced in 2002, shows how France moved from a period of zero immigration to a period of controlled immigration in relation with its economic needs.

1.4. Immigration and globalisation

Several migration flows exist in France today. Family reunification is the main flow, coming mainly from North African countries and Turkey. It represents two thirds of the annual entrances (including entrances for marriage purposes). The number of extra-Europeans permanent workers has slightly increased, along with the number of women and the level of qualification of newcomers. Temporary migration has also increased, including seasonal immigrants and students. Asylum-seekers are the least represented groups of these migration flows. France has experienced an increase in the number of asylum-seekers (25,000 per year) coming from Europe (Romania), Asia (Sri Lanka and China), Africa, and the former USSR republics.

Out of a total of 3.3 million foreigners living in France today, the active foreign population represents 1.6 million people, with a majority of Portuguese, followed by Algerians and Moroccans. Most of them are employed in the building trade, domestic services, agriculture and the car industry. However, it is important to note that foreigners are more subject to unemployment than nationals (24% against 11% for French people in 1999), especially extra-Europeans (32%).

Migration issues have sparked several debates and problems with politicians and the media: the question on border policy is frequently raised in this context of fear. Border crossing is a transnational concern (networks, identities) rather than an international one. The "old" interstate migration is challenged by the increase in regional mobility between global cities. Migration is now a part of globalisation.

Co-development is the second main debate. It questions the international order. It is sometimes initiated by states for other states, but is generally supported by

non-governmental actors (NGOs, immigrant organisations...). Several allegiances are linked to migrations, leading to possible intrusions of countries of origin in the political and cultural behaviours of migrants in a world where multiculturalism and plurality of references are both feared and solicited.

Chapter 2: The stakeholders

2.1. New actors appeared during the last 30 years

During the years of economic growth (1950's to 1970's), immigrants were excluded from the political life. However, most of them claimed the equality of rights at work. The 1972 and 1975 laws gave them the right to be represented in works councils and trade unions. To improve their status, local political rights were constantly claimed, but always refused.

The 1980's represent an important turning point for political expression, especially with the construction of Europe. European citizens are entitled to many rights in this context, while extra-Europeans have lost many of their previous advantages, especially Algerians, who gained freedom of movement on the French territory after the "*Evian agreement*" on independence (March 1962).

At the same time, freedom of association (Law of October 1981) for civic movements of foreigners emerged. They focused on civic issues such as anti-racism and new citizenship and fought for participation in local affairs, political integration on the French political scene, and the introduction of new cultural debates: multiculturalism, identity, ethnicity, secularism in the French republican model. As a result of settlement in the French society, new phenomena appeared such as the "*Beur*" movement (children of north African immigrant parents) in the 1990's, or the "*sans-papiers*" movement (1996), which used modern means of expression and communication (email, mobile phones, websites, artists involvement and organisation of events) to increase their recognition and their position in the society. New protagonists appeared, such as women, students and family members.

Children of immigrants play an important role on the French political scene, especially as local political actors in organisations created by the "second generation" of immigrants, established after freedom of association was granted to foreigners in 1981. New forms of struggle and civic participation emerged through these groups fighting against racism and discrimination, for civic rights, new citizenship and for the promotion of social and cultural integration.

In March 1983, during the local elections, the National Front (FN) made a breakthrough which revealed that immigration had become a bargaining issue between political leaders. The topic of citizenship began to emerge as a new issue that had to be negotiated with the "*Beurs*" and associative movements (*SOS racism* and *France Plus*). New elites emerged as mediators between the "suburbs" and elected politicians. At the same time, new conflicts materialised, for example in industrial firms (Citroën 1983) where immigrant leaders appeared. During the same period, the increasing number of organisations linked to Islam revealed that it had become the second religion in France, with four millions Muslims.

The same debates emerged from this conflict: the importance given to citizenship and civic rights. Then, the reform of the law on nationality from 1987 to 1993 led to many discussions concerning the link between nationality and citizenship, and also led "*Beurs*" organisations to enter the French political mainstream and support the left-wing majority in power.

Later, in the 1990's, localism became a tool of identification for many North Africans, not only for political activity but also for identity building. Some of them

gained social promotion through the management of community resources and projects financed by public funds. Their aim was to reduce marginality, violence and exclusion. At the same time, many of them entered the economic field through these organisations, opening ethnic shops and services.

2.2. The debates remain fragmented

In addition to the emergence of new actors in the debates on immigration on the political stage or in the civil society, one of the major characteristics of France lies in the fragmentation of governmental and non-governmental agencies in charge of immigration issues. Within the government, 3 government ministries are responsible for immigration issues: 1/ the Home Ministry (questions dealing with residence, territorial asylum and "double penalty") to which the OMI is attached (*Office des migrations internationales*, Office for International Migrations, in charge of the new migrants recruitment policy and of the implementation of the return policy), 2/ the Ministry of Foreign Affairs, for all questions regarding entry onto the territory (visa policy), and 3/ the Ministry of Social Affairs, Labour and Solidarity, for all issues regarding integration policy and the fight against discrimination, and to which the Central Office for Population and Migrations and the FASILD (Social Action Fund for Integration and Anti-Discrimination) are attached. Concerning the "double penalty", the Ministry of Justice is incidentally linked to immigration issues in France, since they are linked to residence issues. Moreover, asylum-seekers and refugees are under the responsibility of the Ministry of Social Affairs and the Home Ministry.

This diversity of governmental actors does not make the implementation of a global and concerted approach towards the French immigration policy easier, in spite of the creation of temporary inter-ministerial missions in charge of specific issues (human trafficking, co-development...).

Similarly, non-governmental actors are also extremely scattered; each of them is in charge of a number of issues linked to immigration. Thus, the following organisations deal with immigration:

- the CIMADE: residence, double penalty, asylum and integration (from the literacy perspective);
- the GISTI (*Groupe d'information et de soutien aux travailleurs immigrés* - Group of Information and Support of Immigrant Workers): residence and double penalty
- FTDA (*France Terre d'Asile*): asylum and refugees;
- the MRAP (*Mouvement contre le racisme et pour l'amitié entre les peuples* - Movement against Racism and for Friendship among Peoples);
- SOS Racisme: mainly fights against discrimination but also double penalty,
- the MIB (*Mouvement de l'immigration et des banlieues* - Immigration and Suburbs Movement): double penalty and defence of immigrants' rights;
- the SSAE (*Service social d'aide aux étrangers* - Social Aid for Foreigners): a quasi-governmental organisation dealing with social issues;
- the LDH (*Ligue des droits de l'homme* - Human Rights League) and the FIDH (*Fédération internationale des ligues des droits de l'homme* - International Federation of Human Rights Leagues).

The consequence of this diversity of non-governmental actors is a fragmented approach to immigration issues. Apart from limited campaigns (such as the recent campaign against the double penalty), there is no permanent entity co-ordinating the debates, and no competence sharing between these

organisations. Thus, the diversity of governmental actors is mirrored in the diversity of non-governmental organisations, which does not help implement and manage a debate based on a global approach of the French immigration policy.

2.3. Stereotypes assessing by policy makers and the challenge of multiculturalism in the French opinion

The civic participation of immigrants and ethnic minority groups appears to be mainly linked to the representation and incentive of local and national authorities and political parties, rather than to those of civil society organisations or of elected young elites themselves. When ethnic minority members appear on the political scene, they have been chosen to give visibility to public policies and they are required to keep to multicultural aims in the republican frame, but not to aim at more ambitious and non-ethnic jobs or goals. Communities coming from North Africa, and especially Algeria, are totally socialised in the French culture of administration and republican values.

The ambiguous nature of multiculturalism "*à la française*" has for a long time been hiding behind the discourse on citizenship, equality of rights, and social links. It has, thus, blurred the notions of ethnicity, social mixing (*mixité sociale*) and diversity. This has led to negative situations and to the creation of multiculturalism "by default" (unwillingly and artificially).

The multicultural dimension of urban areas is taking more and more space in the public and political opinion. The confrontation of collective identities and the difficulty to define them in the face of republican values, show that the French political space is poorly integrative and hardly allows for the emergence of communitarian groups.

Multiculturalism in France has a long way to go in order to be more explicit and acquire full legitimacy.

Thus, the recent creation of the National Council of the Muslims of France (*Conseil national des musulmans de France*) elected in April 2003, aims at giving an official status to Islam, as the 4 million Muslims are very often perceived as a challenge for French identity and security. The creation of this Council shows the State's willingness to take into account the diversity of expression, which is one of the major characteristics of French society today.

Chapter 3: European legislative proposals

The French law on foreigners regulates mainly the right of residence of immigrants on the French territory.

Civil and administrative laws are combined with penalty laws according to the various private international laws. Rules are often different. Many foreign groups are exempt from the general rules, and depend on special agreements according to their nationality (EU nationals, Algerians...). These particular regimes are combined to the general one. Legal sources are too numerous, as they have to take into account national and international rights.

National rights are based on the Decree of 11/02/1945 concerning the conditions of entry and residence of immigrants in France. Initially, it concerns and controls the labour force of immigrants. The Decree was changed and adapted many times according to political events and historical facts.

The Decree of 1945, when originally drafted, aimed at regulating the entry, hence the residence, of foreign workers in France. Its application has evolved during the past decades. Indeed, during the 1950's, 1960's and 1970's, when labour immigration was strongly encouraged, entry and residence in France were strongly dependant on whether the person concerned had a French work contract or a letter proving the employer's intention to hire them. Since 1974 – when the borders were closed to labour immigration – the application of this Decree de facto makes the access to employment depending on a residence permit. Except for a recent decree authorising the recruitment of foreign computer scientists (2000), and the specific categories mentioned below, the only legal ways to reside and work in France is through family reunification and settlement. Thus, labour immigration to France can be considered as impossible today. Consequently, there is no work permit as such, except for traders and artisans, but only a residence permit, which authorises employment or not, depending on its category.

The decree is still considered as a police law but its application was moderated by the European Convention on Human Rights (11/04/1950, Article 8: *“toute personne a droit au respect de sa vie privée et familiale, de son domicile et de sa correspondance”* –“Everybody has a right to the respect of privacy regarding their private and family life, their home and their correspondence.) Rules have been enacted concerning entry and residence in France. Foreigners may assert their fundamental rights in the same way as any French national, and among these rights, *“la liberté individuelle et la sureté”*, i.e. individual freedom and safety, such as freedom of movement, freedom of marriage, the right to live a normal family life and the right to sickness insurance, provided the foreigner is living on the French territory legally.

To be allowed to enter onto the French territory, foreigners must hold (*Article 5, Decree of 11/02/1945*):

- A passport;
- A visa (either for short-term residence i.e. less than 3 months, except for countries with which bilateral agreements have been signed, and holders of a Schengen visa, or for long-term residence, a national visa which requires a residence permit, except for EU member states, European Economic Area (EEA), Andorra, Monaco, Vatican and Swiss nationals).

Documents relative to the conditions of stay:

- Proof of sufficient resources and a guarantee of return;
- Or - Proof of professional activity.

3.1. Employment, paid employment and self-employment (admission for economic purposes)

Under the constant political pressure of the National Front and the deepening economic crisis, the various governments implemented restrictive policies from 1986 to 1997, thus creating more illegal aliens.

The coming to power of a left-wing government in June 1997 brought slight changes in policies; new laws on entry and residence introduced new types of visas. The employers' organisation MEDEF launched campaigns to reintroduce labour migration. However, according to the political, economic and social environment in France, these changes did not really introduce a radical transformation of French immigration policy.

Today, unemployment is still seen as one of the major obstacles to immigration to France. Many rules determine the way foreigners can have access to employment in France (see above). However, general unemployment is also the major obstacle to the real insertion of foreigners and immigrant groups who have been living in France for many years. It has a substantial impact on employment discrimination for North African communities, even if other groups - Turks and Africans - are in fact less economically integrated².

Self-entrepreneurship does not face the same problems; it depends on the foreigner's origin and the network s/he is attached to. A survey was carried out by Dietrich Thranhardt (1998) in Germany and Switzerland: the author analysed quantitative data and compared the forms of integration at school, on the labour market, at university, in mixed marriages of Turks, Spaniards and Italians. A comparable research on immigration and employment was conducted in 2001-2002 on the labour market, based on four immigration countries and three nationalities in each country. The populations studied in France were: Romanians, Moroccans, Indians and Pakistanis. Catherine Withol de Wenden and her collaborators observed that self-employment may be a solution to the difficulties of access to the French labour market for these three groups. Although it seems to be the last resort for Moroccans and Romanians, who create small enterprises of self-recruitment with only few employees, it is a real ambition for Indians and Pakistanis who create bigger companies due to their international ethnic networks.

For all three groups, the help of the State is very limited and the role of organisations does not seem to be very important as far as access to the labour market is concerned. For Moroccans, Indians and Pakistanis, the role played by organisations is a cultural and religious one, rather than an economic one. Romanians seem to receive help from orthodox churches, but these churches are not a real labour network.

As far as general rules are concerned, the foreigners who have the right to work in France without an authorisation are: EU members of Andorra and Monaco, those with a residence permit (a 10-year certificate for Algerians national) or a temporary residence permit with the mention "private and family life", employees

² Michèle TRIBALAT, Faire France, 1995.

of consulates and embassies, private employees of members of diplomatic missions, foreign employees of international organisations who do not have the status of international officials, foreigners contributing to their spouse's business (they must hold a worker residence permit), media correspondents in a foreign country and correspondents of information agencies abroad (they must hold a worker residence permit), employees of transport companies in transit in France, sailors and boatmen working on a boat from a foreign home port, home personnel of tourists (if less than 3 months of residence).

An EU national or a national of the EEA has the right to work without a permit. All other foreigners have to hold a residence permit to get a certificate to be able to work if they stay for more than 3 months.

Specific provisions apply to some "statutory" professions. Specific diplomas or authorisations are requested depending on the profession: university teachers, secondary school teachers, in the private sector, in engineering (private sector only), in primary schools, medical and paramedical professions (doctors, dentists, midwives, masseurs and physiotherapists, nurses, care assistants), pharmacists, veterinaries, architects, in social professions (social assistants), accountants, professional athletes, journalists. For other professions, equivalences of diplomas and admissions are requested, for example, for lawyers.

Employment in the public sector, or where there is a direct or indirect participation of public power, or in professions related to the general State interest and public organisations (army, police and justice) is forbidden to EU and EEA nationals. Major public companies want their employees to be French: EDF-GDF, SNCF, Air France; however, RATP has recently decided to open its recruitment to foreigners.

Students have to hold - and so to apply for - a temporary work permit, except Algerian nationals (the clause of 06/29/1990 which allowed Algerian students to have part-time jobs during their studies is void), EU nationals, and nationals of the EEA, Monaco and Andorra. The conditions and formalities to obtain the permit depend on the nature of the professional activity. In any case, students have to hold a valid residence student card and can only apply for part-time jobs.

The conditions under which students are allowed to work have been established in the Decree of 03/26/2002. Students following professional training have to sign a professional training convention and pay fees. Some fees and rights must be paid by non-European Union nationals and not by nationals of the EEA, when they apply to work and live in France. (Decree N°: NOR/INT/D/02/00151/C, 23/07/2002). The amount depends on the foreigner's status. A work permit is also required for internships.

3.2. Residence permits and exceptions

Entry on the French territory is considered legal if the foreigner holds all the documents required and has permission of the French public authority.

To have the right to stay on the French territory for more than 3 months, foreigners need to hold a residence permit.

If a foreigner stays for less than three months and is under 18 years old, and if s/he is a member of a diplomatic or a consular mission, s/he is exempt of the necessity to hold a residence permit.

Except for the aforementioned exceptions, all foreigners residing in France for more than 3 months must have a residence permit. As noted above, the category of residence permit delivered, depending on the reason for entry on the French territory, will then determine the eligibility to work.

To summarise: two residence permits exist. Whatever the case, the French principle is that nobody should become a public burden, and that the applicant, or the person supporting the applicant (family reunification) must have sufficient income and sickness insurance.

Residence permits (*carte de résidence*) are valid for 10 years and give an automatic right to work (all jobs in all regions of France). Since 1984, holders of a long-term residence permit do not have to apply for a work permit, as well as traders or craftsmen.

Temporary permits (*carte temporaire*) are valid for 1 year and give limited access to employment to certain categories of applicants. Temporary permits are delivered, depending on various criteria, to those able to prove real family ties ("private and family life" category), scientists, artists, students and visitors. Thus, the beneficiaries of a temporary permit of the "private and familial life" type, "scientist" and "artist" categories, are automatically eligible to work in France; eligibility to work is mentioned on the residence permit. Holders of a "student" temporary card must apply for an authorisation to work; if granted, this authorisation will be mentioned on the temporary residence permit and will be valid only for part-time work (i.e. a maximum of 50% of the weekly or monthly legal working time) in France.

Special rules apply to some foreigners, due to international agreements concluded with their countries. The Chevènement law of 1998 gives free mobility to new categories of workers in the framework of cultural and scientific exchanges (temporary cards, with the mention "artist" or "scientist") with their country of origin, except if their presence constitutes a threat to public order. This 1998 law brought French legislation in compliance with the European Convention on Human Rights (art. 8 and art. 3), in particular regarding people able to prove real "private and family" life in France.

For unmarried persons, the PACS (*Pacte civil de solidarité* - Civil Pact of Solidarity) has a real influence on the appreciation of immigrant's attachment to France, in case s/he applies for a residence permit. This applies to holders of a temporary permit (art. 12 bis 7e of the Decree of 2 November, 1945). Two restrictions to the right of residence of immigrants were introduced for people who have not signed a PACS (Decree of 10 December, 1999). This circular clearly separates PACS couples from couples without legal act, and states that in order to get a temporary permit with the mention "private and family life" (which gives an automatic right to work), couples have to sign a PACS and to have a legal current residence permit ("scientist", "visitor", "artist", "student"); the law includes people who signed a PACS with students (CE, 29/7/02, n°231158).

Extra-Europeans do not have free access to work, as workers or self-employed workers. To be able to work in France, they need to apply for a residence permit and to be registered with the authorities. The residence permit will give the right

to work or not, depending on the grounds on which it is granted (5 cases mentioned above). Officially, all foreigners are entitled to ask for the right to come to work to France, from their country of origin, on the basis of a letter proving an employer's intention to hire them. However, applications are almost systematically rejected, except those falling under the Decree concerning computer scientists, aimed at helping French companies to recruit foreign workers; work immigration to France is still impossible today. Even in sectors which lack labour force most, the European preference is systematically invoked.

Temporary "private and family life" permit holders must renew their permit every year; this renewal automatically entitles them to work in France. For other temporary permits (scientists, artists and visitors), the renewal is subject to all the requirements governing new applicants; the same is true for temporary "student" permit holders. The last four categories, according to the principles of French law, are not entitled to settle in France at the expiration of the initial contract that allowed them to stay and work in France (scientists, artists), study (students) or after their visit (visitors).

However, the sectorial deficits on the French labour have led to a situation where some French companies seek to recruit persons belonging to one of these four categories; this is notably the case for scientists and students. In this case, temporary permit holders who wish to be recruited by a French company need to apply for an authorisation to work to a local agency of the Ministry of Social Affairs, Labour and Solidarity prior to their hiring. Applications can be submitted with a letter of the employer stating the reasons motivating the choice made by the company about the applicant. The authorisation will not be automatically delivered, since the situation on the labour market can be invoked as a reason for rejecting the application. In other words, the European preference in employment can be used to reject the application. If the authorisation is granted, it gives the right to a one-year work permit, and has to be renewed every year; this renewal is granted if the original requirements are still met. This yearly renewal is mandatory until the holder meets the requirements for a 10-year residence card.

Thus, these recent changes did not give a better access to work to the foreign population.

Algerian nationals holding a temporary permit (1-year) have the right to get a residence permit (10-year) if they give proof of regular, effective and uninterrupted residence in France during the last 3 years. They have to provide evidence by any lawful means that during their stay they will have sufficient and stable resources and do not represent a threat to public order.

Thus, and globally, French immigration policy is defined by the labour market situation in France. Only one circular diverges from this rule and concerns the recruitment of foreign computer scientists. Discussions are currently taking place regarding medical and health care jobs (notably nurses), but, for the time being, all labour market segments are closed to immigrants. In the same way, whatever the situation, all residence permits granted, of any category, are subject to the principle that the applicant or his/her sponsor must have proof of sufficient income and have health insurance coverage.

As for third-country nationals coming for the purpose of self-employment, they are not required to hold a professional card of trader if they have a residence permit. If not, they have to apply for a long-term visa and to give proof of their

professional situation, their accommodation and potential family links in France. Algerians are not required to hold a professional card to be self-employed. This professional card can only be granted to traders and artisans, and is, therefore, equivalent to a work permit for self-employed people for these occupations.

In France, the various statuses regarding employment and self-employment are the results of the last 20 years. The political strategies used to prevent international migrations varied to a large extent from one government to another. Dissuasion consists in border control and the interruption of labour migration in 1974, together with the implementation of the 1985 Schengen Agreement (visa system 1986) and the 1990 Dublin Agreement (refugees). Dissuasion tools can take a repressive form, such as expulsion and readmission agreements in buffer zones with third-countries. Since 1977, dissuasion has often been linked with return policies, along with training and co-development policies, with little success. The “zero migration” policy carried out by the Home Secretary Charles Pasqua in 1993 was too illusive, and clashed with the labour market and human rights obstacles.

The adoption of the Debré law on 24 April, 1997 and then the Chevènement law on 11 May, 1998, successively introduced substantial modifications of the Decree of 2 November, 1945 No 45-2658 on the conditions of entry and residence of immigrants in France.

Regarding the *French Algerian and French Tunisian agreements*, a new amendment signed on 1 July, 2001, allowed citizens of Algeria and Tunisia to be included in the general regulations of the Decree of 2 November, 1945 which apply to nationals of other countries. They can benefit from all new mentions regarding temporary permits created by the Chevènement law (“private and family life”, “scientific/artistic and cultural professions” and “visitors”).

Despite these successive modifications, France resorted several times, during the 1980’s and 1990’s, to regularisation policies in order to “clean up” the situation before any new legislation would come into force. This was the case for the latest regulation procedure of 1997 launched before the “Chevenement” laws of 1998.

This “case-by-case” regularisation procedure aimed at legalising the position of people who could neither make their situation conform to the law, nor be deported. To benefit from this special regularisation procedure, the persons concerned had to prove continuous permanent residence in France for 7 years and real family ties; proof of sufficient income was not required. If all requirements were met, the persons concerned almost automatically had their status regularised. In practice, persons with a letter proving an employer's intention to hire them, and with real family ties, but who resided in France for only 5 years, could have their situation regularised. This special procedure allowed the regularisation of approximately 90,000 people.

The special procedure has ceased to apply. For a temporary permit to be delivered, foreigners need to meet the requirements for the various categories specified above, and must also have complied with the rules of entry on the French territory. However, following the 1997/1998 regularisation procedure, the “Chevenement laws” established a case-by-case regularisation, hence discretionary, for all “*sans-papiers*” (undocumented persons), who resided in France for more than 10 years (workers) or for more than 15 years (students).

3.3. Family reunification

Family members entitled to family reunification are: the spouse (only married persons are entitled to family reunification) and the children (under 21 for nationals from Cyprus, Malta and Turkey, under 18 for others). They have to be considered as legitimate children, natural or adopted. Children born from a first marriage are entitled to family reunification if their other parent died, or has no more parental rights, or if the parent who is asking for family reunification has parental rights granted by a foreign judgement and an authorisation of the other parent to let the child come to France.

There is no possibility of family reunification based on a PACS between an applicant and his/her partner living abroad. In the case of a PACS, for family reunification, the couple needs to prove a year of common life on the French territory before their children can be admitted (State Council on 29 July, 2002, n°231158). In any case, the present legislation does not allow family reunification between an applicant and his/her partner if they are not married.

Immigrants can apply for family reunification after 1 year of full residence in France. Some resources are required. The Decree of 1 March, 2000, defines the conditions for family reunification. According to this decree, immigrants who want to bring their family to France must have lived in France legally for more than a year (i.e. must have held a residence permit for a year at least). This condition does not apply to Algerians. Immigrants need to prove sufficient and stable resources (over the minimum wage) and need to have appropriate accommodation to host their family. The administration will evaluate if the resources and accommodation fulfil the criteria. If they earn less than the minimum wage, the administration is sole judge.

The documentary evidence requested for employees to be able to apply for family reunification includes the last income tax return, a document from the employer stating the dates and nature of the employee's work, with the last payslip attesting the amount of the resources during the year before the application. The resources taken into account are: the salary, commercial and non-commercial benefits and "APL" (housing benefits). Family allowances are not considered part of the income. (Information note, DPM-DM2, 09/16/1997).

"Stable income" means that immigrants must be able to prove sufficient income for the last 12 months before the application. Temporary employment or a temporary work contract can motivate a refusal, except if there is proof of 12 months of stable income. Applications for family reunification made by foreign students are systematically rejected because of unsteady resources. Evidence of appropriate housing is also requested: the accommodation needs to have drinking water, toilets and heating, and must be around 16m² for 2 people, 25m² for 3 people with 9m² for every additional person between 4 and 8 people, and 5m² per additional person over 8 people. The person who applies for family reunification has to be the owner, the tenant or to be put up by parents.

As far as EU nationals are concerned, the family members entitled to reunification are: the spouse, children under 18 and dependent ascendants. EU law gives the right to family members to stay in France, without any consideration of their nationality. Family members receive a residence permit (with the mention "European Community") of the same duration than that of the sponsor. Family members of a non-working EU citizen can get a residence

permit depending on sufficient resources: they cannot depend on the host State. However, they can all have a professional activity even if the person they came with does not work. An EU citizen married with a French national and parents of French children automatically receive a 10-year EC card.

Applications for family reunification, in the French case, only concern the applicant's family members living abroad. No regularisation can be obtained on the basis of family reunification for persons who entered France legally or illegally, and who live permanently in France. All persons holding a residence permit on the basis of family reunification have equal rights to employment and education.

A comparison between current French legislation and the draft Directive of the European Commission on family reunification shows that a certain number of points differ (definition of beneficiaries, requirements...). This directive introduces, among others, the possibility for parents to qualify for family reunification if the applicant supports them. In French legislation, this option gives a "visitor" status only, as long as the beneficiary is not likely to depend on the State. Similarly, French legislation does not include provisions regarding unmarried couples, or even those bound by a PACS agreement. The PACS is only an element assessing real family ties in France, and entitles the concerned person(s) to a temporary permit of the "private and familial life" type only, but under no circumstances of the "family reunification" category.

The implementation of this European Directive presupposes a number of changes in French legislation. Proposals are currently being drafted within the Ministry of Home affairs for a reform of the French policy regarding foreigner's entry and stay. As of today, the government has given no indication on its attitude towards this Directive and its transposition into French law³.

3. 4. Long-term residence right and insertion in French society

Regarding the law on entry and residence in France, immigrants are subject to the dispositions of the Decree of 2 November, 1945 on international conventions and special settlements, and legal exceptions.

The French authorities may give long-term residence status to third-country nationals after a number of years of legal and continuous residence, subject to adequate resources or conditions regarding professional activity (Article 14) and provided they are not a threat to public order. To obtain this type of residence permit, as for the other residence permits, foreigners must have sickness insurance, in the applicant's name or in the sponsor's name. After 3 years, third-country nationals can ask for a 10-year residence permit; however, the answer is not automatically positive. After 5 years, third-country nationals automatically receive a residence permit, if they apply for one.

³ This report was drafted in the 1st quarter of 2003. At the time, the debate on a new reform of French immigration policy was still ongoing; no element could be used to support a particular position of the French government vis-à-vis the proposals of the European Commission about a common immigration policy. This analysis may change quickly during the next months with the new texts; however, there is no possibility to adapt the contents of this report today (Note of the authors – Paris, 17 April 2003).

Many foreigners cannot be expelled because they belong to a protected category: foreigners under 18, foreigners living legally in France since the age of 10, foreigners who have lived legally in France for 15 years, foreigners who are married and living with a French national, foreigners with a child of French nationality and living in France, foreigners who are severely handicapped, foreigners living legally in France with serious health problems who cannot receive a correct treatment in their country of origin.

No deportation or loss of status can be pronounced against a person younger than 18; this is the only category which is fully and thoroughly protected. The protection of the other categories mentioned above depends on the type of residence permit they hold, but most of all, on the reason invoked to pronounce the loss of the permit, i.e. the deportation.

The loss of status, i.e. the deportation, can be pronounced by the Home Secretary for "imperious necessity of State security and absolute urgency" (*nécessité impérieuse pour la sûreté de l'Etat avec urgence absolue*). This administrative decision initially targeted terrorists and drug dealers.

Except for minors, all categories can be prosecuted on the grounds mentioned above. Other grounds can be invoked by the regional prefect in case of "serious threat to public order" (*trouble grave à l'ordre public*); minors and 10-year residence permit holders cannot be prosecuted on these grounds. In case of criminal offence, a ban from the French territory can be pronounced as a simple conviction or following a sentence; this does not apply to minors. For categories with strong family ties, a ban from the French territory must be particularly motivated.

The APRF (*arrêté préfectoral de reconduite à la frontière*) is a standstill clause of expulsion in France. It is a legal decision ordering immediate expulsion (Article 22). A foreigner may appeal against an APRF, which suspends its application until a new decision is made by a judge in an administrative court.

3.5. Mobility of third-country nationals

As far as the mobility of third-country nationals is concerned, for most new waves of immigrants, settlement in the host country does not have the same signification as for the former generations of immigrants (until the 1970's). Many new forms of mobility have developed. While the first generation of Moroccans does not usually plan to return except for holidays, older people from Pondichery and Karikali go back each winter to Southern India to see their families and land properties, and, therefore, have a double positive insertion, and a double spatial, if not cultural, belonging. This phenomenon can be found among young Moroccans who are involved in social and economic associative projects of co-development.

As for Romanians, except for the first generation of refugees, all sub-groups seem to be very mobile, anticipating, even in illegality, the European freedom of movement. Some elites also try to be present both in the host land and the country of origin through their job involvement.

Generally, we can say that settlement has transformed into mobility since many years. Many immigrants return regularly to their country of origin and many of

them, such as North African, are involved in Euro-Mediterranean projects of co-development and are permanently turned towards their homeland.

As regards French law, an immigrant who wishes to return to his/her country of origin can benefit from State support if:

- s/he can be made redundant and if his/her employer has subscribed a convention with OMI ,
- s/he is unemployed and has received jobseeker's allowances for at least three months.

When the French Home Secretary went to Mali, he suggested to double the aid (from €3600 to €7000) granted to immigrants from Mali settled in France who want to go back to their country with a resettlement project or a project in local development. This programme only registered 46 projects of return in 2002. Mr. Sarkozy, the French Home Secretary, announced that irregular Malians could benefit from this aid, as well as from a 3-month training course.

Chapter 4: Recommendations and open method of co-ordination

4.1. A multiculturalism respecting human rights and republican roles

The historical background of France, from the 18th century until today, shows that multiculturalism was, and still is an important issue. The unification of France is compatible with the diversity of “provinces”, the emergence of a French identity and the notion of nation-state.

The Third Republic gave the people of France a feeling of unity, by establishing the foundations of a republican regime based on secularism and a free and public education system. The second part of the 20th century has seen an important revival of regionalism in France. Brittany and Corsica continue to lead regionalist and separatist fights on the issues of cultural diversity of languages (accepted at school), and political autonomy (Corsican Parliamentary Assembly established by Lionel Jospin in 2000).

Since the 1980's, French society has entered the reality of multiculturalism under the pressure of immigration, with the right of association for foreigners in 1981 and the emergence of the “*beur*” movement. This gave legitimacy to the claims of cultural pluralism, intercultural projects, and to the right to be different (proclaimed by SOS racism, created in 1984). At the same time, language courses were added to the compulsory programme on languages and cultures of origin (1974) established through bilateral agreements with the embassies of the countries of origin in order to allow an easier return of the second generation of immigrants to their parents’ country.

The 1991 Gulf War put emphasis on the multicultural definition of French identity, referring to the plurality of allegiances, the legitimacy of collective identities within the republican framework and the dissociation between nationality and citizenship around the debate on new citizenship launched by civic organisations in 1988. The French “assimilationist” model included many taboos, which led France to stress the right to indifference and the respect of republican and assimilation values, secularism, rights and duties, registration and eligibility on electoral lists for the second generation of immigrants with French citizenship.

4.2. Allowing more mobility at the borders and on the labour market

All countries of immigration try to limit illegal migration and the recruitment of illegal workers, but they lack the will and means to do it, due to a permanent conflict between the situation on the labour market, pushing to open the borders and the logic of states, pushing to close them.

Considering this context and taking into account the reality of migrants’ presence on the French labour market, it appears that a study has to be carried out concerning:

- the reopening of borders with a more flexible visa system in relation with the situation on the labour market,
- the reform of the restrictions regarding national employment that could lead to adopt selective immigration policies in a pan-European policy group,

- the definition of a real and new policy concerning French suburbs with a labour market approach, such as training unskilled people and offering financial incentives to employers,
- an evaluation of the needs on the French labour market, and of the deficit of labour force already covered by illegal, seasonal and provisional workers (essentially due to the restriction regarding the employment of non-European workers).

In France, immigration policy must give an immediate answer to questions regarding skill gaps, which imply an increased mobility between the home countries of the immigrants and Diaspora, and the host countries. On the one hand, this implies a real and global policy of insertion and adaptation of immigrants to the host country. On the other hand, European states could develop policies towards countries of origin, encouraging migrants to support local development projects and at the same time protecting their status in host countries. Countries of origin and host countries could develop partnerships to reduce the phenomenon of “brain drain” so as to facilitate the mobility of these migrants and create a process of exchange, in order to increase the mutual benefits of international migration.

The two main factors and issues that seem to be the basis for future policy reforms regarding entry and residence, are: education patterns and training to respond to current patterns of employment, and free transnational circulation according to new forms of mobility. For example, the French economic health depends essentially on corporations, which themselves depend on the labour market, and today, the market needs skilled workers in specific areas. In this context, it would be beneficial for France to recruit workers in countries with linguistic, cultural, industrial, commercial and diplomatic affinities, such as North African countries and other French-speaking African countries.

The objective is to develop partnerships between the private sector and the community of associations and trade unions, territorial organisations and the government, to work on the development of national economic activity, in both the countries of origin and the host countries. This is what co-development means: a new approach to support the role of immigrants and ethnic minority groups in the development of their country. Nonetheless, co-development has to be dissociated from the financial help granted for the return to the country of origin (*aide au retour*); otherwise, this approach will fail because it will be perceived as forced return.

Beyond these examples, and more globally, French legislation, regarding foreigners' residence, significantly restricts their interstate mobility. Until now, the government has given no indication on its attitude towards the mobility of third-country nationals between European Union states. A single indicator could let us assume that the changes this orientation presupposes will occur regarding French policy. In fact, in the present state of the legislation, any foreigner holding a 10-year residence permit and leaving the country for more than 3 years will automatically lose his/her right of residence. Thus, any person wishing to develop an activity in their country of origin, or to work in another country of the European Union, is subject to the possible loss of their previous status. Several reasons can be invoked not to take a risk in that field. In practice, this measure implies and even requires stability in the host society; it dissuades anybody from geographical mobility, unlike what certain groups of population seem to want to develop, and also contradicts the directions taken by the European Union regarding this issue. However, the government has given no

indication as to its attitude towards this issue; proposals are currently being drafted. There is no indication that this issue will even be tackled in the reform which is currently being prepared.

4.3. Conclusion

Today, migration is the result of the globalisation of economy, mass and media culture, transnational networking, but also one of the last symbols of the exercise of Nation-States' sovereignty. And if the issue of foreigner's entry is now managed at European level, insertion and settlement policies are still decided at national level.

There is an increase in the various forms of mobility challenging borders, while Nation-States are faced with a tension between public opinion, markets and human rights principles. However, Nation-States are intensifying border controls with restrictive policies, but at the same time shaping an idealistic discourse on migration and co-development.

To summarise, the entire context leads the States to focus on strict and dissuasive immigration policies with many discretionary and underground decisions that are taken regarding the entrance and residence of foreigners. Nonetheless, there is a real permanent conflict between the logic of the market and that of the State, the human rights situation, and the core question of national identity and citizenship. The opening of markets and the closing of States also have an important impact on the welfare state, questioning the principles of equal treatment and social minima.

Compared with other European countries, while religion is seen in France as a serious concern, language is not considered as a problem. In spite of the globalisation of new immigration trends, most immigrants and their children are perfectly fluent in French (Maghrebi, Sub-Saharan Africans, Indians from Pondichery and Vietnamese). In a way, the *migration couple* - inherited from the colonial past and the privileged relations between countries of origin and host countries (France/Algeria, Germany/Turkey, United Kingdom/Commonwealth) - has lost part of its strength. However, the diversification of origins seems to indicate that countries involved in these new movements do not have apparent links.

What is expected in the coming years is a phenomenon - observed in France for quite a long time - based on the growth of a new type of migration flow involving skilled and urban immigrants, far from the mass migration of "birds of passage" and manual workers during the years of economic growth. The representation of the western El Dorado among foreigners still inspires many immigrants.

This diversification in the types of mobility has many consequences on the internal and international relations of each State subject to these new forms of migration. This leads to obsessive campaigns against irregular immigration, and the decline of State power where its sovereignty is challenged by the difficulty to control borders and by the need for management at inter-governmental and supra-national level, which creates an increased logic of security (*la logique sécuritaire*).

Multiculturalism is related to the new contents of citizenship: multiculturalism "*à la française*", which results from a permanent compromise with the

reinforcement of the power of communities in a neo-colonial management of differences. Features of multiculturalism finally penetrated the French model of citizenship, due to its evolving content since the French revolution, as it was first confronted with the class struggle (1848), then by gender equality rights (from the end of the 19th to the middle of the 20th century). It has been more recently challenged by immigration and Europe that brought new values such as anti-discrimination (Article 13 of the Amsterdam Treaty, 1997).

Recently, and after 11 September, an evolution occurred due to the presence of four million Muslims - the most important concentration in Europe. France did not have an aggressive discourse towards these new challenges, contrary to Germany or the United Kingdom. France was also reluctant to get involved in the conflict with Iraq: the will to maintain good relationships with North African countries and a relative social peace in inner cities may explain such balance in diplomacy. Nevertheless, compared to France, other European countries (United Kingdom, Germany, and the Netherlands) are much more open to multiculturalism and diversity. Their policies recognise communities, ethnic and religious identities. However, Europe, with the Amsterdam Treaty, imposes a top-down method, new multicultural values as parts of its identity: anti-discrimination (article 13), cultural diversity (recommendations of the Council of Europe). Regarding the notion of European citizenship, the Maastricht Treaty proposes an alternative model to traditional citizenship, less exclusive than the national one, compatible with other allegiances, which includes dual citizenship, and enriched with new concepts such as "citizenship of residence".

In this context, and regarding multiculturalism, France has to confront with its hypocrisy since the colonisation period. While France managed its minorities with the complicity of civic and religious mediators (*Caid*s, *Bachagas*, *Marabouts*) who expressed communitarian identities, these people were also the guarantee of the acceptance of republican values and social peace. The same thing was done regarding workers' public housing (foyers) and in French suburbs.

However, it is a duty for France to consider multiculturalism as the only way to maintain French identity alive as well as strong and valid, open to the following new challenges: migration flows, diversity of religions, attractiveness of communitarian allegiances, localism and transnational networks, plural allegiances to political institutions, nations and states. The republican model of integration has no other choice than negotiating with multiculturalism.

For example, Germany has been the first country to officially open its labour market to 20,000 computers specialists from India and change its entrance and residence policy by introducing a quota system (law of 2001). Many other countries like France prefer to use more confidential practices.

Nowadays, there is a real diversification in the groups of migrants due to the new mobility that has developed in France as well as in other European countries in the last ten years (elites, refugees, technicians, middle classes, women, seasonal workers and low qualified workers)

New migrants are "greasing the wheels" of the European labour market and are not really part of a structural mobility legally established. With border controls and politics aiming at the reduction of the mobility of migrants, most newcomers enter illegally to work illegally. The mobility of Europeans in the European labour market is more limited than expected, even if it is encouraged by freedom of

movement, settlement and employment. This shows that European member states seem to be in a paradoxical situation. On the one hand, Europe is in need of migrants to reduce the skill gap and make spatial arbitrage with more mobility. On the other hand, the European public opinion is reluctant to let migrants in, which encourages governments to adopt restrictive policies.

It seems that the "pushing" factors which prompt immigration flows, such as poverty and policy repression, are less influential today, because of the development of communication facilities. These "pushing" factors add to "pulling" factors, such as skill gaps, which give the chance to immigrants to find employment. Other factors facilitate the integration of newcomers, such as existing Diaspora in the host country and the multiplication of seasonal migration. All these factors are a reality for many European member states which have difficulty in dealing with this situation, as regular changes in the status of immigrants and of the residence rights show. Despite thinking of a flexible management of immigrant workers regarding the new kind of mobility flows in a changing world, European member states seem to keep to their previous position, totally disconnected from the realities of today's migration flows, especially France.

Thus, the emergence, or the aspiration to new forms of mobility must be set back in the global context of today's migrations; a world spatially and culturally more open where pluri-belonging seems to become the rule. A global approach towards migrations, which takes into account the interests of the origin, host and transit countries, could emerge from the connection made by immigrant and ethnic minorities between their home and host societies, or the one in which they transit. Today, this approach is still rarely adopted, and immigration policies are designed according to the country's own interest, rather than to the shared interests and benefits these societies could draw from being involved in such movements, especially in France. However, immigrant and ethnic minorities' practices - through their commercial and industrial networks, their solidarity organisations or their media - show that migration and migration management cannot be thought of in binary or linear terms anymore.

Setting migration back into the context of a global and lasting development is the option to explore today if societies want to avoid reproducing and extending the fracture and contemporary economic and social divides. The increase in the movements of capital and goods, and probably of services in the near future, will not lead to a "globalisation with a human face", one of the most important claim in various forums, if there is no guarantee of mobility for men and women, and their initiatives. Countries have to expect migrations flows to provide mutual benefits to countries of origin and to host countries: this is the main challenge for a new immigration policy.

Panos Paris Institute is an international NGO with the two-fold objective of (1) strengthening the media and its capacity to produce pluralist information in developing countries, and (2) supporting the production of information, and stimulating and informing public debates in both developing and developed countries on issues like migration and development.

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This report was written by Reynald Blion, with the collaboration of Catherine Wihtol de Wenden, and the contribution of Nedjma Meknache. It is based on papers published by Catherine Wihtol de Wenden and on the report of Mireille Raunet published in 2000 by the French Economic and Social Council, 2000, "Exodes des compétences du Tiers Monde vers les pays développés: le cas des Africains francophones et de la France".

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